Journal of the Senate

MONDAY, MAY 2, 2011

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Message from the House No. 62

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

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

S. 108. An act relating to effective strategies to reduce criminal recidivism.

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

Message from the House No. 63

A message was received from the House of Representatives by Mr. William M. MaGill, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered Senate proposal of amendment to House bill entitled:

H. 287. An act relating to job creation and economic development.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Botzow of Pownal
Rep. Marcotte of Coventry
Rep. Condon of Colchester

Consideration Resumed; Bill Amended; Third Reading Ordered

H. 420.

Consideration was resumed on House bill entitled:

An act relating to the office of professional regulation.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senator White?, was agreed to.

Thereupon, the pending question, Shall the bill be read the third time?, was decided in the affirmative.

Consideration Resumed; Bill Amended; Third Reading Ordered

H. 438.

Consideration was resumed on House bill entitled:

An act relating to the department of banking, insurance, securities, and health care administration.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Finance?, was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Brock, on behalf of the Committee on Finance, moved to amend the Senate proposal of amendment as follows:

Sec. 11a. 8 V.S.A. § 12603 is amended to read:

§ 12603. MERCHANT BANKS

* * *

(f) The minimum amount of initial capital for a merchant bank is ~~$10,000,000.00~~ $1,000,000.00, all of which ~~at least $5,000,000.00~~ shall be common stock or equity interest in the merchant bank. ~~The balance may be composed of qualifying subordinated or similar debt~~ A merchant bank may use qualified subordinated debt or senior debt as part of its capital structure above $1,000,000.00, provided that the amount of subordinated debt or senior debt used as capital above $1,000,000.00 is not greater than the amount of common stock or equity interest used as capital above $1,000,000.00. The commissioner, in his or her discretion, may increase the minimum capital required for a merchant bank.

* * *

(m) Any acquisition or change in control of ~~five~~ ten percent or more of the common stock or equity interests in a merchant bank shall be subject to the prior approval by the commissioner. The acquiring person shall file an application with the commissioner for approval. The application shall be subject to the provisions of subchapter 7 of chapter 201 of this title.

(n) The commissioner ~~may~~ shall examine the merchant bank and any person who controls it to the extent necessary to determine the soundness and viability of the merchant bank in the same manner as required by subchapter 5 of chapter 201 of this title.

(o) A merchant bank shall include on all its advertising a prominent disclosure that deposits are not accepted by a merchant bank.

(p) For purposes of this section, "control" means that a person:

(1) directly, indirectly, or acting through another person owns, controls, or has power to vote ten percent or more of any class of equity interest of the merchant bank;

(2) controls in any manner the election of a majority of the directors of the merchant bank; or

(3) directly or indirectly exercises a controlling influence over the management or policies of the merchant bank.

Which was agreed to.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative.

Rules Suspended; Bills on Notice Calendar for Immediate Consideration

On motion of Senator Campbell, the rules were suspended, and the following bills and Joint resolution, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

H. 73, H. 264, H. 369, H. 448.

Proposal of Amendment; Third Reading Ordered

H. 369.

Senator Flory, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to health professionals regulated by the board of medical practice.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 26 V.S.A. chapter 7 is amended to read:

CHAPTER 7. PODIATRY

Subchapter 1. General Provisions

§ 321. DEFINITIONS

In this chapter, unless the context requires another meaning:

(1) "Board" means the state board of medical practice established by chapter 23 of this title.

(2) "Disciplinary action" means any action taken against a licensee or an applicant by the board~~, the appellate officer~~, or on appeal ~~therefrom~~ from that action, when that action suspends, revokes, limits, or conditions licensure in any way, ~~and~~ or when it includes reprimands or an administrative penalty.

* * *

§ 324. PROHIBITIONS; PENALTIES

* * *

(c) A person who violates a provision of this ~~chapter~~ section shall be imprisoned not more than two years or fined not more than ~~$100.00 for the first offense and not more than $500.00 for each subsequent offense~~ $10,000.00.

* * *

§ 371. ELIGIBILITY

To be eligible for licensure as a podiatrist, an applicant must:

* * *

(3) have received a diploma or certificate of graduation from an accredited school of podiatric medicine approved by the board; ~~and~~

(4) successfully complete the examinations given by the National Board of Podiatry Examiners; and

(5) if the applicant has not engaged in practice as a podiatrist within the last three years, comply with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 373. RENEWAL OF LICENSURE

(a) ~~Licenses shall be renewable every two years without examination and on payment of the required fee~~ A person licensed by the board to practice podiatry shall apply biennially for the renewal of his or her license. At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee; however, any podiatrist while on extended active duty in the uniformed services of the United States or as a member of the national guard, state guard, or reserve component who is licensed as a podiatrist at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the podiatrist's return from activation or deployment, provided the podiatrist notifies the board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license. The board shall register the applicant and issue the renewal license. Within one month following the date by which renewal is required, the board shall pay the license renewal fees into the medical practice board special fund.

(b) A license which has lapsed may be reinstated on payment of a renewal fee and a late renewal penalty. The applicant shall not be required to pay renewal fees during periods when the license was lapsed. However, if such license remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the licensee to update his or her knowledge and skills as defined by board rules.

* * *

(d) All applicants shall demonstrate that the requirements for licensure are met.

§ 374. FEES; LICENSES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application for licensure ~~$565.00, in fiscal year 2009 $600.00, and in fiscal year 2010 and thereafter,~~ $625.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~$450.00 and in fiscal year 2009 and thereafter,~~ $500.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

§ 375. UNPROFESSIONAL CONDUCT

(a) ~~The term "unprofessional conduct" as used in this chapter shall mean the conduct prohibited by this chapter.~~

(b) The following conduct and the conduct described in section 1354 of this title by a licensed podiatrist constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of licensure:

(1) ~~fraudulent procuring~~ fraud or ~~use of a license~~ misrepresentation in applying for or procuring a podiatry license or in connection with applying for or procuring a periodic renewal of a podiatry license;

* * *

(c) Unprofessional conduct includes the following actions by a licensee:

* * *

(3) ~~professional negligence~~ failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; and

(B) failure to conform to the essential standards of acceptable and prevailing practice;

* * *

(7) administering, dispensing or prescribing any controlled substance other than as authorized by law;

(8) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the podiatrist's ability to practice.

* * *

§ 376. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from any person including a state or federal agency and the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board charging any podiatrist practicing in the state with unprofessional conduct, specifying the grounds. The board ~~may~~ shall initiate ~~disciplinary action in any complaint against~~ an investigation of a podiatrist ~~and~~ when a complaint is received or may act without having received a complaint.

(c) After giving an opportunity for a hearing ~~and upon a finding of unprofessional conduct~~, the board ~~may suspend or revoke a license, refuse to issue or renew a license, issue a warning, or limit or condition a license~~ shall take disciplinary action described in subsection 1361(b) of this title against a podiatrist or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. Such an agreement may include~~, without limitation,~~ any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

* * *

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and the professions regulated by the board. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

* * *

Sec. 2. 26 V.S.A. chapter 23 is amended to read:

CHAPTER 23. MEDICINE ~~AND SURGERY~~

Subchapter 1. General Provisions

§ 1311. DEFINITIONS

For the purposes of this chapter:

(1) ~~A person who advertises or holds himself or herself out to the public as a physician or surgeon, or who assumes the title or uses the words or letters "Dr.," "Doctor," "Professor," "M.D.," or "M.B.," in connection with his or her name, or any other title implying or designating that he or she is a practitioner of medicine or surgery in any of its branches, or shall advertise or hold himself or herself out to the public as one skilled in the art of curing or alleviating disease, pain, bodily injuries or physical or nervous ailments, or shall prescribe, direct, recommend, or advise, give or sell for the use of any person, any drug, medicine or other agency or application for the treatment, cure or relief of any bodily injury, pain, infirmity or disease, or who follows the occupation of treating diseases by any system or method, shall be deemed a physician, or practitioner of medicine or surgery.~~ Practice of medicine means:

(A) using the designation "Doctor," "Doctor of Medicine," "Physician," "Dr.," "M.D.," or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition unless the designation additionally contains the description of another branch of the healing arts for which one holds a valid license in Vermont;

(B) advertising, holding out to the public, or representing in any manner that one is authorized to practice medicine in the jurisdiction;

(C) offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other person;

(D) offering or undertaking to prevent, diagnose, correct, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any person, including the management of pregnancy and parturition;

(E) offering or undertaking to perform any surgical operation upon any person;

(F) rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient within the state by a physician located outside the state as

a result of the transmission of individual patient data by electronic or other means from within the state to the physician or his or her agent; or

(G) rendering a determination of medical necessity or a decision affecting the diagnosis or treatment of a patient.

* * *

§ 1313. EXEMPTIONS

(a) ~~Except as to the provisions of sections 1398 and 1399 of this title, this chapter shall not apply to persons licensed to practice osteopathy under chapter 33 of this title; or to persons licensed to practice chiropractic under the laws of the state; or to persons licensed under the laws in force prior to December 9, 1904, or to commissioned officers~~ The provisions of this chapter shall not apply to the following:

(1) a health care professional licensed or certified by the office of professional regulation when that person is practicing within the scope of his or her profession;

(2) a member of the United States ~~army, navy or marine hospital service~~ military or national guard, including a national guard member in state status, or to any person ~~or persons~~ giving aid, assistance, or relief in emergency or accident cases pending the arrival of a regularly licensed physician ~~or surgeon.~~;

~~(b)~~(3) ~~This chapter shall not apply to a nonresident physician or surgeon who is called to treat a particular case in this state and who does not otherwise practice in this state, provided that such nonresident physician or surgeon is duly licensed where he resides and that the state of his residence grants the same privilege to duly licensed practitioners of this state. This chapter shall not prevent~~ a nonresident physician ~~or surgeon from~~ coming into this state ~~for consultation~~ to consult or using telecommunications to consult with a duly licensed practitioner herein ~~nor shall it prevent,~~; or

(4) a duly licensed physician ~~or surgeon of an adjoining~~ in another state, ~~or of the Dominion of~~ in Canada ~~from coming into a town bordering thereon, in this state for the purpose of treating a sick or disabled person therein~~, or in another nation as approved by the board who is visiting a medical school or a teaching hospital in this state to receive or conduct medical instruction for a period not to exceed three months, provided the practice is limited to that instruction and is under the supervision of a physician licensed by the board.

~~(c)~~(b) The provisions of sections 1311 and 1312 of this title shall not apply to a person, firm or corporation that manufactures or sells patent, compound or proprietary medicines, that are compounded according to the prescription of a

physician who has been duly authorized to practice medicine, or to the domestic administration of family remedies.

* * *

(e) ~~Notwithstanding the provisions of subsection 1313(d) of this title, no physician's assistant shall engage in the practice of optometry as defined in section 1601 of this title.~~

* * *

§ 1314. ILLEGAL PRACTICE

(a) A person who, not being licensed, advertises or holds himself or herself out to the public as described in section 1311 of this title, or who, not being licensed, practices medicine ~~or surgery~~ as defined in section 1311 of this title, or who practices medicine ~~or surgery~~ under a fictitious or assumed name, or who impersonates another practitioner or who is not a licensed health care provider as defined in 18 V.S.A. § 5202 and signs a certificate of death for the purpose of burial or removal, shall be imprisoned not more than ~~three months~~ two years or fined not more than ~~$200.00 nor less than $50.00~~ $10,000.00, or both.

* * *

§ 1317. UNPROFESSIONAL CONDUCT TO BE REPORTED TO BOARD

(a) Any hospital, clinic, community mental health center, or other health care institution in which a licensee performs professional services shall report to the ~~commissioner of health~~ board, along with supporting information and evidence, any disciplinary action taken by it or its staff which significantly limits the licensee's privilege to practice or leads to suspension or expulsion from the institution, a nonrenewal of medical staff membership, or the restrictions of privileges at a hospital taken in lieu of, or in settlement of, a pending disciplinary case related to unprofessional conduct as defined in sections 1354 and 1398 of this title. The commissioner of health shall forward any such information or evidence he or she receives immediately to the board. The report shall be made within 10 days of the date such disciplinary action was taken, and, in the case of disciplinary action taken against a licensee based on the provision of mental health services, a copy of the report shall also be sent to the commissioner of mental health and the commissioner of disabilities, aging, and independent living. This section shall not apply to cases of resignation or separation from service for reasons unrelated to disciplinary action.

* * *

(e) A person who violates this section shall be subject to a civil penalty of not more than ~~$1,000.00~~ $10,000.00.

§ 1318. ACCESSIBILITY AND CONFIDENTIALITY OF DISCIPLINARY MATTERS

* * *

(c) The commissioner of health shall prepare and maintain a register of all complaints, which shall be a public record, and which shall show:

* * *

(2) only with respect to complaints resulting in filing of disciplinary charges or stipulations or the taking of disciplinary action, the following additional information, except for medical and other protected health information contained therein pertaining to any identifiable person that is otherwise confidential by state or federal law:

* * *

(E) stipulations ~~filed with~~ presented to the board at a public meeting; and

* * *

(f) For the purposes of this section, "disciplinary action" means action that suspends, revokes, limits, or conditions licensure or certification in any way, and includes reprimands and administrative penalties.

(g) Nothing in this section shall prohibit the disclosure of information by the commissioner regarding disciplinary complaints to Vermont or other state or federal law enforcement or regulatory agencies in the execution of its duties authorized by statute or regulation, including the department of disabilities, aging, and independent living or the department of banking, insurance, securities, and health care administration in the course of its investigations about an identified licensee, provided the agency or department agrees to maintain the confidentiality and privileged status of the information as provided in subsection (d) of this section.

(h) Nothing in this section shall prohibit the board, at its discretion, from sharing investigative and adjudicatory files of an identified licensee with another state, territorial, or international medical board at any time during the investigational or adjudicative process.

(i) Neither the commissioner nor any person who received documents, material, or information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, material, or information.

Subchapter 2. Board of Medical Practice

§ 1351. BOARD OF MEDICAL PRACTICE

(a) A state board of medical practice is created. The board shall be composed of 17 members, nine of whom shall be licensed physicians, one of whom shall be a ~~physician's~~ physician assistant ~~certified~~ licensed pursuant to chapter 31 of this title, one of whom shall be a podiatrist ~~as described in section 322~~ licensed pursuant to chapter 7 of this title, and six of whom shall be persons not associated with the medical field. The governor, with the advice and consent of the senate, shall appoint the members of the board. Appointments shall be for a term of five years, except that a vacancy occurring during a term shall be filled by an appointment by the governor for the unexpired term. No member shall be appointed to more than two consecutive full terms, but a member appointed for less than a full term (originally or to fill a vacancy) may serve two full terms in addition to such part of a full term, and a former member shall again be eligible for appointment after a lapse of one or more years. Any member of the board may be removed by the governor at any time. The board shall elect from its members a chair, vice chair, and secretary who shall serve for one year and until their successors are appointed and qualified. The board shall meet upon the call of the chair or the commissioner of health, or at such other times and places as the board may determine. Except as provided in section 1360 of this title, nine members of the board shall constitute a quorum for the transaction of business. The affirmative vote of the majority of the members present shall be required to carry any motion or resolution, to adopt any rule, to pass any measure or to authorize any decision or order of the board.

(b) In the performance of their duties, members of the board shall be paid ~~$30.00~~ a per diem and their actual and necessary expenses as provided by 32 V.S.A. § 1010(b).

(c) The board of medical practice is established as an office within the department of health. With respect to the board, the commissioner shall have the following powers and duties to:

* * *

(4) act as custodian of the records of the board; ~~and~~

(5) prepare an annual budget and administer money appropriated to the board by the general assembly. The budget of the board shall be part of the budget of the department. A board of medical practice regulatory fee fund is created. All board regulatory fees received by the department shall be deposited into this fund and used to offset up to two years of the costs incurred by the board, and shall not be used for any purpose other than professional

regulation and responsibilities of the board, as determined by the commissioner of health. To ensure that revenues derived by the department are adequate to offset the cost of regulation, the commissioner shall review fees from time to time, and present proposed fee changes to the general assembly;

(6) prepare and maintain a registry of all physicians licensed by the board; and

(7) make available an accounting of all fees and fines received by the board and all expenditures and costs of the board annually.

* * *

§ 1353. POWERS AND DUTIES OF THE BOARD

The board shall have the following powers and duties to:

(1) License and certify health professionals pursuant to this title.

(2) Investigate all complaints and charges of unprofessional conduct against any holder of a license or certificate, or any medical practitioner practicing pursuant to section 1313 of this title, and to hold hearings to determine whether such charges are substantiated or unsubstantiated.

~~(2)~~(3) Issue subpoenas and administer oaths in connection with any investigations, hearings, or disciplinary proceedings held under this chapter.

~~(3)~~(4) Take or cause depositions to be taken as needed in any investigation, hearing or proceeding.

~~(4)~~(5) Undertake any such other actions and procedures specified in, or required or appropriate to carry out, the provisions of this chapter and chapters 7, 29, 31, and 52 of this title.

~~(5)~~(6) Require a licensee or applicant to submit to a mental or physical examination, and an evaluation of medical knowledge and skill by individuals or entities designated by the board if the board has a reasonable basis to believe a licensee or applicant may be incompetent or unable to practice medicine with reasonable skill and safety. The results of the examination or evaluation shall be admissible in any hearing before the board. The results of an examination or evaluation obtained under this subsection and any information directly or indirectly derived from such examination or evaluation shall not be used for any purpose, including impeachment or cross-examination against the licensee or applicant in any criminal or civil case, except a prosecution for perjury or giving a false statement. The board shall bear the cost of any examination or evaluation ordered and conducted pursuant to this subdivision in whole or in part if the licensee demonstrates financial hardship or other good cause. The licensee or applicant, at his or her expense, shall

have the right to present the results or reports of independent examinations and evaluations for the board's due consideration. An order by the board that a licensee or applicant submit to an examination, test or evaluation shall be treated as a discovery order for the purposes of enforcement under ~~sections~~ 3 V.S.A. §§ 809a and 809b ~~of Title 3~~. The results of an examination or evaluation obtained under this subdivision shall be confidential except as provided in this subdivision.

(7) Investigate all complaints of illegal practice of medicine and refer any substantiated illegal practice of medicine to the office of the attorney general or the state's attorney in the county in which the violation occurred.

(8) Obtain, at the board's discretion, from the Vermont criminal information center a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation, for any applicant, licensee, or holder of certification. The board may also inquire of Interpol for any information on criminal history records of an applicant, licensee, or holder of certification. Each applicant, licensee, or holder of certification shall consent to the release of criminal history records to the board on forms substantially similar to the release forms developed in accordance with 20 V.S.A. § 2056c. When the board obtains a criminal history record, it shall promptly provide a copy of the record to the applicant, licensee, or holder of certification and inform him or her of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont criminal information center. When fingerprinting is required pursuant to this subdivision, the applicant, licensee, or holder of certification shall bear all costs associated with fingerprinting. The board shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. No person shall confirm the existence or nonexistence of criminal history record information to any person who would not be eligible to receive the information pursuant to this chapter. For purposes of this subdivision, "criminal history record" is as defined in 20 V.S.A. § 2056a.

(9) Inquire, at the board's discretion, of the Vermont department for children and families or of the Vermont department of disabilities, aging, and independent living to determine whether any applicant, licensee, or holder of certification who may provide care or treatment to a child or a vulnerable adult is listed on the child protection registry or the vulnerable adult abuse, neglect, and exploitation registry.

§ 1354. UNPROFESSIONAL CONDUCT

(a) The board shall find that any one of the following, or any combination of the following, whether or not the conduct at issue was committed within or outside the state, constitutes unprofessional conduct:

(1) ~~fraudulent~~ fraud or ~~deceptive procuring or use of a license~~ misrepresentation in applying for or procuring a medical license or in connection with applying for or procuring periodic renewal of a medical license;

* * *

(5) ~~addiction to narcotics,~~ habitual ~~drunkenness~~ or ~~rendering professional services to a patient if the physician is intoxicated or under the influence of drugs~~ excessive use or abuse of drugs, alcohol, or other substances that impair the licensee's ability to practice medicine;

* * *

(15) practicing medicine with a physician who is not legally practicing within the state, or aiding or abetting such physician in the practice of medicine; except that it shall be legal to practice in an accredited preceptorship or residency training program or pursuant to section 1313 of this title;

* * *

(23) revocation of a license to practice medicine or surgery in another jurisdiction on one or more of the grounds specified in ~~subdivisions (1) (25) of~~ this section;

* * *

(30) conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession, or failure to report to the board a conviction of any crime related to the practice of the profession or any felony in any court within 30 days of the conviction;

* * *

(32) use of the services of a radiologist assistant by a radiologist in a manner that is inconsistent with the provisions of chapter 52 of this title;

(33)(A) providing, prescribing, dispensing or furnishing medical services or prescription medication or prescription-only devices to a person in response to any communication transmitted or received by computer or other electronic means, when the licensee fails to take the following actions to establish and maintain a proper physician-patient relationship:

(i) a reasonable effort to verify that the person requesting medication is in fact the patient, and is in fact who the person claims to be;

(ii) establishment of documented diagnosis through the use of accepted medical practices; and

(iii) maintenance of a current medical record.

(B) For the purposes of this subdivision (33), an electronic, on-line, or telephonic evaluation by questionnaire is inadequate for the initial evaluation of the patient.

(C) The following would not be in violation of this subdivision (33) if transmitted or received by computer or other electronic means:

(i) initial admission orders for newly hospitalized patients;

(ii) prescribing for a patient of another physician for whom the prescriber has taken the call;

(iii) prescribing for a patient examined by a licensed advanced practice registered nurse, physician assistant, or other advanced practitioner authorized by law and supported by the physician;

(iv) continuing medication on a short-term basis for a new patient, prior to the patient's first appointment; or

(v) emergency situations where life or health of the patient is in imminent danger;

(34) failure to provide to the board such information it may reasonably request in furtherance of its statutory duties. The patient privilege set forth in 12 V.S.A. § 1612 shall not bar the licensee's obligations under this subsection (a) and no confidentiality agreement entered into in concluding a settlement of a malpractice claim shall exempt the licensee from fulfilling his or her obligations under this subdivision;

(35) disruptive behavior which involves interaction with physicians, hospital personnel, office staff, patients, or support persons of the patient or others that interferes with patient care or could reasonably be expected to adversely affect the quality of care rendered to a patient;

(36) commission of any sexual misconduct which exploits the physician-patient relationship, including sexual contact with a patient, surrogates, or key third parties;

(37) prescribing, selling, administering, distributing, ordering, or dispensing any drug legally classified as a controlled substance for the licensee's own use or to an immediate family member as defined by rule;

(38) signing a blank or undated prescription form;

(39) use of the services of a physician assistant by a physician in a manner which is inconsistent with the provisions of chapter 31 of this title.

* * *

§ 1355. COMPLAINTS; HEARING COMMITTEE

(a) Any person, firm, corporation, or public officer may submit a written complaint to the ~~secretary charging~~ board alleging any person practicing medicine ~~or surgery~~ in the state ~~with~~ committed unprofessional conduct, specifying the grounds therefor. ~~If the board determines that such complaint merits consideration, or~~ if the board shall have reason to believe, without a formal complaint, that any person practicing medicine or surgery in the state has been guilty of unprofessional conduct, and in the case of every formal complaint received, the chairman The board shall initiate an investigation of the physician when a complaint is received or may act on its own initiative without having received a complaint. The chairperson shall designate four members, including one public member to serve as a committee to hear or investigate and report upon such charges.

* * *

(c) A person or organization shall not be liable in a civil action for damages resulting from the good faith reporting of information to the board about alleged incompetent, unprofessional, or unlawful conduct of a licensee.

(d) The hearing committee may close portions of hearings to the public if the hearing committee deems it appropriate in order to protect the confidentiality of an individual or for medical and other protected health information pertaining to any identifiable person that is otherwise confidential by state or federal law.

(e) In any proceeding under this section which addresses an applicant's or licensee's alleged sexual misconduct, evidence of the sexual history of the victim of the alleged sexual misconduct shall neither be subject to discovery nor be admitted into evidence. Neither opinion evidence nor evidence of the reputation of the victim's sexual conduct shall be admitted. At the request of the victim, the hearing committee may close portions of hearings to the public if the board deems it appropriate in order to protect the identity of the victim and the confidentiality of his or her medical records.

* * *

§ 1357. TIME AND NOTICE OF HEARING

The time of hearing shall be fixed by the secretary as soon as convenient, but not earlier than 30 days after service of the charge upon the person complained against. The secretary shall issue a notice of hearing of the charges, which notice shall specify the time and place of hearing and shall notify the person complained against that he or she may file with the secretary a written response within 20 days of the date of service. ~~Such~~ The notice shall also notify the person complained against that a stenographic record of the proceeding will be kept, that he or she will have the opportunity to appear

personally and to have counsel present, with the right to produce witnesses and evidence in his or her own behalf, to cross-examine witnesses testifying against him or her and to examine such documentary evidence as may be produced against him or her.

* * *

§ 1359. REPORT OF HEARING

Within 30 days after holding a hearing under the provisions of section 1357 ~~and section 1358~~ of this title, the committee shall make a written report of its findings of fact and its recommendations, and the same shall be forthwith transmitted to the secretary, with a transcript of the evidence.

§ 1360. HEARING BEFORE BOARD

* * *

(d) The board may close portions of hearings to the public if the board deems it appropriate in order to protect the confidentiality of an individual or for medical and other protected health information pertaining to any identifiable person that is otherwise confidential by state or federal law.

§ 1361. DECISION AND ORDER

* * *

(b) In such order, the board may reprimand the person complained against, as it deems appropriate; condition, limit, suspend or revoke the license, certificate, or practice of the person complained against; or take such other action relating to discipline or practice as the board determines is proper, including imposing an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subsection shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and licensees. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

(c) If the person complained against is found not guilty, or the proceedings against him or her are dismissed, the board shall forthwith order a dismissal of the charges and the exoneration of the person complained against.

* * *

§ 1365. NOTICE OF CONVICTION OF CRIME; INTERIM SUSPENSION OF LICENSE

(a) The board shall treat a certified copy of the judgment of conviction of a crime for which a licensee may be disciplined under ~~subdivision~~ section

1354~~(a)(3)~~ of this title as an unprofessional conduct complaint. The record of conviction shall be conclusive evidence of the fact that the conviction occurred. If a person licensed under this chapter is convicted of a crime by a court in this state, the clerk of the court shall within 10 days of such conviction transmit a certified copy of the judgment of conviction to the board.

* * *

§ 1368. DATA REPOSITORY; LICENSEE PROFILES

(a) A data repository is created within the department of health which will be responsible for the compilation of all data required under this section and any other law or rule which requires the reporting of such information. Notwithstanding any provision of law to the contrary, licensees shall promptly report and the department shall collect the following information to create individual profiles on all health care professionals licensed, certified, or registered by the department, pursuant to the provisions of this title, in a format created that shall be available for dissemination to the public:

* * *

(6)(A) All medical malpractice court judgments and all medical malpractice arbitration awards in which a payment is awarded to a complaining party during the last 10 years, and all settlements of medical malpractice claims in which a payment is made to a complaining party within the last 10 years. Dispositions of paid claims shall be reported in a minimum of three graduated categories, indicating the level of significance of the award or settlement, if valid comparison data are available for the profession or specialty. Information concerning paid medical malpractice claims shall be put in context by comparing an individual health care professional's medical malpractice judgment awards and settlements to the experience of other health care professionals within the same specialty within the New England region or nationally. The commissioner may, in consultation with the Vermont medical society, report comparisons of individual health care professionals covered under this section to all similar health care professionals within the New England region or nationally.

(B) Comparisons of malpractice payment data shall be accompanied by:

(i) an explanation of the fact that ~~physicians~~ professionals treating certain patients and performing certain procedures are more likely to be the subject of litigation than others;

(ii) a statement that the report reflects data for the last 10 years, and the recipient should take into account the number of years the ~~physicians~~ professional has been in practice when considering the data;

* * *

(iv) an explanation of the possible effect of treating high-risk patients on a ~~physician's~~ professional's malpractice history; and

* * *

(C) Information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the health care professional. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred." Nothing herein shall be construed to limit or prevent the licensing authority from providing further explanatory information regarding the significance of categories in which settlements are reported. Pending malpractice claims and actual amounts paid by or on behalf of a ~~physician~~ professional in connection with a malpractice judgment, award or settlement shall not be disclosed by the commissioner of health or by the licensing authority to the public. Nothing herein shall be construed to prevent the licensing authority from investigating and disciplining a health care professional on the basis of medical malpractice claims that are pending.

* * *

(c) The profile shall include the following conspicuous statement: "This profile contains information which may be used as a starting point in evaluating the ~~physician~~ professional. This profile should not, however, be your sole basis for selecting a ~~physician~~ professional."

Subchapter 3. Licenses

§ 1391. ~~GENERAL PROVISIONS~~ QUALIFICATIONS FOR MEDICAL LICENSURE

* * *

(b) If a person successfully completes the examination, he or she may then apply for licensure to practice medicine ~~and surgery~~ in the state of Vermont. In addition, each applicant ~~must appear for a personal interview with one or more members of the~~ may be interviewed by a board member.

* * *

(e) An applicant for limited temporary license, who shall furnish the board with satisfactory proof that he or she has attained the age of majority, ~~and~~ is of good moral character, ~~that he or she~~ is a graduate of a legally chartered medical school of this country or of a foreign country ~~having~~ that is recognized by the

board and which has power to grant degrees in medicine, that all other eligibility requirements for house officer status have been met, and that he or she has been appointed an intern, resident, fellow or medical officer in a licensed hospital or in a clinic which is affiliated with a licensed hospital, or in any hospital or institution maintained by the state, or in any clinic or outpatient clinic affiliated with or maintained by the state, may upon the payment of the required fee, be granted a limited temporary license by the board as a hospital medical officer for a period of up to 54 weeks and such license may be renewed or reissued, upon payment of the fee, for the period of the applicant's postgraduate training, internship, or fellowship program. Such limited temporary license shall entitle the said applicant to practice medicine only in the hospital or other institution designated on his or her certificate of limited temporary license and in clinics or outpatient clinics operated by or affiliated with such designated hospital or institution and only if such applicant is under the direct supervision and control of a licensed physician. Such licensed physician shall be legally responsible and liable for all negligent or wrongful acts or omissions of the limited temporary licensee and shall file with the board the name and address both of himself or herself and the limited temporary licensee and the name of such hospital or other institution. Such limited temporary license shall be revoked upon the death or legal incompetency of the licensed physician or, upon ten days written notice, by withdrawal of his or her filing by such licensed physician. The limited temporary licensee shall at all times exercise the same standard of care and skill as a licensed physician, practicing in the same specialty, in the state of Vermont. Termination of appointment as intern, resident, fellow or medical officer of such designated hospital or institution shall operate as a revocation of such limited temporary license. An application for limited temporary license shall not be subject to ~~section~~ subsection 1391(d) of this title.

§ 1392. [Repealed.]

§ 1393. EXAMINATIONS

The examinations shall be wholly or partly in writing, in the English language, and shall be of a practical character, sufficiently strict to test the qualifications of the applicant. In its discretion the board may use multiple choice style examinations provided by the National Board of Medical Examiners or by the Federation of State Medical Boards ~~(The Federation Licensing Examination or FLEX)~~, or as determined by rule. The ~~examinations~~ examination shall embrace the general subjects of anatomy, physiology, chemistry, pathology, bacteriology, hygiene, practice of medicine, surgery, obstetrics, gynecology, materia medica, therapeutics, and legal medicine. The subjects covered by the National Board ~~or FLEX~~ of Medical Examiners examination shall be considered to have met the requirements of this section.

If the applicant passes the ~~National Board of Examiners test or FLEX~~ examination approved by the board and meets the other standards for licensure, he or she will qualify for licensure.

* * *

§ 1395. LICENSE WITHOUT EXAMINATION

(a) Without examination the board may, upon payment of the required fee, issue a license to a reputable physician ~~or surgeon~~ who personally appears and presents a certified copy of a certificate of registration or a license issued to him or her in a jurisdiction whose requirements for registration are deemed by the board as equivalent to those of this state, providing that such jurisdiction grants the same reciprocity to a Vermont physician or by the national board of medical examiners.

(b) Without examination the board may issue a license to a reputable physician ~~or surgeon~~ who is a resident of a foreign country and who shall furnish the board with satisfactory proof that he or she has been appointed to the faculty of a medical college accredited by the Liaison Committee on Medical Education (LCME) and located within the state of Vermont. An applicant for a license under this subsection shall furnish the board with satisfactory proof that he or she has attained the age of majority, is of good moral character, is licensed to practice medicine in his or her country of residence, and that he or she has been appointed to the faculty of an LCME accredited medical college located within the state of Vermont. The information submitted to the board concerning the applicant's faculty appointment shall include detailed information concerning the nature and term of the appointment and the method by which the performance of the applicant will be monitored and evaluated. A license issued under this subsection shall be for a period no longer than the term of the applicant's faculty appointment and may, in the discretion of the board, be for a shorter period. A license issued under this subsection shall expire automatically upon termination for any reason of the licensee's faculty appointment.

(c) Notwithstanding the provisions of subsection (a) of this section and any other provision of law, a physician who holds an unrestricted license in all jurisdictions where the physician is currently licensed, and who certifies to the Vermont board of medical practice that he or she will limit his or her practice in Vermont to providing pro bono services at a free or reduced fee health care clinic in Vermont and who meets the criteria of the board, shall be licensed by the board within 60 days of the licensee's certification without further examination, interview, fee, or any other requirement for board licensure. The physician shall file with the board, on forms provided by the board and based on criteria developed by the board, information on medical qualifications,

professional discipline, criminal record, malpractice claims, or any other such information as the board may require. A license granted under this subsection shall authorize the licensee to practice medicine ~~or surgery~~ on a voluntary basis in Vermont.

§ 1396. REQUIREMENTS FOR ADMISSION TO PRACTICE

(a) The standard of requirements for admission to practice in this state, under section 1395 of this title, shall be as follows:

* * *

(4) Moral: Applicant shall present letters of reference as to moral character and professional competence from the chief of service and two other active physician staff members at the hospital where he or she was last affiliated. In the discretion of the board, letters from different sources may be presented.

* * *

(7) Practice: Applicant shall have practiced medicine within the last three years as defined in section 1311 of this title or shall comply with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 1398. REFUSAL OR REVOCATION OF LICENSES

The board may refuse to issue the licenses provided for in section 1391 of this title to persons who ~~have been convicted of the practice of criminal abortion, or who~~, by false or fraudulent representations, have obtained or sought to obtain practice in their profession, or by false or fraudulent representations of their profession, have obtained or sought to obtain money or any other thing of value, or who assume names other than their own, or for any other immoral, unprofessional or dishonorable conduct. ~~For like cause, or when a licensee has been admitted to a mental hospital or has become incompetent by reason of senility, the board may suspend or revoke any certificate issued by it.~~ However, a certificate shall not be suspended, revoked, or refused until the holder or applicant is given a hearing before the board. In the event of revocation, the holder of any certificate so revoked shall forthwith relinquish the same to the secretary of the board.

§ 1399. [Repealed.]

§ 1400. RENEWAL OF LICENSE; CONTINUING MEDICAL EDUCATION

(a) Every person licensed to practice medicine ~~and surgery~~ by the board shall apply biennially for the renewal of his or her license. ~~One~~ At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the board shall pay the license renewal fees into the medical practice board special fund ~~and shall file a list of licensees with the department of health~~.

(b) A licensee for renewal of an active license to practice medicine shall have completed continuing medical education which shall meet minimum criteria as established by rule, by the board, by August 31, 2012 and which shall be in effect for the renewal of licenses to practice medicine expiring after August 31, 2014. The board shall require a minimum of ten hours of continuing medical education by rule. The training provided by the continuing medical education shall be designed to assure that the licensee has updated his or her knowledge and skills in his or her own specialties and also has kept abreast of advances in other fields for which patient referrals may be appropriate. The board shall require evidence of current professional competence in recognizing the need for timely appropriate consultations and referrals to assure fully informed patient choice of treatment options, including

treatments such as those offered by hospice, palliative care, and pain management services.

(c) A licensee for renewal of an active license to practice medicine shall have practiced medicine within the last three years as defined in section 1311 of this title or have complied with the requirements for updating knowledge and skills as defined by board rules.

(d) All licensees shall demonstrate that the requirements for licensure are met.

(e) A licensee shall promptly provide the board with new or changed information pertinent to the information in his or her license and license renewal applications at the time he or she becomes aware of the new or changed information.

(f) A person who practices medicine ~~and surgery~~ and who fails to renew his or her license in accordance with the provisions of this section shall be deemed an illegal practitioner and shall forfeit the right to so practice or to hold himself or herself out as a person licensed to practice medicine ~~and surgery~~ in the state until reinstated by the board, but nevertheless a ~~person who was licensed to practice medicine and surgery at the time of his induction, call on reserve commission or enlistment into the armed forces of the United States, shall be entitled to practice medicine and surgery during the time of his service with the armed forces of the United States and for 60 days after separation from such service~~ physician while on extended active duty in the uniformed services of the United States or as a member of the national guard, state guard, or reserve component who is licensed as a physician at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician's return from activation or deployment, provided the physician notifies the board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

~~(c)~~(g) Any person who allows a license to lapse by failing to renew the same in accordance with the provisions of this section may be reinstated by the board by payment of the renewal fee ~~and~~, the late renewal penalty, and if applicable, by completion of the required continuing medical education requirement as established in subsection (b) of this section and any other requirements for licensure as required by this section and board rule.

§ 1401. [Expired.]

§ 1401a. FEES

(a) The department of health shall collect the following fees:

(1) Application for licensure ~~$565.00, in fiscal year 2009 $600.00, and in fiscal year 2010 and thereafter,~~ $625.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~$450.00 and in fiscal year 2009 and thereafter,~~ $500.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

* * *

§ 1403. PROFESSIONAL CORPORATIONS; MEDICINE ~~AND SURGERY~~

A person licensed to practice medicine ~~and surgery~~ under this chapter may own shares in a professional corporation created under chapter 4 of Title 11 which provides professional services in the medical and nursing professions.

* * *

Subchapter 5. Quality Assurance Data

* * *

§ 1446. DIRECTORS OF CORPORATION

The board of directors of the Vermont Program for Quality in Health Care, Inc. shall include ~~without limitation~~ the commissioner of the department of health~~, the chair of the hospital data council~~ and two directors, each of whom represents at least one of the following populations: elderly, ~~handicapped~~ people with disabilities, or low income individuals.

* * *

Sec. 3. 26 V.S.A. chapter 29 is amended to read:

CHAPTER 29. ANESTHESIOLOGIST ASSISTANTS

* * *

§ 1654. ELIGIBILITY

To be eligible for certification as an anesthesiologist assistant, an applicant shall have:

(1) obtained a master's degree from a board-approved anesthesiologist assistant program at an institution of higher education accredited by the Committee on Allied Health Education and Accreditation, the Commission on Accreditation of Allied Health Education Programs, or their successor agencies, or graduated from a board-approved anesthesiologist assistant program at an institution of higher education accredited by the Committee on Allied Health Education and Accreditation or the Commission of Accreditation of Allied Health Education Programs, prior to January 1, 1984; ~~and~~

(2) satisfactorily completed the certification examination given by the NCCAA and be currently certified by the NCCAA; and

(3) if the applicant has not engaged in practice as an anesthesiologist assistant within the last three years, complied with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 1656. RENEWAL OF CERTIFICATION

(a) Certifications shall be ~~renewable~~ renewed every two years ~~on payment of the required fee and submission of proof of current, active NCCAA certification~~. At least one month prior to the date on which renewal is required, the board shall send to each anesthesiologist assistant a renewal application form and notice of the date on which the existing certification will expire. On or before the renewal date, the anesthesiologist assistant shall file an application for renewal, pay the required fee and submit proof of current active NCCAA certification. The board shall register the applicant and issue the renewal certification. Within one month following the date renewal is required, the board shall pay the certification renewal fees into the medical practice board special fund.

(b) A certification that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay back renewal fees for the periods when certification was lapsed. However, if such certification remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the applicant to update his or her knowledge and skills as defined by board rules.

* * *

§ 1658. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a certified anesthesiologist assistant constitutes unprofessional conduct.

When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of certification:

(1) ~~fraudulent procuring~~ fraud or ~~use of certification~~ misrepresentation in applying for or procuring an anesthesiologist assistant certificate or in connection with applying for or procuring a periodic renewal of an anesthesiologist assistant certificate;

* * *

(9) ~~professional negligence~~ failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice;

* * *

(18) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred; ~~or~~

(19) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the anesthesiologist assistant's ability to provide medical services; or

~~(19)~~(20) revocation of certification to practice as an anesthesiologist assistant in another jurisdiction on one or more of the grounds specified in subdivisions ~~(1)–(18)~~(1)–(19) of this subsection.

* * *

§ 1659. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from a member of the public, a physician, a hospital, an anesthesiologist assistant, a state or federal agency, or the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging any anesthesiologist assistant practicing in the state is engaged in unprofessional conduct, specifying the grounds. The board shall initiate an investigation of an anesthesiologist

assistant when a complaint is received or may act on its own initiative without having received a complaint.

(c) After giving opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against an anesthesiologist assistant or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. That agreement may include any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

* * *

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subsection shall be deposited into the board of medical practice regulatory fee fund and shall not be used for any other purpose other than professional regulation and other responsibilities of the board, as determined by the commissioner of health.

* * *

§ 1662. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1)(A)(i) Original application for certification, $115.00;

(ii) Each additional application, $50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2)(A)(i) Biennial renewal, $115.00;

(ii) Each additional renewal, $50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network ~~that will monitor~~ which monitors recovering chemically dependent licensees for the protection of the public. In addition to the fee, an applicant for certification renewal shall submit evidence in a

manner acceptable to the board that he or she continues to meet the certification requirements of the NCCAA.

* * *

§ 1664. PENALTY

(a) A person who, not being certified, holds himself or herself out to the public as being certified under this chapter shall be liable for a fine of not more than ~~$1,000.00~~ $10,000.00.

* * *

Sec. 4. 26 V.S.A. chapter 31 is amended to read:

CHAPTER 31. ~~PHYSICIAN'S~~ PHYSICIAN ASSISTANTS

* * *

§ 1732. DEFINITIONS

As used in this chapter:

(1) "Accredited physician assistant program" means a physician assistant educational program that has been accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA), or, prior to 2001, by either the Committee on Allied Health Education and Accreditation (CAHEA), or the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

(2) "Board" means the state board of medical practice established by chapter 23 of this title.

~~(2)~~(3) ~~"Contract" means a legally binding agreement, expressed in writing, containing the terms of employment of a physician's assistant.~~ "Delegation agreement" means a detailed description of the duties and scope of practice delegated by a primary supervising physician to a physician assistant that is signed by both the physician assistant and the supervising physicians.

~~(3)~~(4) "Physician" means an individual licensed to practice medicine pursuant to ~~chapters~~ chapter 23 ~~and~~ or 33 of this title.

~~(4)~~(5) "~~Physician's~~ Physician assistant" means an individual ~~certified~~ licensed by the state of Vermont who is qualified by education, training, experience, and personal character to provide medical ~~services under~~ care with the direction and supervision of a Vermont licensed physician.

~~(5) "Physician's assistant trainee" means a person who is not certified as a "physician's assistant" under this chapter but who assists a physician under the physician's direct supervision for the purpose of acquiring the basic~~

~~knowledge and skills of a physician's assistant by the apprentice-preceptor mode of education.~~

(6) ~~"Protocol" means a detailed description of the duties and scope of practice delegated by a physician to a physician's assistant~~ "Supervising physician" means an M.D. or D.O. licensed by the state of Vermont who oversees and accepts responsibility for the medical care provided by a physician assistant.

(7) "Supervision" means the direction and review by the supervising physician~~, as determined to be appropriate by the board,~~ of the medical ~~services~~ care provided by the ~~physician's~~ physician assistant. The constant physical presence of the supervising physician is not required as long as the supervising physician and physician assistant are or easily can be in contact with each other by telecommunication.

(8) "Disciplinary action" means any action taken against a ~~certified physician's~~ physician assistant~~, a registered physician's assistant trainee~~ or an applicant by the board~~, the appellate officer,~~ or on appeal therefrom, when that action suspends, revokes, limits, or conditions ~~certification or registration~~ licensure in any way, and includes reprimands and administrative penalties.

§ 1733. ~~CERTIFICATION AND REGISTRATION~~ LICENSURE

(a) The state board of medical practice is responsible for the ~~certification~~ licensure of ~~physician's~~ physician assistants ~~and the registration of physician's assistant trainees~~, and the commissioner of health shall adopt, amend, or repeal rules regarding the training, practice ~~and~~, qualification, and discipline of ~~physician's~~ physician assistants.

(b) ~~All applications for certification shall be accompanied by an application by the proposed supervising physician which shall contain a statement that the physician shall be responsible for all medical activities of the physician's assistant~~ In order to practice, a licensed physician assistant shall have completed a delegation agreement as described in section 1735a of this title with a Vermont licensed physician signed by both the physician assistant and the supervising physician or physicians. The original shall be filed with the board and copies shall be kept on file at each of the physician assistant's practice sites.

~~(c) All applications for certification shall be accompanied by a protocol signed by the supervising physician and a copy of the physician's assistant employment contract~~ All applicants and licensees shall demonstrate that the requirements for licensure are met.

~~(d) All physician's assistant trainees shall register biennially with the board. Registrants shall provide the board with such information as it may~~

~~require, including a copy of an employment contract and description of the apprenticeship program involved~~

§ 1734. ELIGIBILITY

(a) ~~To be eligible for certification as a physician's assistant, an applicant shall:~~

~~(1) have graduated from a board-approved physician's assistant program sponsored by an institution of higher education and have satisfactorily completed the certification examination given by the National Commission on the Certification of Physicians' Assistants (NCCPA); or~~

~~(2) have completed a board-approved apprenticeship program, including an evaluation conducted by the board. The requirements of apprenticeship programs shall be set by the board to ensure continuing opportunity for nonuniversity trained persons to practice as physician's assistants consistent with ensuring the highest standards of professional medical care~~ The board may grant a license to practice as a physician assistant to an applicant who:

(1) submits a completed application form provided by the board;

(2) pays the required application fee;

(3) has graduated from an accredited physician assistant program or has passed and maintained the certification examination by the National Commission on the Certification of Physician Assistants (NCCPA) prior to 1988;

(4) has passed the certification examination given by the NCCPA;

(5) is mentally and physically able to engage safely in practice as a physician assistant;

(6) does not hold any license, certification, or registration as a physician assistant in another state or jurisdiction which is under current disciplinary action, or has been revoked, suspended, or placed on probation for cause resulting from the applicant's practice as a physician assistant, unless the board has considered the applicant's circumstances and determines that licensure is appropriate;

(7) is of good moral character;

(8) submits to the board any other information that the board deems necessary to evaluate the applicant's qualifications; and

(9) has engaged in practice as a physician assistant within the last three years or has complied with the requirements for updating knowledge and skills as defined by board rules. This requirement shall not apply to applicants who

have graduated from an accredited physician assistant program within the last three years.

(b) ~~A person intending to practice as a physician's assistant and his or her supervising physician shall be responsible for designing and presenting an apprenticeship program to the board for approval. The program shall be approved in a timely fashion unless there is good reason to believe that the program would be inconsistent with the public health, safety and welfare.~~

(c) ~~Evaluation procedures followed by the board shall be fair and reasonable and shall be designed and implemented to demonstrate competence in the skills required of a physician's assistant and to reasonably ensure that all applicants are certified unless there is good reason to believe that certification of a particular applicant would be inconsistent with the public health, safety and welfare. An evaluation shall include reviewing statements of the supervising physician who has observed the applicant conduct a physical examination, render a diagnosis, give certain tests to patients, prepare and maintain medical records and charts, render treatment, provide patient education and prescribe medication. The evaluation shall be of activities appropriate to the applicant's approved training program. They shall not be designed or implemented for the purpose of limiting the number of certified physician's assistants.~~

(d) When the board intends to deny an application for ~~certification~~ licensure, it shall send the applicant written notice of its decision by certified mail. The notice shall include a statement of the reasons for the action. Within 30 days of the date that an applicant receives such notice, the applicant may file a petition with the board for review of its preliminary decision. At the hearing, the burden shall be on the applicant to show that ~~certification~~ licensure should be granted. After the hearing, the board shall affirm or reverse its preliminary denial.

(e) Failure to maintain competence in the knowledge and skills of a ~~physician's~~ physician assistant, as determined by the board, shall be cause for revocation of ~~certification~~ licensure. ~~Any person whose certification has been revoked for failure to maintain competence may practice for one year as a registered physician's assistant trainee, but shall be examined at the end of that period in the manner provided in subsection (a) of this section. Should the person fail upon reexamination, the person shall be enjoined from practice until meeting all requirements for certification under this chapter.~~

* * *

§ 1734b. RENEWAL OF ~~CERTIFICATION~~ LICENSE

(a) ~~Certifications~~ Licenses shall be ~~renewable~~ renewed every two years ~~without examination and~~ on payment of the required fee. At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the board shall pay the license renewal fees into the medical practice board special fund. Any physician assistant while on extended active duty in the uniformed services of the United States or member of the national guard, state guard, or reserve component who is licensed as a physician assistant at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician assistant's return from activation or deployment, provided the physician assistant notifies the board of his or her activation or deployment prior to the expiration of the current license, and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

(b) A licensee shall demonstrate that the requirements for licensure are met.

(c) A licensee for renewal of an active license to practice shall have practiced as a physician assistant within the last three years or have complied with the requirements for updating knowledge and skills as defined by board rules.

(d) A licensee shall promptly provide the board with new or changed information pertinent to the information in his or her license and license renewal applications at the time he or she becomes aware of the new or changed information.

(e) A ~~certification~~ license which has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay renewal fees during periods when ~~certification~~ the license was lapsed. However, if ~~such certification~~ a license remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the licensee to update his or her knowledge and skills as defined by board rules.

§ 1734c. EXEMPTIONS

Nothing herein shall be construed to require licensure under this chapter of:

(1) a physician assistant student enrolled in a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant;

(2) a physician assistant employed in the service of the U.S. military or national guard, including national guard in-state status, while performing duties incident to that employment; or

(3) a technician or other assistant or employee of a physician who performs physician-delegated tasks but who is not rendering services as a physician assistant or identifying himself or herself as a physician assistant.

* * *

§ 1735a. SUPERVISION AND SCOPE OF PRACTICE

(a) It is the obligation of each team of physician and physician assistant to ensure that the physician assistant's scope of practice is identified; that delegation of medical care is appropriate to the physician assistant's level of competence; that the supervision, monitoring, documentation, and access to the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.

(b) The information required in subsection (a) of this section shall be included in a delegation agreement as required by the commissioner by rule. The delegation agreement shall be signed by both the physician assistant and the supervising physician or physicians, and a copy shall be kept on file at each of the physician assistant's practice sites and the original filed with the board.

(c) The physician assistant's scope of practice shall be limited to medical care which is delegated to the physician assistant by the supervising physician and performed with the supervision of the supervising physician. The medical care shall be within the supervising physician's scope of practice and shall be care which the supervising physician has determined that the physician assistant is qualified by education, training, and experience to provide.

(d) A physician assistant may prescribe, dispense, and administer drugs and medical devices to the extent delegated by a supervising physician. A physician assistant who is authorized by a supervising physician to prescribe controlled substances must register with the federal Drug Enforcement Administration.

(e) A supervising physician and physician assistant shall report to the board immediately upon an alteration or the termination of the delegation agreement.

§ 1736. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a ~~certified physician's~~ licensed physician assistant ~~or registered physician's assistant trainee constitutes~~ shall constitute unprofessional conduct. When that conduct is by an applicant or person who later becomes an

applicant, it may constitute grounds for denial of ~~certification or registration~~ licensure:

(1) ~~fraudulent procuring~~ fraud or ~~use of certification or registration~~ misrepresentation in applying for or procuring a license or in applying for or procuring a periodic renewal of a license;

* * *

(b) Unprofessional conduct includes the following actions by a ~~certified physician's~~ licensed physician assistant ~~or a registered physician's assistant trainee~~:

* * *

(3) ~~professional negligence~~ practicing the profession without having a delegation agreement meeting the requirements of this chapter on file at the primary location of the physician assistant's practice and the board;

* * *

(7) performing otherwise than at the direction and under the supervision of a physician licensed by the board or an osteopath licensed by the Vermont board of osteopathic physicians and surgeons;

(8) ~~accepting the delegation of, or~~ performing or offering to perform a task or tasks beyond the individual's delegated scope ~~as defined by the board~~ of practice;

(9) administering, dispensing, or prescribing any controlled substance otherwise than as authorized by law;

(10) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the ability to provide medical services;

(11) failure to practice competently by reason of any cause on a single occasion or on multiple occasions. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice.

* * *

§ 1737. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from any member of the public, any physician, and any physician's assistant, any state or federal agency or the~~

~~attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging a physician assistant practicing in the state committed unprofessional conduct, specifying the grounds. The board may initiate disciplinary action in any complaint against a ~~physician's~~ physician assistant and may act without having received a complaint.

(c) After giving opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against a ~~physician's~~ physician assistant~~, physician's assistant trainee,~~ or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. Such an agreement may include~~, without limitation,~~ any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

(1) a requirement that the individual submit to care or counseling;

(2) a restriction that the individual practice only under supervision of a named person or a person with specified credentials;

(3) a requirement that the individual participate in continuing education in order to overcome specified practical deficiencies;

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and the professions regulated by the board. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

(e) Upon application, the board may modify the terms of an order under this section and, if ~~certification or registration~~ licensure has been revoked or suspended, order reinstatement on terms and conditions it deems proper.

§ 1738. USE OF TITLE

Any person who is ~~certified~~ licensed to practice as a ~~physician's~~ physician assistant in this state shall have the right to use the title "~~physician's~~ physician assistant" and the abbreviation "P.A." and "PA-C". No other person may assume that title or use that abbreviation, or any other words, letters, signs, or devices to indicate that the person using them is a ~~physician's~~ physician assistant. ~~A physician's assistant shall not so represent himself or herself unless there is currently in existence, a valid contract between the physician's assistant and his or her employer supervising physician, and unless the protocol under which the physician's assistant's duties are delegated is on file with, and has been approved by, the board.~~

§ 1739. LEGAL LIABILITY

(a) The supervising physician delegating activities to a ~~physician's~~ physician assistant shall be legally liable for such activities of the ~~physician's~~ physician assistant, and the ~~physician's~~ physician assistant shall in this relationship be the physician's agent.

* * *

§ 1739a. INAPPROPRIATE USE OF SERVICES BY PHYSICIAN; UNPROFESSIONAL CONDUCT

Use of the services of a ~~physician's~~ physician assistant ~~or a physician's assistant trainee~~ by a physician in a manner which is inconsistent with the provisions of this chapter constitutes unprofessional conduct by the physician and such physician shall be subject to disciplinary action by the board in accordance with the provisions of chapter 23 or 33 of this title, as appropriate.

§ 1740. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Original application for ~~certification and registration~~ ~~$115.00 with each additional application at $50.00~~ licensure, $170.00; the board shall use at least $10.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~$115.00 with each additional renewal at $50.00~~, $170.00; the board shall use at least $10.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

~~(3) Transfer of certification or registration, $15.00.~~

§ 1741. NOTICE OF USE OF ~~PHYSICIAN'S~~ PHYSICIAN ASSISTANT TO BE POSTED

A physician, clinic, or hospital that utilizes the services of a ~~physician's~~ physician assistant shall post a notice to that effect in a prominent place.

§ 1742. PENALTY

(a) Any person who, not being ~~certified or registered~~ licensed, holds himself or herself out to the public as being ~~so certified or registered~~ licensed under this chapter shall be liable for a fine of not more than ~~$1,000.00~~ $10,000.00.

* * *

§ 1743. MEDICAID REIMBURSEMENT

The secretary of the agency of human services shall, pursuant to the Administrative Procedure Act, promulgate rules providing for a fee schedule for reimbursement under Title XIX of the Social Security Act and chapter ~~36~~ 19 of Title 33, relating to medical assistance which recognizes reasonable cost differences between services provided by physicians and those provided by ~~physician's~~ physician assistants under this chapter.

§ 1744. CERTIFIED PHYSICIAN ASSISTANTS

Any person who is certified by the board as a physician assistant prior to the enactment of this section shall be considered to be licensed as a physician assistant under this chapter immediately upon enactment of this section, and shall be eligible for licensure renewal pursuant to section 1734 of this title.

Sec. 5. 26 V.S.A. chapter 52 is amended to read:

CHAPTER 52. RADIOLOGIST ASSISTANTS

* * *

§ 2854. ELIGIBILITY

To be eligible for certification as a radiologist assistant, an applicant shall:

* * *

(3) be certified as a radiologic technologist in radiography by the ARRT; ~~and~~

(4) be licensed as a radiologic technologist in radiography in this state under chapter 51 of this title; and

(5) if the applicant has not engaged in practice as a radiologist assistant within the last three years, comply with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 2856. RENEWAL OF CERTIFICATION

(a) ~~Certifications shall be renewable every two years upon payment of the required fee and submission of proof of current, active ARRT certification, including compliance with continuing education requirements~~ At least one month prior to the date on which renewal is required, the board shall send to each radiology assistant a renewal application form and notice of the date on which the existing certification will expire. On or before the renewal date, the radiologist assistant shall file an application for renewal, pay the required fee and submit proof of current active ARRT certification, including compliance with continuing education requirements. The board shall register the applicant and issue the renewal certification. Within one month following the date renewal is required, the board shall pay the certification renewal fees into the medical practice board special fund.

(b) A certification that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay back renewal fees for the periods when certification was lapsed. However, if certification remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the applicant to update his or her knowledge and skills as defined by board rules.

* * *

§ 2858. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a certified radiologist assistant constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of certification:

(1) ~~fraudulent procuring~~ fraud or ~~use of certification~~ misrepresentation in applying for or procuring a certificate or in connection with applying for or procuring a periodic recertification as a radiologist assistant;

* * *

(5) conviction of a crime related to the profession or conviction of a felony, whether or not related to the practice of the profession or failure to report to the board of medical practice a conviction of any crime related to the

practice of the profession or any felony in any court within 30 days of the conviction;

* * *

(9) ~~professional negligence~~ failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice;

* * *

(18) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill, and proficiency that is commonly exercised by the ordinary skillful, careful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred; ~~or~~

(19) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the radiologist assistant's ability to provide medical services; or

(20) revocation of certification to practice as a radiologist assistant in another jurisdiction on one or more of the grounds specified in subdivisions ~~(1) (18)~~(1)–(19) of this subsection.

* * *

§ 2859. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from a member of the public, a physician, a hospital, a radiologist assistant, a state or federal agency, or the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging a radiologist assistant practicing in the state engaged in unprofessional conduct, specifying the grounds. The board shall initiate an investigation of a radiologist assistant when a complaint is received or may act on its own initiative without having received a complaint.

* * *

(d) After giving an opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against a radiologist assistant or applicant found guilty of unprofessional conduct.

(e) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. That agreement may include any of the following conditions or restrictions which may be in addition to or in lieu of suspension:

* * *

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

* * *

§ 2862. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1)(A)(i) Original application for certification	$115.00;
(ii) Each additional application	$ 50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2)(A)(i) Biennial renewal	$115.00;
(ii) Each additional renewal	$ 50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network ~~that will monitor~~ which monitors recovering chemically dependent licensees for the protection of the public. In addition to the fee, an applicant for certification renewal shall submit evidence in a manner acceptable to the board that he or she continues to meet the certification requirements of the ARRT and is licensed as a radiologic technologist under chapter 51 of this title.

* * *

§ 2864. PENALTY

(a) A person who, not being certified, holds himself or herself out to the public as being certified under this chapter shall be liable for a fine of not more than ~~$1,000.00~~ $10,000.00.

* * *

Sec. 6. 20 V.S.A. § 2060 is amended to read:

§ 2060. RELEASE OF RECORDS

The center is authorized to release records or information requested under ~~section 309 or 6914 of Title~~ 33 V.S.A. §§ 309 or 6914, 26 V.S.A. § 1353, ~~section 4010 of Title~~ 24 V.S.A. § 4010, or chapter 5, subchapter 4 of Title 16.

Sec. 7. 33 V.S.A. § 4919 is amended to read:

§ 4919. DISCLOSURE OF REGISTRY RECORDS

(a) The commissioner may disclose a registry record only as follows:

* * *

(10) To the board of medical practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

* * *

Sec. 8. 33 V.S.A. § 6911 is amended to read:

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

* * *

(c) The commissioner or the commissioner's designee may disclose registry information only to:

* * *

(6) the commissioner of health, or the commissioner's designee, for purposes related to oversight and monitoring of persons who are served by or compensated with funds provided by the department of health, including persons to whom a conditional offer of employment has been made; ~~and~~

(7) upon request or when relevant to other states' adult protective services offices; and

(8) the board of medical practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

Sec. 9. REPEAL

The following sections of Title 26 are repealed:

(1) § 322 (podiatrist as member of board of medical practice);

(2) § 1352 (reports);

(3) § 1397 (recording license);

(4) § 1734a (temporary certification); and

(5) § 1735 (supervision and scope of practice).

Sec. 10. ADOPTION OF RULES

The state board of medical practice shall adopt maintenance of licensure rules for podiatrists, physicians, and physician assistants by September 1, 2012.

Sec. 11. REPORT

By January 15, 2012, the Vermont board of medical practice shall review the process for licensing physicians who seek to provide only pro bono services pursuant to 26 V.S.A. § 1395(c) and report to the house committee on health care regarding any changes to the criteria developed by the board for licensing those physicians pursuant to that subsection or, if no changes are made to the criteria, the reasons therefor.

Sec. 12. EFFECTIVE DATES

This act shall take effect on passage, except that, in Title 26:

(1) §§ 371(5)and 373(b) shall take effect 60 days after the adoption of the maintenance of licensure rule for podiatrists;

(2) §§ 1396(7) and 1400(c) shall take effect 60 days after the adoption of the maintenance of licensure rule for physicians;

(3) §§ 1654(3) and 1656(b) shall take effect 60 days after the adoption of the rule referenced in 26 V.S.A. § 1654(3);

(4) § 1734b(c) shall take effect 60 days after the adoption of the maintenance of licensure rule for physician assistants; and

(5) §§ 2854(5) and 2856(b) shall take effect 60 days after the adoption of the rule referenced in 26 V.S.A. § 2854(5).

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Fox, for the Committee on Finance, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Government Operations.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 448.

Senators Flory, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to contributions to the state and municipal employees' retirement systems.

Reported recommending that the Senate propose to the House to amend the bill by striking out Secs. 1, 2, and 3 and by renumbering the remaining sections to be numerically correct.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Government Operations.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposals of amendment was agreed to, and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 153.

Senator Sears, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to human trafficking.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) According to the report of the Vermont Human Trafficking Task Force:

(A) the number of human beings estimated to be enslaved today has reached over 27 million worldwide, the highest in recorded history; and

(B) Vermont and all of its bordering states have seen elements of human trafficking, yet Vermont is the only remaining state in the Northeast and one of the remaining five in the nation lacking legislation on this issue. Vermont's geographical location bordering Canada makes it susceptible to human trafficking activity.

(2) As a result of the efforts of the Vermont Human Trafficking Task Force and numerous national organizations dedicated to combating human trafficking, Vermont will with the passage of this act make substantial progress toward protecting citizens of this state and persons everywhere from the dangers and tragic consequences of human trafficking.

Sec. 2. 13 V.S.A. chapter 60 is added to read:

CHAPTER 60. HUMAN TRAFFICKING

Subchapter 1. Criminal Acts

§ 2651. DEFINITIONS

As used in this subchapter:

(1) "Blackmail" means the extortion of money, labor, commercial sexual activity, or anything of value from a person through use of a threat to expose a secret or publicize an asserted fact, whether true or false, that would tend to subject the person to hatred, contempt, ridicule, or prosecution.

(2) "Coercion" means:

(A) threat of serious harm, including physical or financial harm, to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily or financial harm to or physical restraint of any person;

(C) the abuse or threatened abuse of law or the legal process;

(D) withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other government identification document of another person;

(E) providing a drug, including alcohol, to another person with the intent to impair the person's judgment or maintain a state of chemical dependence;

(F) wrongfully taking, obtaining, or withholding any property of another person;

(G) blackmail;

(H) asserting control over the finances of another person;

(I) debt bondage; or

(J) withholding or threatening to withhold food or medication.

(3) "Commercial sex act" means any sex act or sexually explicit performance on account of which anything of value is promised to, given to, or received by any person.

(4) "Debt bondage" means a condition or arrangement in which a person requires that a debtor or another person under the control of a debtor perform labor, services, sexual acts, sexual conduct, or a sexually explicit performance in order to retire, repay, or service a real or purported debt which the person has caused with the intent to defraud the debtor.

(5) "Family member" means a spouse, child, sibling, parent, next of kin, domestic partner, or legal guardian of a victim.

(6) "Human trafficking" means:

(A) to subject a person to a violation of section 2652 of this title; or

(B) "severe form of trafficking" as defined by 21 U.S.C. § 7105.

(7) "Labor servitude" means labor or services performed or provided by a person which are induced or maintained through force, fraud, or coercion. "Labor servitude" shall not include labor or services performed by a family member of a person who is engaged in the business of farming as defined in 10 V.S.A. § 6001(22) unless force, fraud, or coercion is used.

(8) "Serious bodily injury" shall have the same meaning as in subdivision 1021(2) of this title.

(9) "Sexual act" shall have the same meaning as in subdivision 3251(1) of this title.

(10) "Sexual conduct" shall have the same meaning as in subdivision 2821(2) of this title.

(11) "Sexually explicit performance" means a public, live, photographed, recorded, or videotaped act or show which:

(A) Depicts a sexual act or sexual conduct;

(B) Is intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers; and

(C) Lacks literary, artistic, political, or scientific value.

(12) "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

(13) "Victim of human trafficking" means a victim of a violation of section 2652 of this title.

§ 2652. HUMAN TRAFFICKING

(a) No person shall knowingly:

(1) recruit, entice, harbor, transport, provide, or obtain by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act;

(2) recruit, entice, harbor, transport, provide, or obtain a person through force, fraud, or coercion for the purpose of having the person engage in a commercial sex act;

(3) compel a person through force, fraud, or coercion to engage in a commercial sex act;

(4) benefit financially or by receiving anything of value from participation in a venture, knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture;

(5) subject a person to labor servitude;

(6) recruit, entice, harbor, transport, provide, or obtain a person for the purpose of subjecting the person to labor servitude; or

(7) benefit financially or by receiving anything of value from participation in a venture, knowing that a person will be subject to labor servitude as part of the venture.

(b) A person who violates subsection (a) of this section shall be imprisoned for a term up to and including life or fined not more than $500,000.00, or both.

(c)(1)(A) A person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)–(4) of this title shall not be found in violation of or be the subject of a delinquency petition based on chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct committed as a victim of sex trafficking.

(B) Notwithstanding any other provision of law, a person under the age of 18 charged with a violation of this section shall be immune from prosecution for a violation of chapter 59 (lewdness and prostitution) of this title and may be referred to the department for children and families for treatment under Chapter 53 of Title 33.

(2) If a person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)–(4) of this title is prosecuted for any offense or is the subject of any delinquency petition other than a violation of chapter 59

(lewdness and prostitution) or 63 (obscenity) of this title which arises out of the sex trafficking or benefits the sex trafficker, the person may raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.

(d) In a prosecution for a violation of this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted.

(e) If a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision proceeding.

§ 2653. AGGRAVATED HUMAN TRAFFICKING

(a) A person commits the crime of aggravated human trafficking if the person commits human trafficking in violation of section 2652 of this title under any of the following circumstances:

(1) The offense involves a victim of human trafficking who is a child under the age of 18;

(2) The person has previously been convicted of a violation of section 2652 of this title;

(3) The victim of human trafficking suffers serious bodily injury or death; or

(4) The actor commits the crime of human trafficking under circumstances which constitute the crime of sexual assault as defined in section 3252 of this title, aggravated sexual assault as defined in section 3253 of this title, or aggravated sexual assault of a child as defined in section 3253a of this title.

(b) A person who violates this section shall be imprisoned not less than 20 years and a maximum term of life or fined not more than $100,000.00, or both.

(c) The provisions of this section do not limit or restrict the prosecution for murder or manslaughter.

§ 2654. PATRONIZING OR FACILITATING HUMAN TRAFFICKING

(a) No person shall knowingly:

(1) Permit a place, structure, or building owned by the person or under the person's control to be used for the purpose of human trafficking;

(2) Receive or offer or agree to receive or offer a person into a place, structure, or building for the purpose of human trafficking; or

(3) Permit a person to remain in a place, structure, building, or conveyance for the purpose of human trafficking.

(b) A person who violates this section shall be imprisoned not more than five years or fined not more than $100,000.00, or both.

§ 2655. SOLICITATION

(a) No person shall knowingly solicit a commercial sex act from a victim of human trafficking.

(b) A person who violates this section shall be imprisoned not more than five years or fined not more than $100,000.00, or both.

§ 2656. HUMAN TRAFFICKING BY A BUSINESS ENTITY; DISSOLUTION

If a business entity, including a corporation, partnership, association, or any other legal entity, is convicted of violating this chapter, the attorney general may commence a proceeding in the civil division of the superior court to dissolve the entity pursuant to 11A V.S.A. § 14.30–14.33.

§ 2657. RESTITUTION

(a) A person convicted of a violation of this subchapter shall be ordered to pay restitution to the victim pursuant to section 7043 of this title.

(b) If the victim of human trafficking to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.

(c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

Subchapter 2. Resource Guide Posting; Private Cause of Action for Victims; Victim Protection

§ 2661. RESOURCE GUIDE POSTING

(a) A notice offering help to victims of human trafficking shall be accessible on the official website of the Vermont department of labor and may be posted in a prominent and accessible location in workplaces.

(b) The notice should provide contact information for at least one local law enforcement agency and provide information regarding the National Human Trafficking Resource Center (NHTRC) hotline as follows:

> "If you or someone you know is being forced to engage in any activity and cannot leave – whether it is commercial sex, housework, farm work, or any other activity – call the toll-free National Human Trafficking

Resource Center Hotline at 1-888-373-7888 to access help and services. The toll-free hotline is:

- Available 24 hours a day, 7 days a week
- Operated by a nonprofit, nongovernmental organization
- Anonymous and confidential
- Accessible in 170 languages
- Able to provide help, referral to services, training, and general information."

(c) The notice described in this section should be made available in English, Spanish, and, if requested by an employer, another language.

(d) The Vermont department of labor shall develop and implement an education plan to raise awareness among Vermont employers about the problem of human trafficking, about the hotline described in this section, and about other resources that may be available to employers, employees, and potential victims of human trafficking. On or before January 15, 2013, the department shall report to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare on the progress achieved in developing and implementing the notice requirement and education plan required by this section.

§ 2662. PRIVATE CAUSE OF ACTION

(a) A victim of human trafficking may bring an action against the offender in the civil division of the superior court for damages, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and attorney's fees. Actual damages may include any loss for which restitution is available under section 2657 of this chapter.

(b) If the victim is deceased or otherwise unable to represent himself or herself, the victim may be represented by a legal guardian, family member, or other representative appointed by the court, provided that the legal guardian, family member, or other representative appointed by the court has not benefited in any way from the trafficking.

(c) In a civil action brought under this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted.

§ 2663. CLASSIFICATION OF VICTIMS; IMMIGRATION ASSISTANCE

(a) Classification of victims of human trafficking. As soon as practicable after the initial encounter with a person who reasonably appears to a law enforcement agency, a state's attorneys' office, or the office of the attorney general to be a victim of human trafficking, such agency or office shall:

(1) notify the victim's compensation program at the center for crime victim services that such person may be eligible for services under this chapter; and

(2) make a preliminary assessment of whether such victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States Code (Trafficking Victims Protection Act) or appears to be otherwise eligible for any federal, state, or local benefits and services. If it is determined that the victim appears to meet such criteria, the agency or office shall report the finding to the victim and shall refer the victim to services available, including legal service providers. If the possible victim is under the age of 18 or is a vulnerable adult, the agency or office shall also notify the family services division of the department for children and families or the office of adult protective services in the department of disabilities, aging, and independent living.

(b) Law enforcement assistance with respect to immigration. After the agency or office makes a preliminary assessment pursuant to subdivision (a)(2) of this section that a victim of human trafficking or a possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of Title 22 of the United States Code and upon the request of such victim, the agency or office

shall provide the victim of human trafficking with a completed and executed United States citizenship and immigration service (USCIS) form I-914 supplement B declaration of law enforcement officer for victim of human trafficking in persons or a USCIS form I-918, supplement B, U nonimmigrant status certification, or both. These endorsements shall be completed by the certifying officer in accordance with the forms' instructions and applicable rules and regulations. The victim of human trafficking may choose which form to have the certifying officer complete.

Sec. 3. SERVICES FOR VICTIMS OF HUMAN TRAFFICKING

(a) The Vermont center for crime victim services may convene a task force to assist social service providers, victim service providers, state agencies, law enforcement agencies, state's attorneys' offices, the office of the attorney general, and other agencies and nongovernmental organizations as necessary to develop a statewide protocol to provide services for victims of human trafficking in Vermont. The protocol may include a public awareness and education campaign.

(b) The Vermont center for crime victim services may enter into contracts with individuals and nongovernmental organizations in order to develop a statewide protocol and to coordinate services to victims of human trafficking, insofar as funds are available for that purpose. Such services may include:

(1) Case management;

(2) Emergency temporary housing;

(3) Health care;

(4) Mental health counseling;

(5) Drug addiction screening and treatment;

(6) Language interpretation and translation services;

(7) English language instruction;

(8) Job training and placement assistance;

(9) Post-employment services for job retention; and

(10) Services to assist the victim of human trafficking and any of his or her family members to establish a permanent residence in Vermont or the United States.

(c) Nothing in this section precludes the Vermont center for crime victim services or any local social services organization from providing victims of human trafficking in Vermont with any benefits or services for which they may otherwise be eligible.

Sec. 4. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN FELONIES

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, human trafficking, aggravated human trafficking, murder, arson causing death, and kidnapping may be commenced at any time after the commission of the offense.

* * *

Sec. 5. 13 V.S.A. § 9 is amended to read:

§ 9. ATTEMPTS

(a) A person who attempts to commit an offense and does an act toward the commission thereof, but by reason of being interrupted or prevented fails in the execution of the same, shall be punished as herein provided unless other express provision is made by law for the punishment of the attempt. If the offense attempted to be committed is murder, aggravated murder, kidnapping, arson causing death, human trafficking, aggravated human trafficking, aggravated sexual assault, or sexual assault, a person shall be punished as the offense attempted to be committed is by law punishable.

* * *

Sec. 6. 13 V.S.A. § 5301 is amended to read:

§ 5301. DEFINITIONS

* * *

(7) For the purpose of this chapter, "listed crime" means any of the following offenses:

* * *

(CC) aggravated sexual assault of a child in violation of section 3253a of this title; ~~and~~

(DD) ~~sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in section 2635a of this title~~ human trafficking in violation of section 2652 of this title; and

(EE) aggravated human trafficking in violation of section 2653 of this title.

Sec. 7. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

(a)(1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title, has suffered a material loss.

(2) For purposes of this section, "material loss" means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.

(3) In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, "material loss" shall also mean:

(A) attorney's fees and costs; and

(B) the greater of either:

(i) the gross income or value of the labor performed for the offender by the victim; or

(ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. § 385.

* * *

Sec. 8. 13 V.S.A. § 3255 is amended to read:

§ 3255. EVIDENCE

(a) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse of ~~an~~ a vulnerable adult under chapter 28 of this title or chapter 69 of Title 33:

(1) Neither opinion evidence of, nor evidence of the reputation of the complaining witness' sexual conduct shall be admitted.

(2) Evidence shall be required as it is for all other criminal offenses and additional corroborative evidence heretofore set forth by case law regarding sexual assault shall no longer be required.

(3) Evidence of prior sexual conduct of the complaining witness shall not be admitted; provided, however, where it bears on the credibility of the complaining witness or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:

(A) Evidence of the complaining witness' past sexual conduct with the defendant;

(B) Evidence of specific instances of the complaining witness' sexual conduct showing the source of origin of semen, pregnancy or disease;

(C) Evidence of specific instances of the complaining witness' past false allegations of violations of this chapter.

(b) In a prosecution for a crime defined in this chapter and in a prosecution pursuant to sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse or exploitation of ~~an~~ a vulnerable adult under subsection 6913(b) of Title 33, if a defendant proposes to offer evidence described in subdivision (a)(3) of this section, the defendant shall prior to the introduction of such evidence file written notice of intent to introduce that evidence, and the court shall order an in camera hearing to determine its admissibility. All objections to materiality, credibility and probative value shall be stated on the record by the prosecutor at the in camera hearing, and the court shall rule on the objections forthwith, and prior to the taking of any other evidence.

(c) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title or for human trafficking or aggravated human trafficking under chapter 60 of this title, if the defendant takes the deposition of the complaining witness, questions concerning the evidence described in subdivisions (a)(1) and (3) of this section shall not be permitted.

Sec. 9. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

* * *

(10) "Sex offender" means:

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

(i) sexual assault as defined in 13 V.S.A. § 3252.

(ii) aggravated sexual assault as defined in 13 V.S.A. § 3253.

(iii) lewd and lascivious conduct as defined in 13 V.S.A. § 2601.

(iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A. § 1379.

(v) second or subsequent conviction for voyeurism as defined in 13 V.S.A. § 2605(b) or (c).

(vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. § 2405(a)(1)(D).

(vii) aggravated sexual assault of a child in violation of section 3253a of this title; ~~and~~

(viii) human trafficking in violation of subdivisions 2652(a)(1)–(4) of this title;

(ix) aggravated human trafficking in violation of subdivision 2653(a)(4) of this title; and

(x) a federal conviction in federal court for any of the following offenses:

(I) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(II) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

(III) Sexual abuse as defined in 18 U.S.C. § 2242.

(IV) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.

(V) Abusive sexual contact as defined in 18 U.S.C. § 2244.

(VI) Offenses resulting in death as defined in 18 U.S.C. § 2245.

(VII) Sexual exploitation of children as defined in 18 U.S.C. § 2251.

(VIII) Selling or buying of children as defined in 18 U.S.C. § 2251A.

(IX) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.

(X) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(XI) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(XII) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(XIII) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(XIV) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(XV) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

(XVI) Trafficking in persons as defined in 18 U.S.C. sections 2251–2252(a), 2260, or 2421–2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse.

~~(ix)~~(xi) an attempt to commit any offense listed in this subdivision (A).

* * *

Sec. 10. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

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

(1) Sex offenders who have been convicted of:

(A) Aggravated sexual assault of a child (13 V.S.A. § 3253a).

(B) Aggravated sexual assault (13 V.S.A. § 3253).

(C) Sexual assault (13 V.S.A. § 3252).

(D) Kidnapping with intent to commit sexual assault (13 V.S.A. § 2405(a)(1)(D)).

(E) Lewd or lascivious conduct with child (13 V.S.A. § 2602).

(F) A second or subsequent conviction for voyeurism (13 V.S.A. § 2605(b) or (c)).

(G) Slave traffic if a registrable offense under subdivision 5401(10)(B)(iv) of this title (13 V.S.A. § 2635).

(H) Sex trafficking of children or sex trafficking by force, fraud, or coercion (13 V.S.A. § 2635a).

(I) Sexual exploitation of a minor (13 V.S.A. § 3258(b)).

(J) Any offense regarding the sexual exploitation of children (chapter 64 of this title).

(K) Sexual abuse of a vulnerable adult (13 V.S.A. § 1379).

(L) Human trafficking as defined in subdivisions 2652(a)(1)–(4) of this title.

(M) Aggravated human trafficking as defined in subdivision 2653(a)(4) of this title.

(N) A federal conviction in federal court for any of the following offenses:

(i) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(ii) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

(iii) Sexual abuse as defined in 18 U.S.C. § 2242.

(iv) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.

(v) Abusive sexual contact as defined in 18 U.S.C. § 2244.

(vi) Offenses resulting in death as defined in 18 U.S.C. § 2245.

(vii) Sexual exploitation of children as defined in 18 U.S.C. § 2251.

(viii) Selling or buying of children as defined in 18 U.S.C. § 2251A.

(ix) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.

(x) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(xi) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(xii) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(xiii) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(xiv) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(xv) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

(xvi) Trafficking in persons as defined in 18 U.S.C. sections 2251–2252(a), 2260, or 2421–2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse.

~~(M)~~(O) An attempt to commit any offense listed in this subdivision (a)(1).

* * *

Sec. 11. STATE'S ATTORNEYS; FORFEITURE ATTORNEY; REPORT

On or before January 15, 2012, the department of state's attorneys and sheriffs shall report to the general assembly a plan for funding and hiring a forfeiture attorney in this state.

Sec. 12. 13 V.S.A. § 5322 is added to read:

§ 5322. CONFIDENTIALITY

When responding to a request for public records, or on any state website or state payment report, the state of Vermont shall not disclose to the public the name or any other identifying information, including the town of residence or the type or purpose of the payment, of an applicant to the victim's compensation program, a victim named in a restitution judgment order, or a recipient of the domestic and sexual violence survivors' transitional employment program.

Sec. 13. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND

* * *

(d)(1) The restitution unit is authorized to advance up to $10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection.

(2) The restitution unit may make advances of up to $10,000.00 under this subsection to the following persons or entities:

(A) A victim service agency approved by the restitution unit if the agency has advanced monies which would have been payable to a victim under subdivision (1) of this subsection.

(B) A victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract requiring payment of restitution.

(3) An advance under this subsection shall not be made to the government or to any governmental subdivision or agency.

(4) An advance under this subsection shall not be made to a victim who:

(A) fails to provide the restitution unit with the documentation necessary to support the victim's claim for restitution; or

(B) violated a criminal law of this state which caused or contributed to the victim's material loss.

(5) An advance under this subsection shall not be made for the amount of cash loss included in a restitution judgment order.

* * *

Sec. 14. 13 V.S.A. § 7043(n) is amended to read:

(n)~~(1) All restitution orders made or modified on or after January 1, 2008 shall include an order for wage withholding unless the court in its discretion finds good cause not to order wage withholding or the parties have entered into an alternative arrangement by written agreement which is affirmatively stated in the order. The wage withholding order shall direct current and subsequent employers of the offender to pay a portion of the offender's wages directly to the restitution unit until the offender's restitution obligation is satisfied. The wages of the offender shall be exempt as follows:~~

~~(A) to the extent provided under Section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)); or~~

~~(B) if the court finds the weekly expenses reasonably incurred by the debtor for his or her maintenance and that of dependents exceed the amounts exempted by subdivision (1)(A) of this subsection, such greater amount of earnings as the court shall order.~~

~~(2) The court shall transmit all wage withholding orders issued under this section to the restitution unit, which shall forward the orders to the offender's employers. Upon receipt of a wage withholding order from the restitution unit, an employer shall:~~

~~(A) withhold from the wages paid to the offender the amount specified in the order for each wage period;~~

~~(B) forward the withheld wages to the restitution unit within seven working days after wages are withheld, specifying the date the wages were withheld;~~

~~(C) retain a record of all withheld wages;~~

~~(D) cease withholding wages upon notice from the restitution unit; and~~

~~(E) notify the restitution unit within 10 days of the date the offender's employment is terminated.~~

~~(3) In addition to the amounts withheld pursuant to this section, the employer may retain not more than $5.00 per month from the offender's wages as compensation for administrative costs incurred.~~

~~(4) Any employer who fails to withhold wages pursuant to a wage withholding order within 10 working days of receiving actual notice or upon the next payment of wages to the employee, whichever is later, shall be liable to the restitution unit in the amount of the wages required to be withheld.~~

~~(5) An employer who makes an error in the amount of wages withheld shall not be held liable if the error was made in good faith.~~

~~(6) For purposes of this subsection, "wages" means any compensation paid or payable for personal services, whether designated as wages, salary, commission, bonuses, or otherwise, and shall include periodic payments under pension or retirement programs and workers' compensation or insurance policies of any type.~~

After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

Sec. 15. 13 V.S.A. § 7043(d)(3) is added to read:

(3) An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement which provides that the offender pay restitution for that offense.

Sec. 16. PILOT PROJECT; REPORT

(a) The restitution unit shall develop and implement a pilot project in Chittenden County which permits the unit to require a crime victim who may be eligible for an advance payment of restitution from the crime victims' restitution special fund pursuant to section 5363(d) of this title to submit a request for restitution to the restitution unit prior to sentencing. The unit shall investigate the victim's request and may require that the victim submit supporting documentation in order to verify the claimed material loss. If the unit determines that the victim appears to be eligible for an advance payment, the unit shall notify the victim and the court of the amount that appears eligible to be advanced to the victim from the fund.

(b) The restitution unit shall report the results of the pilot project established by this section to the senate and house committees on judiciary on or before January 15, 2012.

Sec. 17. REPEALS

(a) Sec. 9 (repeal of 13 V.S.A. § 7282(a)(9), 15 percent assessment on criminal penalties for the crime victims' restitution special fund) and Sec. 13 (July 1, 2012 effective date of repeal of 13 V.S.A. § 7289(a)(9)) of No. 40 of the Acts of 2007 are repealed.

(b) Sec. 27a of No. 1 of the Acts of 2009 (July 1, 2011 sunset of amendment to Rule 15 of Vermont Rules of Criminal Procedure related to depositions of minors in sexual assault cases) is repealed.

(c) Sec. 1 (amendment to Rule 15 of Vermont Rules of Criminal Procedure) and Sec. 5(a) (July 1, 2011 effective date of amendment to Rule 15 of Vermont Rules of Criminal Procedure) of No. 66 of the Acts of the 2009 Adj. Sess. (2010) are repealed.

(d) 13 V.S.A. § 2635a (sex trafficking of children; sex trafficking of any person by force, fraud, or coercion) is repealed.

Sec. 18. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending third reading of the bill, Senator Sears moved to amend the Senate proposal of amendment in Sec.2, 13V.S.A. § 2652(c)(1), by striking

out subdivision (B) in its entirety and inserting in lieu thereof a new subdivision (B) to read as follows:

(B) Notwithstanding any other provision of law, a person under the age of 18 shall be immune from prosecution in the criminal division of the superior court for a violation of section 2632 of this title (prohibited acts; prostitution), but may be treated as a juvenile under chapter 52 of Title 33 or referred to the department for children and families for treatment under chapter 53 of Title 33.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Flory moved to amend the Senate proposal of amendment as follows:

First: In Sec. 17, by striking out subsection (a) in its entirety and relettering the remaining subsections to be alphabetically correct.

Second: By adding a new section to be numbered Sec. 19 to read as follows:

Sec. 19. Sec. 13 of No. 40 of the Acts of 2007 is amended to read:

Sec. 13. EFFECTIVE DATE

Sec. 9 of this act shall take effect on ~~July 1, 2012~~ July 1, 2014.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Recess

On motion of Senator Campbell the Senate recessed until the fall of the gavel.

Called to Order

The Senate was called to order by the President.

Rules Suspended; Proposal of Amendment; Third Reading Ordered

H. 56.

Pending entry on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and Senate bill entitled:

An act relating to the Vermont Energy Act of 2011.

Was taken up for immediate consideration.

Proposals of Amendment; Third Reading Ordered

H. 56.

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to the Vermont Energy Act of 2011.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 30 V.S.A. § 219a (self-generation and net metering), in subsection (h) (electric company obligations), in subdivision (1)(K)(i), in the first sentence, by striking out the following: "paid" and inserting in lieu thereof the following: charged

Second: In Sec. 11, 30 V.S.A. § 8009, by striking out subdivision (f)(1) in its entirety and inserting in lieu thereof a new subdivision (f)(1) to read as follows:

(1) The SPEED facilitator shall purchase the baseload renewable power, and the electricity purchased and any associated costs shall be allocated by the SPEED facilitator to the Vermont retail electricity providers based on their pro rata share of total Vermont retail kWh sales for the previous calendar year, and the Vermont retail electricity providers shall accept and pay those costs.

Third: By adding a new section to be numbered Sec. 20a to read as follows:

* * * Woody Biomass Heating; Energy Efficiency * * *

Sec. 20a. FINDINGS; INTENT; WOODY BIOMASS HEATING

(a) The general assembly finds that:

(1) Installation of woody biomass heating systems will provide multiple benefits to Vermont homes, businesses, and the Vermont economy.

(2) These benefits will include reducing Vermont's dependence on foreign oil and other fossil fuels, supporting locally harvested fuel resources, reducing emissions of greenhouse gases, and supporting local biomass equipment and fuel manufacturers and distributors.

(3) These benefits also will include the retention and potential expansion of significant in-state economic resources that would otherwise flow out of the state and the nation.

(b) The general assembly intends to clarify that an energy efficiency entity appointed pursuant to 30 V.S.A. § 209(d)(2) that delivers energy efficiency services to heating and fuel process consumers in Vermont is fully authorized

to offer incentives for installation of woody biomass heating systems in a manner that promotes deployment of such systems.

Fourth: By adding a new section to be numbered Sec. 20b to read as follows:

Sec. 20b. 30 V.S.A. § 209(d)(7) and (8) are amended to read:

(7) Net revenues above costs associated with payments from the New England Independent System Operator (ISO-NE) for capacity savings resulting from the activities of the energy efficiency utility designated under subdivision (2) of this subsection shall be deposited into the electric efficiency fund established by this section and be used by the entity appointed under subdivision (2) of this subsection to deliver ~~fossil fuel~~ heating and process-fuel energy efficiency services to Vermont ~~heating and process-fuel~~ consumers of such fuel on a whole-buildings basis to help meet the state's building efficiency goals established by 10 V.S.A. § 581. In delivering such services with respect to heating systems, the entity shall give priority to incentives for the installation of woody biomass heating systems and shall have a goal of offering an incentive that is equal to 25 percent of the installed cost of such a system. For the purpose of this subdivision (7), "woody biomass" means organic nonfossil material from trees or woody plants constituting a source of renewable energy within the meaning of subdivision 8002(2) of this title.

(8) Effective January 1, 2010, such revenues from the sale of carbon credits under the cap and trade program as provided for in section 255 of this title shall be deposited into the electric efficiency fund established by this section. Such revenues shall be used by the entity appointed under subdivision (2) of this subsection to support delivery of the services described in subdivision (7) of this subsection.

Fifth: By adding a new section to be numbered Sec. 20c to read as follows:

Sec. 20c. 30 V.S.A. § 255 is amended to read:

§ 255. REGIONAL COORDINATION TO REDUCE GREENHOUSE GASES

* * *

(d) Appointment of consumer trustees. The public service board, by rule, order, or competitive solicitation, may appoint one or more consumer trustees to receive, hold, bank, and sell tradable carbon credits created under this program. Trustees may include Vermont electric distribution utilities, the fiscal agent collecting and disbursing funds to support the statewide efficiency utility, or a financial institution or other entity with the expertise and financial resources to manage a portfolio of carbon credits for the long-term benefit of

Vermont energy consumers. Fifty percent of the net proceeds above costs from the sale of carbon credits shall be deposited into the fuel efficiency fund established under section 203a of this title. These funds shall be used to provide expanded fossil fuel energy efficiency services to residential consumers who have incomes up to and including 80 percent of the median income in the state. The remaining 50 percent of the net proceeds above costs shall be deposited into the electric efficiency fund established under subdivision 209(d)(3) of this title. These funds shall be used by the entity or entities appointed under subdivision 209(d)(2) of this title to help meet the building efficiency goals established under 10 V.S.A. § 581 by delivering ~~fossil fuel~~ heating and process-fuel energy efficiency services to Vermont ~~heating and process-fuel~~ consumers who use such fuel and are businesses or are residential consumers whose incomes exceed 80 percent of the median income in the state.

Sixth: By adding a new section to be numbered Sec. 20d to read as follows:

* * * Building Energy Disclosure; Working Group * * *

Sec. 20d. WORKING GROUP ON BUILDING ENERGY DISCLOSURE

(a) Creation of working group. There is created a working group on building energy disclosure to study whether and how to require disclosure of the energy efficiency of commercial and residential buildings in order to make data on building energy performance visible in the marketplace for real property and inform the choices of those who may purchase or rent such property.

(b) Membership. The building energy disclosure working group (the working group) shall be composed of the following members:

(1) A member of the senate appointed by the committee on committees.

(2) A member of the house appointed by the speaker of the house.

(3) The commissioner of public service or designee.

(4) The secretary of commerce and community development or designee.

(5) A real estate broker licensed in Vermont appointed by the governor from a list of three names recommended by the Vermont association of realtors.

(6) A representative of an entity appointed pursuant to 30 V.S.A. § 209(d)(2) to deliver energy efficiency services to multiple utility service territories, designated by the entity.

(7) A real estate appraiser licensed in Vermont appointed by the governor.

(8) A building construction contractor appointed by the governor.

(9) A representative of the Vermont homebuilders and remodelers association designated by the association.

(10) A person who is an accredited provider of energy rating services under the process adopted by the department of public service pursuant to 21 V.S.A. § 267, appointed by the governor.

(11) A person with expertise in energy policy appointed by the governor.

(12) A person who is an active member of a local energy committee that is part of the Vermont energy and climate action network, appointed by the governor from a list of three names recommended by that network.

(13) A representative of a financial institution appointed by the governor from a list of three names submitted by the Vermont bankers association and the association of Vermont credit unions.

(14) A representative of the Vermont housing finance agency designated by the agency.

(c) Structure; decision-making. The working group shall elect two co-chairs from its membership, one of whom shall be a legislative member. The provisions of 1 V.S.A. § 172 (joint authority to three or more) shall apply to the meetings and decision-making of the working group.

(d) Issues. The working group shall consider the following:

(1) Whether there should be requirements to disclose building energy performance, that is, to disclose the energy use of buildings in a standardized manner that allows comparison and assessment of energy use among multiple buildings.

(2) Requirements for disclosure of building energy performance that have been adopted in other jurisdictions and model codes or statutes that have been published relating to such disclosure.

(3) If requirements to disclose building energy performance as described in subdivision (1) of this subsection were to be adopted:

(A) To whom should such disclosure be made (e.g., prospective buyers, prospective renters, the general public, the state).

(B) When such disclosure, if any, should be required (e.g., time of offer for sale, execution of contract for sale, at regular intervals).

(C) Which properties, if any, should be exempt from such requirements.

(D) For which markets (e.g., residential property, commercial property, purchase of property, rental of property) such disclosure, if any, should be required, and whether there should be a phase-in of any requirements for disclosure.

(E) What type or types of building energy ratings and audits should be employed.

(F) Whether the state should subsidize the cost of energy audits (e.g., for low income housing) and what sources of funding would be used to support the subsidy.

(4) Any other issue relevant to the question of disclosing building energy performance as described in subdivision (1) of this subsection.

(e) Report. On or before December 15, 2011, the working group shall submit to the general assembly its recommendation on whether the state of Vermont should adopt requirements on disclosure of building energy performance and recommended legislation on such disclosure if the general assembly were to choose to adopt such requirements.

(f) Assistance. For the purpose of its study of the issues identified in subsection (d) of this section and the preparation of its recommendation pursuant to subsection (e) of this section on whether the state should adopt requirements on building energy performance, the working group shall have the administrative, technical, and legal assistance of the department of public service and of the agency of commerce and community development. For the purpose of scheduling meetings and preparing its recommended legislation pursuant to subsection (e) of this section, the working group shall have the assistance of the office of legislative council.

(g) Meetings; term of working group; reimbursement. The working group may meet no more than four times during adjournment of the general assembly, and shall cease to exist on July 1, 2012.

(h) Reimbursement. For attendance at meetings during adjournment of the general assembly, legislative members of the working group shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406; and other members of the working group who are not employees of the state of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010. The costs of reimbursement of members of the working group who are not legislative members shall be allocated among the budgets of the department of public service and the agency of commerce and community development.

(i) Appointments. Within 30 days of this section's effective date, each entity required to submit a list of names to the governor pursuant to subsection (b) of this section shall make such submission. Within 60 days of this section's effective date, the appointing or designating authority shall appoint or designate each member of the working group under subsection (b) of this section and shall report the member so appointed or designated to the office of legislative council.

Seventh: By adding a new section to be numbered Sec. 20e to read as follows:

* * * Energy Planning * * *

Sec. 20e. ENERGY PLAN

(a) The general assembly finds that the department of public service is presently in the process of updating the electrical energy and comprehensive energy plans issued pursuant to 30 V.S.A. §§ 202 and 202b, with an intent to reissue such plans in October 2011.

(b) In the first update immediately following the effective date of this section by the department of public service of the plans described in subsection (a) of this section, the department shall consider each of the following:

(1) After considering the report of the public service board required by Sec. 13 of No. 159 of the Acts of the 2009 Adj. Sess. (2010), whether the best interests of the state are served by implementing a renewable portfolio standard (RPS) or by continued use and potential expansion of the Sustainably Priced Energy Enterprise Development (SPEED) Program under 30 V.S.A. § 8005; whether, should an RPS come into effect in the state, energy efficiency should be a resource that could be used to satisfy an RPS; and whether there should be tiers of resources used to satisfy an RPS based on the characteristics and qualities of the resources, such as the environmental impacts of their procurement, siting, or use. In the event that, due to the timing of the public service board's report, the department is unable to consider the matters in this subdivision (1) in the energy plan it intends to issue in October 2011, the department may propose any relevant recommendations in an addendum to the energy plan issued on or before January 15, 2012.

(2) The relationship of energy use and land use, including land devoted now or in the future to cultivating biomass energy resources and the interrelationship among modes of transportation (such as single-occupancy or low efficiency vehicles), energy consumption, and settlement patterns.

(3) The work of the agency of agriculture, food and markets on 25 x 25, which may include:

(A) The cultivation of land for biomass energy resources in a manner that is carbon-neutral or carbon-negative, that is, a net reduction in carbon emissions over the life cycle of the cultivation, harvesting, and use of such resources.

(B) The use of buffer zones on properties to counter the carbon impacts of fossil fuel use or to cultivate land for biomass energy resources and on potential incentives to encourage landowners to set aside such buffer zones.

(C) The use of grass as a source of energy.

(D) Energy end uses of biomass in the state, including residential heating and transportation.

(4) The appropriate energy conversion efficiency requirements that should be applicable to woody biomass energy plants, with particular emphasis on encouraging woody biomass for combined heat and power applications.

(5) The potential development of a land capability map for the purpose of guiding and accomplishing coordinated, efficient, and environmentally and economically sound development of renewable energy plants in the state, including particularly wind and woody biomass energy generation plants and any recommendations concerning the siting of wind energy plants to assure adequate protection of ridgeline environments.

(6) Obtaining additional funds from available sources to be used within the clean energy development fund (CEDF) established under 10 V.S.A. § 6523 to establish one or more revolving loan funds to support the purposes of the CEDF and of increasing the use of existing CEDF moneys to support such revolving loan funds.

(7) Citizen participation in decision-making on energy generation projects, including mechanisms in other states for so-called "intervenor funding" with respect to participation in permit processes for proposed electric generation plants and of the advantages and disadvantages of adopting in Vermont a system for funding intervenor participation in permit processes for such plants.

(8) Mechanisms to assure that electric energy consumers receive the benefits of so-called "smart grid" technology, also known as advanced metering infrastructure, taking into consideration the reports and orders previously issued by the public service board on such technology.

(9) The residential building and commercial building energy standards required to be adopted pursuant to 21 V.S.A. §§ 266 and 268, including their adequacy in advancing the efficient use of energy and in reducing carbon

impacts, including consideration of incentives or other means to encourage energy-efficient upgrades of rental property.

(10) Measures to control or mitigate the effects of fuel price volatility on Vermonters, including heating, process, and transportation fuel, including the role of entities appointed pursuant to Title 30 to deliver energy efficiency services to heating and process-fuel consumers and to consumers of electric energy.

(11) Development of a timeline for full implementation of the recommendations issued in October 2007 by the Governor's Commission on Climate Change pursuant to executive order no. 10-33 dated December 5, 2005.

(c) In making any recommendations concerning woody biomass, the department of public service shall consider the 2011 interim report of the biomass energy development working group filed pursuant to No. 37 of the Acts of 2009.

(d) In this section:

(1) "Biomass" means organic nonfossil material of biological origin constituting a source of renewable energy.

(2) "Renewable energy" shall have the same meaning as under 30 V.S.A. § 8002(2).

Eighth: By adding a new section to be numbered Sec. 20f to read as follows:

* * * Energy Efficiency; Street Lighting * * *

Sec. 20f. 30 V.S.A. § 218(g) is added to read:

(g) Each company subject to the public service board's jurisdiction that distributes electrical energy shall have in place a rate schedule for street lighting that provides an option under which efficient streetlights, including light-emitting diode (LED) lights, are installed on company-owned fixtures. These rate schedules also shall include a separate option under which customers may own street lighting and install efficient streetlights, including LED lights, on customer-owned fixtures.

Ninth: By adding a new section to be numbered Sec. 20g to read as follows:

Sec. 20g. RATE SCHEDULES; STREET LIGHTING; IMPLEMENTATION

No later than 60 days after the effective date of this section, each company subject to the public service board's jurisdiction that distributes electrical energy shall file with the public service board a proposed modification to its

rate schedules that complies with Sec. 20f of this act, 30 V.S.A. § 218(g). However, a company shall not be required to file such a proposed modification if its rate schedules, as of the date on which such filing is due, include an approved street lighting rate schedule that complies with Sec. 20f of this act, 30 V.S.A. § 218(g).

Tenth: In Sec. 21 (effective dates), in subsection (b) (sections effective on passage), at the end of the subsection, by inserting a new subdivision to be numbered subdivision (4) to read as follows:

(4) Secs. 20a through 20g of this act.

And that the bill ought to pass in concurrence with such proposals of amendment.

Senator MacDonald, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Natural Resources and Energy with the following amendments thereto:

First: In Sec. 2 (implementation; retroactive application), in subsection (e), in the second sentence, after the following: "the board is authorized to" by striking out the following "and shall"

Second: In Sec. 5, 30 V.S.A. § 248 (new gas and electric purchases, investments, and facilities; certificate of public good), at the end of the section, after the ellipsis, by inserting the following:

(c)(1) Except as otherwise provided in subdivision (j)(3) of this section, in the case of a municipal plant or department formed under local charter or chapter 79 of this title or a cooperative formed under chapter 81 of this title, any proposed investment, construction or contract which is subject to this section shall be approved by a majority of the voters of a municipality or the members of a cooperative voting upon the question at a duly warned annual or special meeting to be held for that purpose. However, in the case of a cooperative formed under chapter 81 of this title, an investment in or construction of an in-state electric transmission facility shall not be subject to the requirements of this subsection if the investment or construction is solely for reliability purposes and does not include new construction or upgrades to serve a new generation facility.

(2) The municipal department or cooperative shall provide to the voters or members, as the case may be, written assessment of the risks and benefits of the proposed investment, construction, or contract which were identified by the public service board in the certificate issued under this section. The municipal department or cooperative also may provide to the voters an assessment of any other risks and benefits.

* * *

Third: In Sec. 11, 30 V.S.A. § 8009 (baseload renewable power portfolio requirement), in subsection (d), in the fourth sentence, after the following: "obtain from a" by striking out the following: "new"

Fourth: In Sec. 11, 30 V.S.A. § 8009 (baseload renewable power portfolio requirement), by adding a new subsection to be subsection (i) to read as follows:

(i) The state and its instrumentalities shall not be liable to a plant owner or retail electricity provider with respect to any matter related to the baseload renewable power portfolio requirement or a plant used to satisfy such requirement, including costs associated with a contract related to such a plant or any damages arising from the breach of such a contract, the flow of power between a plant and the electric grid, or the interconnection of a plant to that grid. For the purpose of this section, the board and the SPEED facilitator constitute instrumentalities of the state.

Fifth: By adding 10 new sections to be numbered Secs. 18a through 18j to read as follows:

* * * Property Assessed Clean Energy * * *

Sec. 18a. 24 V.S.A. § 3255 is amended to read:

§ 3255. COLLECTION OF ASSESSMENTS; LIENS

(a) Special assessments under this chapter shall constitute a lien on the property against which the assessment is made in the same manner and to the same extent as taxes assessed on the grand list of a municipality, and all procedures and remedies for the collection of taxes shall apply to special assessments.

(b) Notwithstanding subsection (a) of this section, a lien for an assessment under subchapter 2 of this chapter shall be subordinate to all liens on the property in existence at the time the lien for the assessment is filed on the land records, shall be subordinate to a first mortgage on the property recorded after such filing, and shall be superior to any other lien on the property recorded after such filing. In no way shall this subsection affect the status or priority of any municipal lien other than a lien for an assessment under subchapter 2 of this chapter.

Sec. 18b. REDESIGNATION

24 V.S.A. chapter 87, subchapter 2 is redesignated to read:

Subchapter 2. Property-Assessed Clean Energy ~~Assessments~~

Sec. 18c. 24 V.S.A. § 3261 is amended to read:

§ 3261. PROPERTY-ASSESSED CLEAN ENERGY ~~ASSESSMENT~~ DISTRICTS; APPROVAL OF VOTERS

(a)(1) In this subchapter, "district" means a property-assessed clean energy district.

(2) The legislative body of a town, city, or incorporated village may submit to the voters of the municipality the question of whether to designate the municipality as a property-assessed clean energy ~~assessment~~ district. In a ~~clean energy assessment~~ district, only those property owners who have entered into written agreements with the municipality under section 3262 of this title would be subject to a special assessment, as set forth in section 3255 of this title.

(b) Upon a vote of approval by a majority of the qualified voters of the municipality voting at an annual or special meeting duly warned for that purpose, the municipality may incur indebtedness for or otherwise finance projects relating to renewable energy, as defined in 30 V.S.A. § 8002(2), or to eligible projects relating to energy efficiency as defined by section 3267 of this title, undertaken by owners of ~~real property~~ dwellings, as defined in Section 103(v) of the federal Truth in Lending Act, within the boundaries of the town, city, or incorporated village.

Sec. 18d. 24 V.S.A. § 3262 is amended to read:

§ 3262. WRITTEN AGREEMENTS; CONSENT OF PROPERTY OWNERS; ENERGY SAVINGS ANALYSIS

(a) Upon an affirmative vote made pursuant to section 3261 of this title and the performance of an energy savings analysis pursuant to subsection (b) of this section, an owner of ~~real property~~ a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act, within the boundaries of a ~~clean energy assessment~~ district may enter into a written agreement with the municipality that shall constitute the owner's consent to be subject to a special assessment, as set forth in section 3255 of this title. Entry into such an agreement may occur only after January 1, 2012. A participating municipality shall follow underwriting criteria~~, consistent with responsible underwriting and credit standards as~~ established by the department of banking, insurance, securities, and health care administration, and shall establish other qualifying criteria to provide an adequate level of assurance that property owners will have the ability to meet assessment payment obligations. A participating municipality shall refuse to enter into a written agreement with a property owner who fails to meet the underwriting or other qualifying criteria.

* * *

(c) A written agreement shall provide that:

* * *

(2) ~~At~~ Notwithstanding any other provision of law:

(A) At the time of a transfer of property ownership ~~excepting~~ including foreclosure, the past due balances of any special assessment under this subchapter shall be due for payment, but future payments shall continue as a lien on the property.

(B) In the event of a foreclosure action, the past due balances described in subdivision (A) of this subdivision (2) shall include all payments on an assessment under this subchapter that are due and unpaid as of the date the action is filed, and all payments on the assessment that become due after that date and that accrue up to and including the date title to the property is transferred to the mortgage holder, the lien holder, or a third party in the foreclosure action. The person or entity acquiring title to the property in the foreclosure action shall be responsible for payments on the assessment that become due after the date of such acquisition.

(3) A participating municipality shall disclose to participating property owners ~~the~~ each of the following:

(A) The risks associated with participating in the program, including risks related to the failure of participating property owners to make payments and the risk of foreclosure.

(B) The provisions of subsection (h) of this section that pertain to prepayment of the assessment.

(d) A written agreement or notice of such agreement and the analysis performed pursuant to subsection (b) of this section shall be filed with the clerk of the applicable municipality for recording in the land records of ~~the~~ that municipality and shall be disclosed to potential buyers prior to transfer of property ~~of~~ ownership. Personal financial information provided to a municipality by a participating property owner or potential participating property owner shall not be subject to disclosure as set forth in 1 V.S.A. § 317(c)(7). If a notice of agreement is filed instead of the full written agreement, the notice shall attach the analysis performed pursuant to subsection (b) of this section and shall include at least each of the following:

(1) The name of the property owner as grantor.

(2) The name of the municipality as grantee.

(3) The date of the agreement.

(4) A legal description of the real property against which the assessment is made pursuant to the agreement.

(5) The amount of the assessment and the period during which the assessment will be made on the property.

(6) A statement that the assessment will remain a lien on the property until paid in full or released.

(7) The location at which the original or a true, legible copy of the agreement may be examined.

* * *

(g) ~~In the case of~~ With respect to an agreement ~~with the resident owner of a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act~~ under this section:

(1) the assessments to be repaid under the agreement, when calculated as if they were the repayment of a loan, shall not violate ~~chapter 4 of Title 9~~ 9 V.S.A. §§ 41a, 43, 44, and 46–50.

(2) the maximum length of time for the owner to repay the ~~loan~~ assessment shall not exceed 20 years; and

(3) the maximum amount to be repaid for the project, including the participating property owner's contribution to the reserve fund under subsection 3269(c) of this title, shall not exceed $30,000.00 or 15 percent of the assessed value of the property, whichever is less.

(h) There shall be no penalty or premium for prepayment of the outstanding balance of an assessment under this subchapter if the balance is prepaid in full.

Sec. 18e. 24 V.S.A. § 3267 is amended to read:

§ 3267. ELIGIBLE ENERGY EFFICIENCY PROJECTS; ASSISTANCE TO MUNICIPALITIES

Those entities appointed as energy efficiency utilities under 30 V.S.A. § 209(d) ~~shall~~:

(1) Shall develop a list of eligible energy efficiency projects and shall make the list available to the public on or before July 1 of each year; and

(2) Shall provide information concerning implementation of this subchapter to each municipality, within the area in which the entity delivers efficiency services, that requests such information, and shall contact each such municipality that votes to establish a district to offer this information.

Sec. 18f. 24 V.S.A. § 3268 is amended to read:

§ 3268. RELEASE OF LIEN

(a) A municipality shall release a participating property owner of the lien on the property against which the assessment under this subchapter is made upon~~:~~

~~(1) Full~~ full payment of the value of the assessment~~; or~~

~~(2) Demand from a party who has filed an action for foreclosure on a participating property~~.

(b) ~~If a municipality releases a participating property owner of a lien upon demand from a party who has filed an action for foreclosure and the participating property owner redeems the property, the municipality shall reinstate the lien on the property against which the assessment under this subchapter is made.~~

~~(c)~~ Notice of ~~the~~ a release ~~or reinstatement~~ of ~~the~~ a lien for an assessment under this subchapter shall be filed with the clerk of the applicable municipality for recording in the land records of ~~the~~ that municipality.

Sec. 18g. 24 V.S.A. § 3269 is amended to read:

§ 3269. RESERVE FUND

(a) A ~~participating municipality may create a~~ reserve fund is created for use in paying the past due balances of an assessment under this subchapter in the event ~~of~~ that there is a foreclosure upon ~~an assessed~~ the property subject to the assessment and the proceeds resulting from the foreclosure are, after all superior liens have been satisfied, insufficient to pay those past due balances. The reserve fund shall comply with the provisions of subsections (b) through (e) of this section and shall be administered by and in the custody of the entity described in subsection (f) of this section. Each municipality that establishes a district under this subchapter shall participate in the reserve fund created by this subsection.

(b) The reserve fund shall be funded by participating property owners at a level sufficient to provide for the payment of ~~any~~ past due balances ~~on assessments under this subchapter and any remaining principal balances on those assessments~~ described in subdivision 3262(c)(2) of this title in the event of a foreclosure upon a participating property and the costs of administering the reserve fund and shall only be used to provide for such payment and administration.

(c) The contribution of each participating property owner to the reserve fund shall be included in the special assessment applicable to the property and

shall be subject to section 3255 of this title. From time to time, the commissioner of banking, insurance, securities, and health care administration shall determine the appropriate contribution to the fund in accordance with subsection (d) of this section. A determination by the commissioner under this subsection shall apply to the reserve fund contribution for an assessment concerning which a written agreement under section 3262 is signed after the date of the commissioner's determination and shall not affect the reserve fund contribution for an assessment concerning which such an agreement was signed on or before the date of the commissioner's determination.

~~(b)~~(d) The reserve fund shall be capitalized in accordance with standards and procedures approved by the commissioner of banking, insurance, securities, and health care administration to cover expected foreclosures and fund administration costs based on good lending practice experience. Interest earned shall remain in the fund. The administrator of the reserve fund shall invest and reinvest the moneys in the fund and hold, purchase, sell, assign, transfer, and dispose of the investments in accordance with the standard of care established by the prudent investor rule under chapter 147 of Title 9. The administrator shall apply the same investment objectives and policies adopted by the Vermont state employees' retirement system, where appropriate, to the investment of moneys in the fund.

~~(c)~~(e) The municipality shall disclose in advance to each interested property owner the amount of that property owner's required payment into the reserve fund. Once disclosed, the amount of the reserve fund payment shall not change over the life of the assessment.

(f) An entity appointed under 30 V.S.A. § 209(d)(2) to deliver energy efficiency programs to multiple service territories shall administer the reserve fund created under subdivision (a)(1) of this section.

(1) The entity's costs of administering the reserve fund shall be considered costs of operating the districts under section 3263 of this title.

(2) In the event of foreclosure on a property that is subject to a special assessment and is in a district that participates in the reserve fund administered by the entity, the entity's obligation shall be to disburse, at the direction of the municipality, moneys from the reserve fund to apply to the past due balances of the assessment. In no event shall other moneys received or held by the entity be available to meet this obligation or the payment of balances on an assessment.

(3) The entity shall keep an accurate account of all activities and receipts and expenditures under this subsection. An independent audit of the reserve fund shall be conducted annually. The cost of such an audit shall be considered a cost of administering the reserve fund. Where feasible, the entity

shall cause this audit to be conducted in conjunction with other independent audits of its accounts, receipts, and expenditures. An audit conducted under this subdivision shall be available, on request, to the auditor of accounts and the commissioners of banking, insurance, securities, and health care administration and of public service.

Sec. 18h. 24 V.S.A. § 3270 is added to read:

§ 3270. STATE PACE RESERVE FUND

(a) The state PACE reserve fund is established to be held in the custody of and administered by the state treasurer. The purpose of the state PACE reserve fund shall be to reduce, for those districts for which the entity described in subsection 3269(f) of this title administers the loss reserve fund, the risk faced by an investor making an agreement with a municipality to finance such a district.

(b) The treasurer may invest monies in the fund in accordance with 32 V.S.A. § 434. All balances in the fund at the end of the fiscal year shall be carried forward and shall not revert to the general fund. Interest earned shall remain in the fund. The treasurer's annual financial report to the general assembly under 32 V.S.A. § 434 shall contain an accounting of receipts, disbursements, and earnings of the fund.

(c) At the direction of the treasurer, a sum shall be transferred to the fund from moneys deposited into the energy efficiency fund pursuant to 30 V.S.A. § 209(d)(7) (net capacity savings payments) and (8) (net revenues from the sale of carbon credits).

(1)(A) For a given year, the sum transferred under this subsection shall be:

(i) Five percent of the total amount of those assessments concerning which owners of real property, in the districts described in subsection (a) of this section, are expected to enter into written agreements pursuant to section 3262 of this title during the year; and

(ii) Such additional amount, if any, that is necessary to meet the full amount of payments reasonably expected to be made from the state PACE reserve fund during that year.

(B) In no event shall the sum transferred under this subsection exceed the limits on the total amount of funding from the state PACE reserve fund set forth under subsection (f) of this section.

(2) When directing a transfer under this subsection, the treasurer shall notify the commissioners of finance and management and of public service, the chair of the public service board, and the entity described in subsection 3269(f)

of this title. Monies shall not be disbursed from the state PACE reserve fund until necessary resources are transferred to the fund.

(d) Moneys deposited to the state PACE reserve fund and any interest on moneys in that fund shall be used for the sole purpose of paying claims as described in subsections (e) and (f) of this section. In no event shall any moneys received or held by the state of Vermont, other than moneys deposited into the state PACE reserve fund or interest on moneys in that fund, be available to meet this obligation or the payment of a remaining past due balance or any other obligation under this subchapter.

(e) In this section, "remaining past due balance" means that amount, if any, of a past due balance on an assessment under this subchapter that exists:

(1) Immediately following foreclosure on a property in a district that participates in the loss reserve fund administered by the entity described in subsection 3269(f) of this title; and

(2) After the application, to the past due balances of the assessment on that property, of the proceeds available from the foreclosure, net of superior liens, and of the assets of that loss reserve fund.

(f) The obligation of the state PACE reserve fund shall be to fund 90 percent of a remaining past due balance, upon presentation of a claim and application acceptable to the treasurer and the entity described in subsection 3269(f) of this title, provided that the total amount of all such funding from the state PACE reserve fund shall not exceed the smallest of the following:

(1) $1,000,000.00.

(2) The funds available pursuant to subsection (d) of this section.

(3) Five percent of the total of all assessments under this subchapter in the districts that participate in the loss reserve fund administered by the entity described in subsection 3269(f) of this title.

Sec. 18i. 24 V.S.A. § 3271 is added to read:

§ 3271. MONITORING; COMPLIANCE; UNDERWRITING CRITERIA

The department of public service created under 30 V.S.A. § 1 shall monitor and evaluate, for compliance with the underwriting criteria, standards, and procedures established under subsections 3262(a) (underwriting criteria for assessments) and 3269(c) and (d) (underwriting standards and procedures; loss reserve fund) of this title, all activities to which those criteria, standards, and procedures apply that are undertaken by an entity appointed under 30 V.S.A. § 209(d)(2) to deliver energy efficiency programs. The department shall consult with the department of banking, insurance, securities, and health care

administration in performing these tasks. The department of public service may combine its tasks under this section with monitoring and evaluation of an energy efficiency entity conducted pursuant to 30 V.S.A. § 209(d) or (e).

Sec. 18j. UNDERWRITING CRITERIA; ADOPTION

On or before December 31, 2011, the commissioner of banking, insurance, securities, and health care administration shall adopt criteria and standards pursuant to Sec. 18d of this act, 24 V.S.A. § 3262(a), and determine the participating property owner's contribution to the loss reserve fund and adopt standards and procedures pursuant to Sec. 18g of this act, 24 V.S.A. § 3269(c) and (d). Prior to adoption, the commissioner of banking, insurance, securities, and health care administration shall consult with the commissioner of public service concerning the development of such criteria, standards, and procedures.

Sixth: By adding a new section to be numbered Sec. 19a to read as follows:

* * * Propane Regulation * * *

Sec. 19a. 9 V.S.A. § 2461b is amended to read:

§ 2461b. REGULATION OF ~~LIQUIFIED PETROLEUM GAS~~ PROPANE

(a)(1) In this section:

(A) "Consumer" means any person who purchases propane for consumption and not for resale, through a meter or has propane delivered to one or more storage tanks of 2000 gallons or less.

(B) "Seller" means a person who sells or offers to sell propane to a consumer.

(2) The attorney general shall investigate irregularities, complaints, and unfair or deceptive acts in commerce by sellers ~~of liquefied petroleum gas~~.

(b) For the purpose of promoting business practices which are uniformly fair to sellers and which protect consumers, the attorney general shall promulgate necessary rules and regulations, including~~, but not limited to,~~ notice prior to disconnection, repayment agreements, minimum delivery, discrimination, security deposits and the assessment of fees and charges.

(c)(1) A violation of this section, or a rule or regulation promulgated under this section not inconsistent with this section, shall constitute an unfair and deceptive act in commerce in violation of section 2453 of this title.

(2) No contract for propane services shall contain any provision which conflicts with the obligations and remedies established by this section or by any rule or regulation promulgated under this section, and any conflicting provision shall be unenforceable and void.

(d) A seller shall not:

(1) assess a minimum usage fee;

(2) assess a fee for propane that is not actually delivered to a consumer; or

(3) require a consumer to purchase a minimum number of gallons of propane per year, except as part of a guaranteed price plan that meets the requirements of section 2461e of this title.

(e) When terminating service to a consumer, a seller shall comply with the following requirements.

(1)(A) If the propane storage tank has been located on the consumer's premises, regardless of ownership of the premises, for 12 months or more, the seller may not assess a fee related to termination of propane service, including a fee

(i) to remove the seller's storage tank from the premises;

(ii) to pump out or restock propane; or

(iii) to terminate service.

(B) If a consumer has received propane service from the seller for less than 12 months, any fee related to termination of service may not exceed the disclosed price of labor and materials.

(2)(A) Within 20 days of the date when the seller disconnects propane service or is notified by the consumer in writing that service has been disconnected, whichever is earlier, the seller shall refund to the consumer the amount paid by the consumer for any propane remaining in the storage tank, less any payments due the seller from the consumer.

(B) If the quantity of propane remaining in the storage tank cannot be determined with certainty, the seller shall, within the 20 days described in subdivision (2)(A) of this subsection, refund to the consumer the amount paid by the consumer for 80 percent of the seller's best reasonable estimate of the quantity of propane remaining in the tank, less any payments due from the consumer. The seller shall refund the remainder of the amount due as soon as the quantity of propane left in the tank can be determined with certainty, but no later than 14 days after the removal of the tank or restocking of the tank at the time of reconnection.

(3)(A) Any refund to the consumer shall be by cash, check, direct deposit, credit to a credit card account, or in the same method or manner of payment that the consumer, or a third party on the consumer's behalf, used to make payments to the seller.

(B) Unless requested by the consumer, a seller shall not provide a refund in the form of a reimbursement or credit to any account with the seller.

(4) If the seller fails to mail or deliver a refund to the consumer in accordance with this subsection, the seller shall within one business day make a penalty payment to the consumer, in addition to the refund, of $250.00 on the first day after the refund was due, and $75.00 per day for each day thereafter until the refund and penalty payment have been mailed or delivered.

(5) Termination of service does not void any guaranteed price plan that meets the requirements of section 2461e of this title that has not expired by its own terms.

(f)(1) A seller of propane shall not refuse to deliver propane to a storage tank owned by a consumer if the consumer provides proof of ownership of the tank and the seller has conducted a safety check of the tank in accordance with NFPA 54 (National Fuel Gas Code) and NFPA 58 (Storage and Handling of Liquefied Petroleum Gas Code) of the National Fire Protection Association and complies with rules adopted by the attorney general governing propane.

(2) If a seller of propane chooses to finance a consumer's purchase of a storage tank, the financing shall be a retail installment sale as provided in chapter 61 of this title.

(g) Nonpayment of the following charges may be the only basis for an interruption or disconnection of service: propane, leak or pressure test, safety check, restart of equipment, after-hours delivery, special trip for delivery, and meter read.

Seventh: By striking out Sec. 20 (utility payment; credit or debit card; report) and inserting in lieu thereof a new section to be numbered Sec. 20 to read as follows:

Sec. 20. UTILITY BILL PAYMENT; CREDIT OR DEBIT CARD; REPORT

On or before January 15, 2012, the commissioner of public service shall submit to the general assembly a report on whether, in the commissioner's opinion, it is in the public interest for the cost of service of a company subject to jurisdiction under 30 V.S.A. § 203 to include fees and expenses incurred by the company in accepting payments from customers of retail charges by credit or debit card. In the report, the commissioner shall consider and discuss the advantages and disadvantages of including these fees and expenses in a company's cost of service, including the extent to which allowing inclusion of such fees and expenses may avoid or reduce costs that would otherwise be incurred by the company; shall quantify on a statewide basis the expected cost impacts of requiring all ratepayers to bear the cost of these fees and expenses, including the amount, if any, of cross-subsidy that would occur from customers

who do not pay utility bills by credit or debit card to customers who do pay utility bills by credit or debit card; and shall propose a draft statute or a statutory amendment to effect the commissioner's recommendation.

Eighth: By striking out Sec. 20b in its entirety and inserting in lieu thereof a new section to be numbered Sec. 20b to read as follows:

Sec. 20b. 30 V.S.A. § 209(d)(7) and (8) are amended to read:

(7) Net revenues above costs associated with payments from the New England Independent System Operator (ISO-NE) for capacity savings resulting from the activities of the energy efficiency utility designated under subdivision (2) of this subsection shall be deposited into the electric efficiency fund established by this section ~~and~~. Any such net revenues not transferred to the state PACE reserve fund under 24 V.S.A. § 3270(c) shall be used by the entity appointed under subdivision (2) of this subsection to deliver ~~fossil fuel~~ heating and process-fuel energy efficiency services to Vermont ~~heating and process fuel~~ consumers of such fuel on a whole-buildings basis to help meet the state's building efficiency goals established by 10 V.S.A. § 581. In delivering such services with respect to heating systems, the entity shall give priority to incentives for the installation of woody biomass heating systems and shall have a goal of offering an incentive that is equal to 25 percent of the installed cost of such a system. For the purpose of this subdivision (7), "woody biomass" means organic nonfossil material from trees or woody plants constituting a source of renewable energy within the meaning of subdivision 8002(2) of this title.

(8) Effective January 1, 2010, such net revenues above costs from the sale of carbon credits under the cap and trade program as provided for in section 255 of this title shall be deposited into the electric efficiency fund established by this section. Such revenues shall be used by the entity appointed under subdivision (2) of this subsection to support delivery of the services described in subdivision (7) of this subsection.

Ninth: In Sec. 20d (working group on building energy disclosure), in subsection (b) (membership), at the end of the subsection, by inserting two new subdivisions to be numbered subdivisions (15) and (16) to read as follows:

(15) A member of the Vermont Bar Association with experience in the conveyance of real property designated by the association.

(16) A representative of the heating service industry designated by the Vermont Fuel Dealers Association.

Tenth: By adding a new section to be numbered Sec. 20h to read as follows:

* * * Clean Energy Development Fund; Solar Tax Credits * * *

Sec. 20h. 32 V.S.A. § 5930z is amended to read:

§ 5930z. SOLAR ENERGY TAX CREDIT

* * *

(f) In lieu of a solar energy tax credit certified by the board under this section, a taxpayer may in accordance with this subsection convert such a credit into a grant to the taxpayer from the clean energy development fund established under 10 V.S.A. § 6523.

(1) To qualify for a grant-in-lieu-of-credit under this subsection, the taxpayer shall comply with the provisions of this subsection and subdivision (c)(1) (solar plant of 2.2 MW or less) or (2) (solar plant of 150 kW or less) of this section. However, in the case of a taxpayer who complies with the provisions of this subsection and of subdivision (c)(1) of this section except for subdivision (c)(1)(C) (commissioning by Sep. 1, 2011), the taxpayer may qualify for such a grant if, by September 1, 2011, construction begins on the plant in accordance with Sec. IV.C (beginning of construction) of "Payments for Specified Energy Property in Lieu of Tax Credits under the American Recovery and Reinvestment Act of 2009" issued by the U.S. Department of the Treasury, Office of the Fiscal Assistant Secretary, as revised April 2011.

(2) The dollar amount of a grant-in-lieu-of-credit under this subsection shall be the lesser of the following:

(A) 50 percent of the dollar amount of the credit as contained in the certification issued by the board to the taxpayer.

(B) 15 percent of the actual costs of the plant.

(3) No later than 30 days after the effective date of this subdivision (2), the clean energy development fund shall provide notice of this option to obtain a grant-in-lieu-of-credit to all taxpayers for which the clean energy development board has certified tax credits under this section.

(4) On or before August 1, 2011, a taxpayer to which the board has issued a certification of a solar energy tax credit under this section shall submit to the fund the taxpayer's request, if any, to obtain a grant-in-lieu-of-credit under this subsection.

(5) To a taxpayer making a timely request under subdivision (4) of this subsection, a grant-in-lieu-of-credit shall be paid from the clean energy development fund within 30 days of:

(A) The date on which the taxpayer provides proof to the clean energy development fund that the plant for which the taxpayer seeks a

grant-in-lieu-of-credit under this subsection has received from the U.S. Department of the Treasury, pursuant to 26 U.S.C. §§ 46 and 48, a grant in lieu of the federal investment tax credit and proof of the dollar amount of such federal grant; or

(B) If the taxpayer has not received a grant from the U.S Department of the Treasury described in subdivision (5)(A) of this subsection, the date on which the taxpayer provides to the clean energy development fund proof that the solar energy plant for which the taxpayer seeks a grant-in-lieu-of-credit under this subsection has been commissioned and proof of the plant's actual costs.

(g) On a regular basis, the department shall notify the treasurer and the clean energy development board of solar energy tax credits claimed pursuant to this section, and the board shall cause to be transferred from the clean energy development fund to the general fund an amount equal to the amount of solar energy tax credits as and when the credits are claimed.

~~(g)~~(h) The clean energy development board and the department shall collaborate in implementing the certification of credits under this section.

Eleventh: By adding a new section to be numbered Sec. 20i to read as follows:

Sec. 20i. GRANT IN LIEU OF CREDIT; TAX TREATMENT

The amount of a clean energy development fund grant made pursuant to 32 V.S.A. § 5930z(f) in lieu of a solar energy tax credit certified under 32 V.S.A. § 5930z(c) shall not be included as Vermont net income under 32 V.S.A. § 5811(18) and shall not be included as taxable income under 32 V.S.A. § 5811(21). This section shall apply to tax years 2010, 2011, and 2012.

Twelfth: By adding a new section to be numbered Sec. 20j to read as follows:

Sec. 20j. 10 V.S.A § 6523 is amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

* * *

(c) Purposes of fund. The purposes of the fund shall be to promote the development and deployment of cost-effective and environmentally sustainable electric power and thermal energy or geothermal resources~~, and emerging energy efficient technologies,~~ for the long-term benefit of Vermont consumers, primarily with respect to renewable energy resources, and the use of combined heat and power technologies. The fund also may be used to support natural gas

vehicles in accordance with subdivision (d)(1)(K) of this section. The general assembly expects and intends that the public service board, public service department, and the state's power and efficiency utilities will actively implement the authority granted in Title 30 to acquire all reasonably available cost-effective energy efficiency resources for the benefit of Vermont ratepayers and the power system.

(d) Expenditures authorized.

* * *

(2) If during a particular year, the ~~clean energy development board~~ commissioner of public service determines that there is a lack of high value projects eligible for funding, as identified in the five-year plan, or as otherwise identified, the ~~clean energy development board may~~ commissioner shall consult with the ~~public service~~ clean energy development board, and shall consider transferring funds to the energy efficiency fund established under the provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in response to an opportunity for a particularly cost-effective investment in energy efficiency, and only as a temporary supplement to funds collected under that subsection, not as replacement funding.

(3) A grant in lieu of a solar energy tax credit in accordance with 32 V.S.A. § 5930z(f). Of any fund moneys unencumbered by such grants, the first $2.3 million shall fund the small-scale renewable energy incentive program described in subdivision (1)(E)(ii) of this subsection.

(4) A sum equal to the cost for the 2010 and preceding tax years of the business solar energy income tax credits authorized in 32 V.S.A. ~~§~~ §§ 5822(d) and 5930z(a), net of any such costs for which a transfer has already been made under this subdivision and of the cost of any credits in lieu of which the taxpayer elects to receive a grant, shall be transferred ~~annually~~ from the clean energy development fund to the general fund.

(e) Management of fund.

(1) ~~There is created the clean energy development board, which shall consist of the following nine directors:~~

~~(A) Three at-large directors appointed by the speaker of the house;~~

~~(B) Three at-large directors appointed by the president pro tempore of the senate.~~

~~(C) Two at-large directors appointed by the governor.~~

~~(D) The state treasurer, ex officio.~~ This fund shall be administered by the department of public service to facilitate the development and

implementation of clean energy resources. The department is authorized to expend moneys from the clean energy development fund in accordance with this section. The commissioner of the department shall make all decisions necessary to implement this section and administer the fund except those decisions committed to the clean energy development board under this subsection. The department shall assure an open public process in the administration of the fund for the purposes established in this subchapter.

(2) During fiscal years after FY 2006, up to five percent of amounts appropriated to the public service department from the fund may be used for administrative costs related to the clean energy development fund ~~and after FY 2007, another five percent of amounts appropriated to the public service department from the fund not to exceed $300,000.00 in any fiscal year shall be transferred to the secretary of the agency of agriculture, food and markets for agricultural and farm-based energy project development activities~~.

(3) ~~A quorum of the clean energy development board shall consist of five directors. The directors of the board shall select a chair and vice chair.~~ There is created the clean energy development board, which shall consist of seven persons appointed in accordance with subdivision (4) of this subsection.

(A) The clean energy development board shall have decision-making and approval authority with respect to the plans, budget, and program designs described in subdivisions (7)(B)–(D) of this subsection. The clean energy development board shall function in an advisory capacity to the commissioner on all other aspects of this section's implementation.

(B) During a board member's term and for a period of one year after the member leaves the board, the clean energy development fund shall not make any award of funds to and shall confer no financial benefit on a company or corporation of which the member is an employee, officer, partner, proprietor, or board member or of which the member owns more than 10 percent of the outstanding voting securities. This prohibition shall not apply to a financial benefit that is available to any person and is not awarded on a competitive basis or offered only to a limited number of persons.

(4) ~~In making appointments of at-large directors to the clean energy development board, the appointing authorities shall give consideration to citizens of the state with knowledge of relevant technology, regulatory law, infrastructure, finance, and environmental permitting. A director shall recuse himself or herself from all matters and decisions pertaining to a company or corporation of which the director is an employee, officer, partner, proprietor, or board member. The at-large directors of the board shall serve terms of four years beginning July 1 of the year of appointment. However, one at-large director appointed by the speaker and one at-large director appointed by the~~

~~president pro tempore shall serve an initial term of two years. Any vacancy occurring among the at-large directors shall be filled by the respective appointing authority and shall be filled for the balance of the unexpired term. A director may be reappointed.~~ The commissioner of public service shall appoint three members of the clean energy development board, and the chairs of the house and senate committees on natural resources and energy each shall appoint two members of the clean energy development board. The terms of the members of the clean energy development board shall be four years, except that when appointments to this board are made for the first time after the effective date of this act, each appointing authority shall appoint one member for a two-year term and the remaining members for four-year terms. When a vacancy occurs in the board during the term of a member, the authority who appointed that member shall appoint a new member for the balance of the departing member's term.

(5) Except for those ~~directors~~ members of the clean energy development board otherwise regularly employed by the state, the compensation of the ~~directors~~ members shall be the same as that provided by ~~subsection~~ 32 V.S.A. § 1010(a) ~~of Title 32. All directors of the clean energy development board, including those directors otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties~~.

(6) ~~At least every three years, the clean energy development board shall commission a detailed financial audit by an independent third party of the fund and the activities of the fund manager, which shall make available to the auditor its books, records, and any other information reasonably requested by the board or the auditor for the purpose of the audit.~~

~~(7)~~ In performing its duties, the clean energy development board may utilize the legal and technical resources of the department of public service ~~or, alternatively, may utilize reasonable amounts from the clean energy development fund to retain qualified private legal and technical service providers~~. The department of public service shall provide the clean energy development board ~~and its fund manager~~ with administrative services.

~~(8)~~(7) The ~~clean energy development board~~ department shall perform each of the following:

(A) By January 15 of each year, ~~commencing in 2010,~~ provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development a report for the fiscal year ending the preceding June 30 detailing the activities undertaken, the revenues collected, and the expenditures made under this subchapter.

(B) Develop, and submit to the clean energy development board for review and approval, a five-year strategic plan and an annual program plan, both of which shall be developed with input from a public stakeholder process and shall be consistent with state energy planning principles.

(C) Develop, and submit to the clean energy development board for review and approval, an annual operating budget.

(D) Develop, and submit to the clean energy development board for review and approval, proposed program designs to facilitate clean energy market and project development (including use of financial assistance, investments, competitive solicitations, technical assistance, and other incentive programs and strategies). Prior to any approval of a new program or of a substantial modification to a previously approved program of the clean energy development fund, the department of public service shall publish online the proposed program or modification, shall provide an opportunity for public comment of no less than 30 days, and shall provide to the clean energy development board copies of all comments received on the proposed program or modification. For the purpose of this subdivision (D), "substantial modification" shall include a change to a program's application criteria or application deadlines and shall include any change to a program if advance knowledge of the change could unfairly benefit one applicant over another applicant. For the purpose of 3 V.S.A. § 831(b) (initiating rulemaking on request), a new program or substantial modification of a previously approved program shall be treated as if it were an existing practice or procedure.

~~(9)~~(8) At least ~~quarterly~~ annually, the clean energy development board and the commissioner or designee jointly shall hold a public meeting to review and discuss the status of the fund, fund projects, the performance of the fund manager, any reports, information, or inquiries submitted by the fund manager or the public, and any additional matters ~~the clean energy development board deems~~ they deem necessary to fulfill ~~its~~ their obligations under this section.

~~(10) The clean energy development board shall administer and is authorized to expend monies from the clean energy development fund in accordance with this section.~~

(f) Clean energy development fund manager. The clean energy development fund shall have a fund manager who shall be ~~a state~~ an employee ~~retained and supervised by the board and housed within and assigned for administrative purposes to~~ of the department of public service.

(g) Bonds. The commissioner of public service, in consultation with the clean energy development board, may explore use of the fund to establish one or more loan-loss reserve funds to back issuance of bonds by the state treasurer

otherwise authorized by law, including clean renewable energy bonds, that support the purposes of the fund.

(h) ARRA funds. All American Recovery and Reinvestment Act (ARRA) funds described in section 6524 of this title shall be disbursed, administered, and accounted for in a manner that ensures rapid deployment of the funds and is consistent with all applicable requirements of ARRA, including requirements for administration of funds received and for timeliness, energy savings, matching, transparency, and accountability. These funds shall be expended for the following categories listed in this subsection, provided that no single project directly or indirectly receives a grant in more than one of these categories. ~~The~~ After consultation with the clean energy development board, the commissioner of public service shall have discretion to use non-ARRA moneys within the fund to support all or a portion of these categories and shall direct any ARRA moneys for which non-ARRA moneys have been substituted to the support of other eligible projects, programs, or activities under ARRA and this section.

* * *

(4) $2 million for a public-serving institution efficiency and renewable energy program that may include grants and loans and create a revolving loan fund. For the purpose of this subsection, "public-serving institution" means government buildings and nonprofit public and private universities, colleges, and hospitals. In this program, awards shall be made through a competitive bid process. ~~On or before January 15, 2011, the clean energy development board shall report to the general assembly on the status of this program, including each award made and, for each such award, the expected energy savings or generation and the actual energy savings or generation achieved.~~

* * *

(8) Concerning the funds authorized for use in subdivisions (4)–(7) of this subsection:

(A) To the extent permissible under ARRA, up to five percent may be spent for administration of the funds received.

(B) In the event that the ~~clean energy development board~~ commissioner of public service determines that a recipient of such funds has insufficient eligible projects, programs, or activities to fully utilize the authorized funds, then after consultation with the clean energy development board, the commissioner shall have discretion to reallocate the balance to other eligible projects, programs, or activities under this section.

(9) The ~~clean energy development board~~ commissioner of public service is authorized, to the extent allowable under ARRA, to utilize up to 10 percent

of ARRA funds received for the purpose of administration. The ~~board~~ commissioner shall allocate a portion of the amount utilized for administration to retain permanent, temporary, or limited service positions or contractors and the remaining portion to the oversight of specific projects receiving ARRA funding ~~through the board~~ pursuant to section 6524 of this title.

(i) Rules. The department and the clean energy development board each may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out its functions under this section~~. The board~~ and shall consult with ~~the commissioner of public service~~ each other either before or during the rulemaking process.

~~(j) Governor disapproval. The governor shall have the authority within 30 days of approval or adoption to disapprove a project, program, or other activity approved by the clean energy development board if the source of the funds is ARRA; and any rules adopted under subsection (i) of this section. The governor may at any time waive his or her authority to disapprove any project, program, or other activity or rule under this subsection.~~

Thirteenth: By adding a new section to be numbered Sec. 20k to read as follows:

Sec. 20k. CLEAN ENERGY DEVELOPMENT BOARD; TRANSITION; TERM EXPIRATION; NEW APPOINTMENTS

(a) The terms of all members of the clean energy development board under 10 V.S.A. § 6523 appointed prior to the effective date of this section shall expire 44 days after such effective date.

(b) No later than 30 days after the effective date of this section, the appointing authorities under Sec. 20j of this act, 10 V.S.A. § 6523(e)(4), shall appoint the members of the clean energy development board created by Sec. 20j, 10 V.S.A. § 6523(e)(3). The terms of the members so appointed shall commence on the 45th day following the effective date of this section. The appointing authorities may appoint members of the clean energy development board as it existed prior to the effective date of this section. The provisions of 10 V.S.A. § 6523(e)(3)(B) (board members; prohibition; financial benefits) shall apply only to members of the clean energy development board appointed to terms commencing on the 45th day after such effective date.

(c) With respect to the clean energy development fund established under 10 V.S.A. § 6523, as of the 45th day following the effective date of this section:

(1) The department of public service shall be the successor to the clean energy development board as it existed on the 44th day after the effective date of this act, and any legal obligations incurred by the clean energy development

board as of such 44th day shall become legal obligations of the department of public service.

(2) The clean energy development board shall exercise prospectively such functions and authority as this act confers on that board.

Fourteenth: By adding a new section to be numbered Sec. 20l to read as follows:

Sec. 20l. 10 V.S.A. § 6524 is amended to read:

§ 6524. ARRA ENERGY MONEYS

The expenditure of each of the following shall be subject to the direction and approval of the commissioner of public service, after consultation with the clean energy development board established under subdivision ~~6523(e)(1)~~ 6523(e)(4) of this title, and shall be made in accordance with subdivisions 6523(d)(1)(expenditures authorized), ~~(e)(3)(quorum), (e)(4)(appointments; recusal), (e)(5)(compensation), (e)(7)(assistance, administrative support),~~ and (e)(8)(A)(reporting) and subsections 6523(f)(fund manager), (h)(ARRA funds), and (i)(rules)~~, and (j)(governor disapproval)~~ of this title and applicable federal law and regulations:

(1) The amount of $21,999,000.00 in funds received by the state under the appropriation contained in the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, to the state energy program authorized under 42 U.S.C. § 6321 et seq.

(2) The amount of $9,593,500.00 received by the state under ARRA from the United States Department of Energy through the energy efficiency and conservation block grant program.

Fifteenth: By adding a new section to be numbered Sec. 20m to read as follows:

Sec. 20m. RECODIFICATION; REDESIGNATION

(a) 10 V.S.A. §§ 6523 and 6524 are recodified respectively as 30 V.S.A. §§ 8015 and 8016. The office of legislative council shall revise accordingly any references to these statutes contained in the Vermont Statutes Annotated. Any references in session law to these statutes as previously codified shall be deemed to refer to the statutes as recodified by this act.

(b) Within 30 V.S.A. chapter 89 (renewable energy programs):

(1) §§ 8001–8014 shall be within subchapter 1 and designated to read:

Subchapter 1. General Provisions

(2) §§ 8015–8016 shall be within subchapter 2 and designated to read:

Subchapter 2. Clean Energy Development Fund

Sixteenth: By adding a new section to be numbered Sec. 20n to read as follows:

* * * Cost Allocation * * *

Sec. 20n. 30 V.S.A. § 20 is amended to read:

§ 20. PARTICULAR PROCEEDINGS; PERSONNEL

(a)(1) The board or department may authorize or retain legal counsel, official stenographers, expert witnesses, advisors, temporary employees, and other research services:

(i) to assist the board or department in any proceeding listed in subsection (b) of this section; ~~and~~

(ii) to monitor compliance with any formal opinion or order of the board; ~~and~~

(iii) in proceedings under section 248 of this title, to assist other state agencies that are named parties to the proceeding where the board or department determines that they are essential to a full consideration of the petition, or for the purpose of monitoring compliance with an order resulting from such a petition; ~~and~~

(iv) in addition to the above, in proceedings under subsection 248(h) of this title, by contract with the regional planning commission of the region or regions affected by a proposed facility, to assist in determining conformance with local and regional plans and to obtain the commissions data, analysis and recommendations on the economic, environmental, historic, or other impact of the proposed facility in the region; and

(v) to assist in monitoring the ongoing and future reliability and the postclosure activities of any nuclear generating plant within the state. For the purpose of this subdivision, "postclosure activities" includes planning for and implementation of any action within the state's jurisdiction that shall or will occur when the plant permanently ceases generating electricity.

* * *

(b) Proceedings, including appeals therefrom, for which additional personnel may be retained are:

* * *

(12) proceedings at the United States Bankruptcy Court which involve Vermont utilities or which may affect the interests of the state of Vermont. Costs under this subdivision shall be charged to the involved ~~electric companies~~ utilities pursuant to subsection 21(a) of this title. In cases where the proceeding is generic in nature, the costs shall be allocated to ~~electric companies~~ utilities in proportion to the benefits sought for the customers of such companies from such advocacy;

* * *

(14) proceedings before the Federal Communications Commission or related forums which involve a company that owns a cable television system holding a certificate of public good and delivering services in Vermont or which may affect the interests of the state of Vermont. Costs under this subdivision shall be charged to the company pursuant to subsection 21(a) of this title. In cases where the proceeding is generic in nature, the costs shall be allocated to companies in proportion to the benefits sought for their customers from such advocacy;

(15) proceedings before any state or federal court concerning a company holding or a facility subject to a certificate issued under this title if the proceedings may affect the interests of the state of Vermont. Costs under this subdivision (15) shall be charged to the involved company pursuant to subsection 21(a) of this title. In cases where the proceeding is generic in nature, the costs shall be allocated to companies in proportion to the benefits sought for their customers from such advocacy.

Seventeenth: By adding a new section to be numbered Sec. 20o to read as follows:

Sec. 20o. 30 V.S.A. § 21 is amended to read:

§ 21. PARTICULAR PROCEEDINGS; ASSESSMENT OF COSTS

(a) The board, the department, or the agency of natural resources may allocate the portion of the expense incurred or authorized by it in retaining additional personnel for the particular proceedings authorized in section 20 of this title to the applicant or the public service company or companies involved in those proceedings. The board shall upon petition of an applicant or public service company to which costs are proposed to be allocated, review and determine, after opportunity for hearing, having due regard for the size and complexity of the project, the necessity and reasonableness of such costs, and may amend or revise such allocations. Nothing in this section shall confer authority on the board to select or decide the personnel, the expenses of whom are being allocated, unless such personnel are retained by the board. Prior to allocating costs, the board shall make a determination of the purpose and use of the funds to be raised hereunder, identify the recipient of the funds, provide for allocation of costs among companies to be assessed, indicate an estimated duration of the proceedings, and estimate the total costs to be imposed. With the approval of the board, such estimates may be revised as necessary. From time to time during the progress of the work of such additional personnel, the board, the department, or the agency of natural resources shall render to the company detailed statements showing the amount of money expended or contracted for in the work of such personnel, which statements shall be paid by the applicant or the public service company into the state treasury at such time

and in such manner as the board, the department, or the agency of natural resources may reasonably direct.

* * *

(f) With the approval of the governor, the department of public service may allocate the expense incurred under 10 V.S.A. § 7063 in compensating members and alternate members of the commission among the generators of low-level radioactive waste in the state. Any such allocation shall be in proportion to the volume of waste generated by each such generator.

(g) The board, or the department with the approval of the governor, may allocate such portion of expense incurred or authorized by it in compensating persons retained pursuant to subdivision 20(a)(1)(v) of this title to the nuclear generating plant whose activities are being monitored.

(h) Under subsections (f) and (g) of this section, the manner of assessment and making payments shall be as provided in subsection (a) of this section. A generator or plant to which expense is allocated under subsection (f) or (g) of this section may petition the board in accordance with the procedures of subsection (a) of this section.

Eighteenth: By adding a new section to be numbered Sec. 20p to read as follows:

Sec. 20p. Sec. 5.012.2 of No. 192 of the Acts of the 2007 Adj. Sess. (2008), as amended by Sec. E.127.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010), is amended to read:

Sec. 5.012.2. JOINT FISCAL COMMITTEE – NUCLEAR ENERGY ANALYSIS (Sec. 2.031)

(a) The joint fiscal committee may authorize or retain ~~consultant~~ services or resources to assist the general assembly:

(1) ~~in~~ In any legislative proceeding under or related to 30 V.S.A. § 248(e) or chapter 157 of Title 10; or

(2) With respect to any proceedings before any state or federal court concerning a nuclear generating plant in the state and related issues.

(b) ~~Consultants~~ Persons retained pursuant to subsection (a) of this section shall work under the direction of a special committee consisting of the chairs of the house and senate committees on natural resources and energy and the joint fiscal committee.

(c) The public service board shall allocate expenses incurred pursuant to subsection (a) of this section to the applicant or the ~~public service~~ company or

companies involved ~~in those proceedings~~ and such allocation and expense may be reviewed by the public service board pursuant to 30 V.S.A. § 21.

Nineteenth: By adding a new section to be numbered Sec. 20q to read as follows:

Sec. 20q. CODIFICATION

The office of legislative council shall codify, as 30 V.S.A. § 254a, the catchline and provisions of Sec. 5.012.2 of No. 192 of the Acts of the 2007 Adj. Sess. (2008), as amended by Sec. E.127.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) and this act.

Twentieth: By adding a new section to be numbered Sec. 20r to read as follows:

* * * Texas–Vermont Compact * * *

Sec. 20r. 10 V.S.A. § 7062 is amended to read:

§ 7062. ~~MEMBER OF THE~~ COMMISSION MEMBERSHIP

The governor shall appoint ~~a person~~ one or more persons with relevant knowledge and experience to represent the state on the commission established by Article III of the compact. The governor may appoint an alternate for ~~the~~ each commission member appointed under this section. ~~The~~ Each commission member and alternate, if appointed, shall serve at the pleasure of the governor.

Twenty-first: By adding a new section to be numbered Sec. 20s to read as follows:

Sec. 20s. 10 V.S.A. § 7063 is amended to read:

§ 7063. COMPENSATION OF ~~THE~~ COMMISSION ~~MEMBER~~ MEMBERS; REPORT

~~The~~ Each commission member and alternate ~~are~~ is entitled to compensation at ~~the~~ a rate established ~~under 32 V.S.A. § 1010~~ by the governor, and for reimbursement for actual and necessary expenses incurred in the performance of their duties. If a state employee is appointed as a commission member or an alternate, that state employee is not entitled to ~~per diem~~ compensation in addition to such employee's regular pay. At least annually by December 31, commission members and alternates appointed under this section shall report to the governor and the commissioner of public service on their activities conducted in representing the state on the commission. The report shall include an itemization of compensation paid and expenses incurred. Compensation and expenses of commission members and alternates shall be included in the annual budget of the department of public service and shall be

specifically identified in the budget report filed pursuant to 32 V.S.A. §§ 306 and 307.

Twenty-second: In Sec. 21 (effective dates), in subsection (b) (sections effective on passage), at the end of the subsection, by inserting:

(5) Secs. 20h (business solar energy tax credits), 20i (grant in lieu of credit; tax treatment), and 20k (clean energy development; transition; term expiration; new appointments) of this act.

(6) In Sec. 20j (clean energy development fund) of this act: 10 V.S.A. § 6523(d)(3) and (4) (solar tax credit; grant in lieu of and general fund reimbursement) and, for the purpose of Sec. 20k of this act, 10 V.S.A. § 6523(e)(3) (clean energy development board) and (4) (appointments to clean energy development board).

(7) Secs. 20n–20s of this act.

Twenty-third: In Sec. 21 (effective dates), by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) The following shall take effect on July 1, 2011: Secs. 5 (new gas and electric purchases); 11 (baseload renewable power portfolio requirement); 18 (statutory revision); 19 (heating oil), except for 10 V.S.A. § 585(c) (heating oil; biodiesel requirement); and 20m (recodification; redesignation) of this act.

Twenty-fourth: In Sec. 21 (effective dates), at the end of the section, by inserting:

(e)(1) Secs. 18c (property-assessed clean energy districts) and 18j (underwriting criteria; adoption) of this act shall take effect on passage.

(2) Secs. 18a, 18b, and 18d–18i of this act shall take effect on January 1, 2012, except that in Sec. 18d, 24 V.S.A. § 3262(a) (written agreements) shall take effect on passage.

(f)(1) Sec. 19a (regulation of propane) of this act shall take effect on passage.

(2) A provision of an existing contract that specifies an amount for any fee that would otherwise be prohibited by Sec. 19a this act shall remain valid and enforceable until:

(A) the date the contract expires or April 1, 2012, whichever is sooner; or,

(B) in the case of the termination of service to an underground storage tank, the earlier of:

(i) 30 days after the date the contract expires, or as soon thereafter as weather and access to the tank allow; or

(ii) April 1, 2014.

(g) Except as provided under subdivision (b)(6) of this section, Secs. 20j (clean energy development fund) and 20l (ARRA energy moneys) of this act shall take effect 45 days after the act's passage.

And that the bill ought to pass in concurrence with such proposals of amendment.

Senator Nitka, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committees on Natural Resources and Energy and on Finance and be further amended as follows:

In Sec. 20d (working group on building energy disclosure,) in subsection (h) (reimbursement), in the first sentence, after the following: "who are not employees of the state of Vermont" by inserting the following: and whose participation is not supported by their employment or association

And that the bill ought to pass in concurrence with such proposals of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, the question, Shall the proposal of amendment as recommended by the Committee on Natural Resources and Energy be amended as recommended by the Committee on Finance?, was agreed to.

Thereupon, the question, Shall the proposal of amendment as recommended by the Committee on Natural Resources and Energy, as amended be amended as recommended by the Committee on Appropriations?, was agreed to.

Thereupon, the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Natural Resources and Energy, as amended?, was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senator Nitka moved to amend the Senate proposal of amendment as follows:

First: By adding a new section to be numbered Sec. 20t to read as follows:

Sec. 20t. 21 V.S.A. § 266(c) is amended to read:

(c) Revision and interpretation of energy standards. The commissioner of public service shall amend and update the RBES, by means of administrative rules adopted in accordance with chapter 25 of Title 3. No later than

January 1, 2011, the commissioner shall complete rulemaking to amend the energy standards to ensure that, to comply with the standards, residential construction must be designed and constructed in a manner that complies with the 2009 edition of the IECC. These amendments shall be effective ~~on~~ three months after final adoption and shall apply to construction commenced on and after the date they become effective. After January 1, 2011, the commissioner shall ensure that appropriate revisions are made promptly after the issuance of updated standards for residential construction under the IECC. The department of public service shall provide technical assistance and expert advice to the commissioner in the interpretation of the RBES and in the formulation of specific proposals for amending the RBES. Prior to final adoption of each required revision of the RBES, the department of public service shall convene an advisory committee to include one or more mortgage lenders, builders, building designers, utility representatives, and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The advisory committee may provide the commissioner with additional recommendations for revision of the RBES.

* * *

Second: By adding a new section to be numbered Sec. 20u to read as follows:

Sec. 20u. 21 V.S.A. § 268(c) is amended to read:

(c) Revision and interpretation of energy standards. No later than January 1, 2011, the commissioner shall complete rulemaking to amend the commercial building energy standards to ensure that commercial building construction must be designed and constructed in a manner that complies with ANSI/ASHRAE/IESNA standard 90.1-2007 or the 2009 edition of the IECC, whichever provides the greatest level of energy savings. These amendments shall be effective ~~on~~ three months after final adoption and shall apply to construction commenced on and after the date they become effective. At least every three years after January 1, 2011, the commissioner of public service shall amend and update the CBES by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25. The commissioner shall ensure that appropriate revisions are made promptly after the issuance of updated standards for commercial construction under the IECC or ASHRAE/ANSI/IESNA standard 90.1, whichever provides the greatest level of energy savings. Prior to final adoption of each required revision of the CBES, the department of public service shall convene an advisory committee to include one or more mortgage lenders; builders; building designers; architects; civil, mechanical, and electrical engineers; utility representatives; and other persons with experience and expertise, such as consumer advocates

and energy conservation experts. The advisory committee may provide the commissioner of public service with additional recommendations for revision of the CBES.

* * *

Third: In Sec. 21 (effective dates), in subsection (b) (sections effective on passage), at the end of the subsection, by inserting:

(8) Secs. 20t (revision and interpretation of residential building energy standards) and 20u (revision and interpretation of commercial building energy standards) of this act.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senator Ashe moved to amend the Senate proposal of amendment in Sec. 1, 30 V.S.A. § 219a (self-generation and net metering), in subdivision (h)(1)(K), by adding a new subdivision to be numbered subdivision (vii) to read:

(vii) Not later than 30 days after board approval of an electric company's first rate schedule proposed to comply with this subdivision (1)(K), the company shall offer the amount of the credit contained in such rate schedule to each solar net metering system placed into service prior to the date on which the company submitted the proposed schedule to the board. Each system that accepts this offer shall receive the credit for not less than 10 years after the date of such acceptance, provided that the system remains in service, and regardless of any subsequent modification to the credit as contained in the company's rate schedules. Should an additional meter at the premises of the net metering customer be necessary to implement this subdivision (vii), the net metering customer shall bear the cost of the additional meter.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senator Illuzzi moved to amend the Senate proposal of amendment in Sec. 20b, 30 V.S.A. § 209(d)(7) (net capacity savings revenues) and (8) (revenues from carbon credits), in subdivision (7), at the end of the subdivision, by inserting: Provision of an incentive under this subdivision (7) for a woody biomass heating system shall not be contingent on the making of other energy efficiency improvements at the property on which the system will be installed.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Rules Suspended; Bills Passed in Concurrence with Proposals of Amendment; Bills Messaged

H. 56.

Pending entry on the Calendar for action tomorrow, on motion of Senator Campbell, the rules were suspended and House bill entitled:

An act relating to the Vermont Energy Act of 2011.

Was placed on all remaining stages of its passage in concurrence with proposal of amendment forthwith.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was ordered messaged to the House forthwith.

H. 153.

Pending entry on the Calendar for action tomorrow, on motion of Senator Campbell, the rules were suspended and House bill entitled:

An act relating to human trafficking.

Was placed on all remaining stages of its passage in concurrence with proposal of amendment forthwith.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was ordered messaged to the House forthwith.

H. 369.

Pending entry on the Calendar for action tomorrow, on motion of Senator Campbell, the rules were suspended and House bill entitled:

An act relating to health professionals regulated by the board of medical practice.

Was placed on all remaining stages of its passage in concurrence with proposal of amendment forthwith.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was ordered messaged to the House forthwith.

H. 420.

Pending entry on the Calendar for action tomorrow, on motion of Senator Campbell, the rules were suspended and House bill entitled:

An act relating to the office of professional regulation.

Was placed on all remaining stages of its passage in concurrence with proposal of amendment forthwith.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was ordered messaged to the House forthwith.

H. 438.

Pending entry on the Calendar for action tomorrow, on motion of Senator Campbell, the rules were suspended and House bill entitled:

An act relating to the department of banking, insurance, securities, and health care administration.

Was placed on all remaining stages of its passage in concurrence with proposal of amendment forthwith.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was ordered messaged to the House forthwith.

H. 448.

Pending entry on the Calendar for action tomorrow, on motion of Senator Campbell, the rules were suspended and House bill entitled:

An act relating to contributions to the state and municipal employees' retirement systems.

Was placed on all remaining stages of its passage in concurrence with proposal of amendment forthwith.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was ordered messaged to the House forthwith.

House Proposal of Amendment Concurred In

S. 90.

House proposal of amendment to Senate bill entitled:

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

Was taken up.

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

Sec. 1. RESPECTFUL LANGUAGE STUDY

(a) The agency of human services shall convene a working group to recommend guidelines for using respectful language when referring to people with disabilities. In convening the working group, the agency shall designate at least one employee of the agency to serve on the working group and shall invite the participation of two representatives from the Vermont coalition for disability rights, two representatives from Green Mountain self-advocates, one representative from the Vermont center for independent living, one representative from Vermont psychiatric survivors, one representative from the human rights commission, one representative from the disability law project, one representative from disability rights Vermont, and two people appointed by the governor, at least one of whom shall be a high school student. The agency shall provide administrative services to the working group. In preparing its recommendations, the working group shall:

(1) identify words that should not be used in Vermont statutes, regulations, and policies and suggest in their place words that reflect positive views of people with disabilities;

(2) avoid using any language that changes the meaning or intent of state statutes;

(3) identify specific statutes that should be addressed by the general assembly;

(4) select wording that does not conflict with federal law; and

(5) recommend guidelines to support state government agencies and departments to use respectful language.

(b) By November 1, 2011, the working group shall report to the house committees on government operations and on human services and the senate committees on government operations and on health and welfare the group's findings and recommendations, including any recommended legislation to address its findings and recommendations.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

S. 94.

House proposal of amendment to Senate bill entitled:

An act relating to miscellaneous amendments to the motor vehicle laws.

Was taken up.

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

* * * 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 instate 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 ~~instate~~ 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~~ 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 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 $125.00 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 $125.00.

(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 $125.00

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 $125.00.

(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 $125.00 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 $125.00.

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.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Mazza, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

Rules Suspended; Bills on Notice Calendar for Immediate Consideration

On motion of Senator Campbell, the rules were suspended, and the following bills and Joint resolution, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

S. 30, S. 37, S. 73, S. 101, S. 105.

House Proposal of Amendment Concurred In

S. 30.

House proposal of amendment to Senate bill entitled:

An act relating to assault of a health care worker.

Was taken up.

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

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

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

(a) A person convicted of a simple or aggravated assault against a law enforcement officer, a firefighter, ~~emergency room personnel~~ a health care worker, or a member of emergency ~~services~~ medical personnel as defined in ~~subdivision~~ 24 V.S.A. § 2651(6) ~~of Title 24~~ while the officer, firefighter, health care worker, or emergency medical personnel member is performing a lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, shall:

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

(2) For the second offense and subsequent offenses, be imprisoned not more than 10 years.

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

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

(c) In imposing a sentence under this section, the court shall take into consideration whether the defendant was a patient at the time of the offense and had a psychiatric illness, the symptoms of which were exacerbated by the surrounding circumstances, irrespective of whether the illness constituted an affirmative defense to the charge.

(d) For purposes of this section:

(1) "Health care facility" shall have the same meaning as defined in 18 V.S.A. § 9432(8)

(2) "Health care worker" means an employee of a health care facility or a licensed physician who is on the medical staff of a health care facility who provides direct care to patients or who is part of a team-response to a patient or visitor incident involving real or potential violence.

Sec. 2. LAW ENFORCEMENT ADVISORY BOARD

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

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

S. 37.

House proposal of amendment to Senate bill entitled:

An act relating to expungement of a nonviolent misdemeanor criminal history record.

Was taken up.

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

Sec. 1. 13 V.S.A. chapter 230 is added to read:

CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL RECORDS

§ 7601. DEFINITIONS

As used in this subchapter:

(1) "Court" means the criminal division of the superior court.

(2) "Charge or conviction record" means data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(3) "Investigation or prosecution record" means all information documenting the investigation or prosecution of the case that is maintained by law enforcement, the prosecuting attorney, or the defense attorney.

(4) "Predicate offense" means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of intoxicating liquor or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title.

(5) "Qualifying misdemeanor" means a misdemeanor offense which is not a listed crime as defined in subdivision 5301(7) of this title, an offense involving sexual exploitation of children in violation of chapter 64 of this title, an offense involving violation of a protection order in violation of section 1030 of this title, a prohibited act as defined in section 2632 of this title, or a predicate offense.

§ 7602. EXPUNGEMENT AND SEALING OF RECORD, POST-CONVICTION; PROCEDURE

(a) A person who was convicted of a qualifying misdemeanor or qualifying misdemeanors arising out of the same incident or occurrence may file a petition with the court requesting expungement of the charge or conviction record and sealing of the investigation or prosecution record related to the conviction. The state's attorney or attorney general shall be the respondent in the matter.

(b) The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner a certificate and provide notice of the order in accordance with this section.

(c) The court shall grant the petition, after hearing, if all of the following conditions are met:

(1) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction. If the person has successfully completed the terms and conditions of an indeterminate term of probation, the court may waive this 10-year wait period.

(2) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of the qualifying misdemeanor.

(3) Any restitution ordered by the court has been paid in full.

(4) In the totality of the circumstances, the court finds that expungement of the charge or conviction record and sealing of the investigation or prosecution record for the qualifying misdemeanor serve the interest of justice.

(d) The court may grant the petition, after hearing, if the following conditions are met:

(1) At least 20 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.

(2) The person has not been convicted of a felony arising out of a new incident or occurrence since the person was convicted of the qualifying misdemeanor.

(3) The person has not been convicted of a misdemeanor during the past 15 years.

(4) Any restitution ordered by the court for any misdemeanor of which the person has been convicted has been paid in full.

(5) After considering the particular nature of any subsequent offense, the court finds that expungement of the charge or conviction record and sealing of the investigation or prosecution record for the qualifying misdemeanor serve the interest of justice.

(e) At the time the petition is filed, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any stipulation or to offer the court a statement at any hearing on the petition. The respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(f) Upon granting a petition pursuant to this section, the court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence.

(g) An order granting a petition pursuant to this section shall direct the recipient to expunge the charge or conviction record and to seal the investigation or prosecution record as provided in section 7604 of this title.

§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO CONVICTION; PROCEDURE

(a) A person who was cited or arrested for a criminal offense may petition the court to expunge the charge or conviction record, and seal the investigation or prosecution record, related to the citation or arrest if:

(1) No criminal charge is filed by the state and the statute of limitations has expired.

(2) The court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment and the statute of limitations has expired.

(3) The charge is dismissed before trial:

(A) without prejudice and the statute of limitations has expired.

(B) with prejudice.

(4) The defendant and the respondent stipulate that the court may grant the petition to expunge and seal the record.

(b) The state's attorney or attorney general shall be the respondent in the matter. At the time the petition is filed, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The

victim shall have the right to offer the respondent a statement prior to any petition being granted. The petitioner and the respondent shall be the only parties in the matter.

(c) The court may grant the petition if it finds, in the totality of the circumstances, that expungement of the charge or conviction record and sealing of the investigation or prosecution record, serve the interest of justice.

(d) An order granting a petition pursuant to this section shall direct the recipient to expunge the charge or conviction record and to seal the investigation or prosecution record as provided in section 7604 of this title.

(e) An arresting or investigating agency's records are subject only to sealing, not expungement, under this section.

§ 7604. EFFECT OF EXPUNGEMENT AND SEALING

(a) Upon entry of an order of expungement of a charge or conviction record:

(1) The court shall provide a copy of the order of expungement to the respondent, Vermont criminal information center (VCIC), center for crime victim services, and any other entity that may possess a portion of the charge or conviction record of the criminal offense which is the subject of the order. The Vermont criminal information center shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(2) The person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous charge or conviction record only with respect to arrests or convictions that have not been expunged. Upon receiving an inquiry from any person regarding an expunged record, any person or entity that has received a copy of the order of expungement shall respond that "NO RECORD EXISTS."

(3) The court may keep a special index of cases that have been expunged together with the order for expungement and the certificate issued pursuant to section 7602 of this title. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(4) The special index and related documents specified in subdivision (3) of this section shall be confidential and shall be physically and electronically

segregated in a manner that ensures confidentiality and that limits access only to authorized persons.

(5) Inspection of the expungement order or the certificate may be permitted only upon petition by the person who is the subject of the case or by the court if the court finds that inspection of the documents is necessary to serve the interest of justice. The administrative judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(6) All other court documents in a case that is subject to an expungement order shall be destroyed.

(7) The court administrator shall establish policies for implementing subdivisions (3) – (6) of this subsection.

(b) Upon entry of an order to seal an investigation or prosecution record:

(1) The court shall provide a copy of the sealing order to the respondent, Vermont criminal information center (VCIC), center for crime victim services, the arresting agency, the investigating agency, and any other entity that may possess a portion of the investigation or prosecution record of the qualifying misdemeanor which is the subject of the order. The Vermont criminal information center shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(2) The person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous investigation or prosecution record only with respect to investigations, arrests, or convictions that have not been sealed.

(c) Upon receiving a sealing order, an entity shall:

(1) Seal the investigation or prosecution record;

(2) Enter a copy of the sealing order into the record;

(3) Flag the record as "SEALED" to prevent inadvertent disclosure of sealed information; and

(4) Upon receiving an inquiry from any person regarding a sealed record, respond that "NO RECORD EXISTS."

(d)(1) Notwithstanding a sealing order:

(A) An entity that possesses a sealed record may continue to use it for any litigation or claim arising out of the same incident or occurrence or involving the same defendant.

(B) An entity may use an investigation or a prosecution record sealed in accordance with section 7603 of this title, regarding a person who was cited or arrested, for future criminal investigations or prosecutions without limitation.

(2) An entity may use an investigation or prosecution record sealed in accordance with section 7602 of this title, regarding a person who was convicted, for future criminal investigations or prosecutions only upon an order of a superior court judge in the criminal division. The hearing on an application for such an order may be conducted in a confidential and nonadversarial manner substantially similar to procedures for obtaining a search warrant.

(e) The person whose record has been sealed shall maintain his or her right to access the sealed record as if the record had not been sealed.

§ 7605. NEW CHARGE

If a person is charged with a criminal offense after he or she has filed a petition pursuant to this chapter, the court shall not act on the petition until disposition of the new charge.

§ 7606. DENIAL OF PETITION

If a petition is denied by the court pursuant to this chapter, no further petition on that same matter shall be brought for at least five years.

Sec. 2. REPORT; COURT ADMINISTRATOR

On or before January 15, 2015, the court administrator shall report to the general assembly the total number of court orders for expungement of charge or conviction records and sealing of investigation or prosecution records which have been issued by the courts of this state and the types of offenses for which a court ordered expungement of charge or conviction records and sealing of investigation or prosecution records pursuant to this act.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Sears, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

House Proposal of Amendment Concurred In

S. 73.

House proposal of amendment to Senate bill entitled:

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

Was taken up.

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

Sec. 1. 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.

* * *

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

House Proposal of Amendment Concurred In

S. 101.

House proposal of amendment to Senate bill entitled:

An act relating to child support enforcement.

Was taken up.

The House proposes to the Senate to amend the bill in Sec. 1, 15 V.S.A. § 606(d), in subdivision (2), by striking out "the obligated parent lacked the ability" and inserting in lieu thereof "since that date, the obligated parent became unable"

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

House Proposal of Amendment Concurred In

S. 105.

House proposal of amendment to Senate bill entitled:

An act relating to miscellaneous agricultural subjects.

Was taken up.

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

Sec. 1. 6 V.S.A. chapter 151 is amended to read:

CHAPTER 151. SUPERVISION, INSPECTION AND LICENSING OF DAIRY OPERATIONS

* * *

§ 2672. DEFINITIONS

As used in this part, the following terms have the following meanings:

* * *

(5) "Milk handler" or "handler" is a person, firm, unincorporated association or corporation engaged in the business of buying, selling, assembling, packaging, or processing milk or other dairy products, for sale within or without the state of Vermont. "Milk handler" or "handler" shall not mean a milk producer.

* * *

(7) "Milk": Unless preceded or succeeded by an explanatory term, means the pure lacteal secretion of a type of dairy livestock listed in this subdivision. Such milk may be standardized by the addition of pure, fresh skim milk or cream as defined by regulation.

(A) "Cows' milk" is the colostrum-free, pure, lacteal product of healthy ~~cows~~ cattle which contains not less than 11.50 percentum of total milk solids (to which nothing has been added or taken away). Cows' milk sold in retail packages shall contain not less than 3.25 percent milk fat, and not less than 8.25 percent nonfat milk solids. ~~The secretary may, in accordance with chapter 25 of Title 3, promulgate a list of food grade additives which may be added to cows' milk. The additives used in cows' milk sold in retail packages shall be conspicuously stated in descending order of importance on the label of the package in a manner approved by the secretary. Such milk may be standardized by the addition of pure, fresh skim milk or cream as defined by regulation.~~

(B) "Goats' milk" is the colostrum-free, pure, lacteal product of healthy ~~dairy~~ goats which contains not less than 10 percentum of total milk solids (to which nothing has been added or taken away). Goats' milk sold in retail packages shall contain not less than 2.5 percent milk fat and not less than 7.5 percent nonfat milk solids. ~~The secretary may, in accordance with chapter 25 of Title 3, promulgate a list of food grade additives which may be added to goats' milk. The additives used in goats' milk sold in retail packages shall be conspicuously stated in descending order of importance on the label of the package in a manner approved by the secretary. Such milk may be standardized by the addition of pure, fresh skim milk or cream as defined by regulation.~~

(C) "Sheep's milk" is the colostrum-free, pure, lacteal product of healthy ~~dairy~~ sheep which contains no less than 11.50 percent of total milk solids (to which nothing has been added or taken away).

(D) "Water buffalo's milk" is the colostrum-free, pure, lacteal product of healthy ~~dairy~~ water buffalo which contains no less than 11.50 percent of total milk solids (to which nothing has been added or taken away).

~~(8) "Imitation dairy products" are those products containing no milk which by their texture, flavor, color, packaging, or other characteristics, could be confused by consumers with established and defined dairy products or are sold or offered for sale as substitutes for milk or fluid dairy products.~~

~~(9) "An imitation dairy product handler" is a person, firm, unincorporated association or corporation engaged in the business of buying, selling, packaging or processing imitation dairy products for sale within or without the state of Vermont.~~

~~(10) "An imitation dairy product handler's license" is a license issued by the secretary which authorizes the licensee to carry on the business of an imitation dairy products handler.~~

~~(11)~~(8) "Retail package of dairy product ~~or imitation dairy product~~" is a package to be sold to a consumer.

~~(12)~~(9) "Dairy ~~products~~ product" ~~are~~ is milk, or ~~the products~~ a product derived therefrom, which ~~conform~~ conforms to the appropriate legal standard or definition for the specific product as defined in this part and regulations made under this part.

~~(13)~~(10) "Fluid dairy products" are milk and fluid dairy products derived from milk, including cultured products, as defined by regulations made under this part.

~~(14)~~(11) "Licensed technician" is a person who has demonstrated by appropriate tests, to the satisfaction of the secretary, that he or she has the skill, experience, ability, and integrity to perform tests that are used as a basis for payment or acceptance of dairy products ~~or imitation dairy products~~, and who holds one or more licenses issued by the secretary authorizing ~~him~~ the person to carry on one or more of these activities.

~~(15)~~(12) "Approved dairy laboratory" is any place or premise which has been inspected and approved by the secretary or, those premises outside Vermont approved and listed by the National Conference on Interstate Milk Shipments in accordance with the most recent evaluation of milk laboratories as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, where tests are made on milk~~,~~ or dairy products~~, or imitation dairy products,~~ to determine the quality or acceptance of the products. The laboratory shall meet recommendations as set forth in the latest edition of APHA "standard methods for the examination of dairy products." The secretary may terminate approval for cause.

~~(16)~~(13) "Adulteration" means an adulterated dairy product ~~or adulterated imitation dairy product~~ containing noxious, unwholesome, or deleterious material, preservative, drugs, or chemical in a quantity injurious to health; or which does not conform to the definition of the product; or which is not produced, processed, or distributed according to the provisions of this part.

~~(17)~~(14) "Commission" means the Vermont milk commission as constituted in section 2922 of this title.

~~(18)~~(15) "Charitable ~~uses~~ use" means the distribution of milk among poor and needy persons without charge or compensation therefor.

~~(19)~~(16) "Distributor" means any person who sells milk ~~or imitation dairy products~~ to consumers within the state, except those who sell milk ~~or imitation dairy products~~ for consumption on the premises. ~~A producer or person who delivers or sells milk to a distributor only shall not be deemed a distributor.~~

~~(20)~~(17) "Market" means any area designated by the board as a natural marketing area.

~~(21)~~(18) "School lunch milk" means milk sold, offered for sale, or distribution at school buildings, grounds, or other places used for school purposes.

~~(22)~~(19) "Person" means individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units or entities.

~~(23)~~(20) "Additional definitions": The secretary may~~,~~ (after due notice and public hearing) in accordance with chapter 25 of Title 3, promulgate, amend, or rescind definitions of other dairy products ~~and imitation dairy products,~~ including modified milk, dairy processes, and rules relating to specially trained personnel.

~~(24)~~(21) "Drug" or "drugs" mean:

(A) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or supplement thereto; and

(B) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and

(C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(D) articles intended for use as a component of any articles specified in subdivision ~~(24)~~(A), (B), or (C)~~,~~ of this ~~section~~ subdivision (21), but not including devices or their components, parts, or accessories.

~~(25)~~(22) Definitions and standards of milk products not herein defined shall be those established by federal agencies and published in the Code of Federal Regulations.

~~(26)~~(23) "Vermont fresh milk" means milk consisting entirely of fresh milk produced in Vermont.

~~(27)~~(24) "Northeastern fresh milk" means milk consisting entirely of fresh milk produced in Delaware, Maryland, New Jersey, Pennsylvania, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine.

(25) "National Conference on Interstate Milk Shipments" means the national nonprofit organization of that same name, or its successor in interest, that deliberates and votes on proposals submitted by individuals from state or local regulatory agencies, the U.S. Food and Drug Administration, the U.S. Department of Agriculture, producers, processors, and consumers who have an interest in the safety of dairy products.

* * *

§ 2677. FLUID DAIRY PRODUCTS FOR LIVESTOCK FEED

A milk plant or handler shall not dispense or deliver fluid dairy products other than whey for livestock feed including poultry except under regulations as may be promulgated by the secretary.

* * *

§ 2681. ADDITIVES

The secretary may, in accordance with chapter 25 of Title 3, promulgate a list of food grade additives which may be added to milk. The additives used in milk sold in retail packages shall be conspicuously stated in descending order of volume on the label of the package in a manner approved by the secretary.

* * *

§ 2701. REGULATIONS

(a) The secretary, in accordance with chapter 25 of Title 3, shall promulgate, and may amend and rescind, dairy sanitation regulations relating to dairy products ~~and imitation dairy products~~ to enforce this chapter, including but not limited to: labeling, weighing, measuring and testing facilities, buildings, equipment, methods, procedures, health of animals, health and capability of personnel, and quality standards. In addition, the uniform regulation for sanitation requirements, as adopted by the National Conference on Interstate Milk Shippers, and published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration,

Grade A Pasteurized Milk Ordinance (PMO), together with amendments, supplements and revisions thereto, are adopted as part of this chapter, except as modified or rejected by regulation. When adherence to the PMO is deemed unreasonable by the agency for non-Grade "A" products, the most current version of the Recommended Requirements of the United States Department of Agriculture, Agricultural Marketing Service, Milk for Manufacturing Purposes and its Production and Processing may be used.

* * *

§ 2721. HANDLERS' LICENSES

* * *

(c) ~~An imitation dairy products handler shall not transact business in the state unless he or she secures and holds an imitation dairy product handler's license from the secretary. The license shall terminate September 1 each year and shall be procured by August 15 of each year. The secretary shall furnish all forms for applications, licenses and bonds. The imitation dairy products handler shall pay a license fee of $200.00 for an initial application or a license fee of $50.00 for a renewal application at the time the application is delivered to the secretary.~~

* * *

§ 2722a. HEARINGS, AND ACTION UPON APPLICATIONS

(a) Upon receipt of an application for a milk handler's license the secretary shall examine it. If the application is deficient the secretary shall so notify the applicant and return the application together with one-half of the application fee within 30 days of the receipt of the application. If the application is not deficient, the secretary shall ~~set a date for a hearing on the application, shall notify the applicant of that date and shall cause public notice of the hearing to be published in three newspapers of general circulation within the state. The~~ publish notice of the application in one or more publications of general circulation within the state's dairy community at the applicant's expense. The secretary shall also publish notice of the handler's application on the agency's website. An interested party shall have 14 calendar days from the date of publication to request a hearing on the application. The secretary shall grant a request for a hearing when an interested party can demonstrate a reasonable belief that the applicant will not promote the general good of the dairy industry and the consuming public pursuant to Vermont rule 20-021-001 adopted by the agency of agriculture, food and markets. Where such a showing is made, a hearing ~~must~~ shall be held within 60 days of receipt of ~~an application but not less than 10 days after public notice has been published~~ the

request. In the absence of such a showing or where no request for a hearing is received, the secretary may hold a hearing at his or her discretion.

(b) In the ~~case of a new application~~ event a hearing is convened, the hearing shall be held in central Vermont unless requested by the applicant to be in the specific area ~~which the applicant intends principally to serve~~ where the applicant will be located. Additional hearings may be held at the discretion of the secretary.

§ 2723. EXEMPTIONS

Handlers' licenses shall not be required from the following persons:

(1) Producers, except producers who sell fluid dairy products at retail in Vermont.

(2) A hotel, restaurant, or other public eating place that sells ~~fluid~~ dairy products for consumption on the premises, or a store which sells packaged dairy products, provided the entire supply of ~~fluid~~ dairy products is purchased from licensed milk handlers.

(3) A person producing unpasteurized milk under chapter 152 of this title, with respect to the sale of that unpasteurized milk only.

(4) A person who holds a frozen dessert license that only utilizes pasteurized frozen dessert mix.

* * *

§ 2741. MILK PLANTS ~~AND IMITATION DAIRY PRODUCTS PLANTS~~

Before issuing a milk handler's license ~~or an imitation dairy products handler's license~~ and at least twice a year thereafter, the secretary shall inspect or cause to be inspected all milk plants ~~and imitation dairy products plants~~ as to their premises, equipment, procedures, and sanitary conditions. ~~He~~ The secretary may enter into reciprocal agreements with or accept the inspection reports of appropriate dairy sanitation agencies of other states, municipalities, or the federal government in lieu of inspection by the secretary, provided their standards and administration are substantially equal to the standards established by the secretary under the provisions of this chapter.

* * *

§ 2743. DAIRY LABORATORIES

(a) The secretary shall, at least annually, inspect or cause to be inspected all premises where dairy products are tested to determine the basis of payment or acceptance. Each handler shall notify the secretary of the place in which tests of producer's dairy products are conducted. Such tests shall be performed only by licensed technicians. Approved dairy laboratories located outside Vermont are exempt from this inspection.

(b) The secretary shall at least annually inspect ~~approved~~ all in-state dairy laboratories and those out-of-state dairy laboratories not approved by the National Conference on Interstate Milk Shipments and if qualified, they shall be ~~so certified~~ approved by the secretary.

* * *

(d) In case the producer's milk is transported from the farm to a milk plant in another state, the ~~purchaser shall keep the samples and test them at some approved place within the state of Vermont, or if the purchaser elects and agrees to pay the additional cost of supervision by the secretary or his agent, he may test the samples in another state in the plant where the milk is first received from the farm. All testing shall be done by persons holding a testing license issued by the secretary. The secretary may enter the premises of a milk handler and take possession of any or all samples including those from milk producers' deliveries and test them~~ samples shall be tested in an approved dairy laboratory.

§ 2744. ENFORCEMENT

* * *

(d) Right of entry. The secretary or his or her agent may for the purpose of inspection enter at all reasonable times the premises, except the residence, of all milk handlers and producers and examine all pertinent records and personnel and may use reasonable means of determining the sanitary condition of the entire milk producing and handling process. Refusal to permit inspection shall be grounds for revoking a license or ability to ship milk pursuant to chapter 25 of Title 3.

§ 2744a. DRUGS

(a) No producer shall sell or offer for sale milk which contains any drug or drugs in excess of tolerances established by the United States Food and Drug Administration in the Code of Federal Regulations.

~~(b)~~(1) In the event that milk from a dairy farm contains a drug, no more milk produced by that producer shall be received by any milk dealer~~,~~ or handler~~, for a period of up to two days~~ until a sample of at least one complete

milking has been collected and found negative. In the event of a second violation within a 12-month period, no more milk produced by that producer shall be received by any milk dealer~~,~~ or handler~~,~~ for a period of up to ~~four~~ two days and until a sample of at least one complete milking has been collected and found negative. In the event of a third violation within a 12-month period, the secretary shall, at a minimum, take the same action as required for a second violation and may prohibit the producer from selling milk in this state. No handler~~,~~ or dealer~~,~~ shall accept milk from a producer whose ability to sell milk is suspended or terminated.

~~(c)~~(2) In lieu of suspending a producer's ability to sell milk, the secretary may issue an administrative penalty. The amount of the penalty shall not exceed the value of the milk which could have been prohibited from sale. A producer who fails to pay an administrative penalty, after opportunity for hearing, shall have his, or her, ability to sell milk suspended until the penalty is paid. In lieu of suspending a producer's ability to sell milk, the secretary may accept the assessment by the milk dealer or handler, against the producer, of damages beyond the milk dealer's, or handler's control which occurred as a result of purchasing the contaminated milk, as an equivalent penalty.

(3) Notwithstanding the provisions of subsection (c) of this section, the secretary may at any time issue an emergency order prohibiting a producer from selling and a handler from accepting any milk until the milk tests negative for drugs.

(b)(1) No producer shall sell livestock for slaughter which contains any drug or drugs in excess of tolerances established by the United States Food and Drug Administration in the Code of Federal Regulations.

(2) In the event that livestock intended for slaughter is found to contain a drug or drugs in excess of levels established by the United States Food and Drug Administration in the Code of Federal Regulations at the time of sale, the secretary may assess an administrative penalty not to exceed $1,000.00 for each violation.

~~(d)~~(c) Before issuing an order or administrative penalty under this section, the secretary shall provide the producer and the handler~~,~~ or dealer~~,~~ an opportunity for hearing. ~~Notwithstanding this requirement, the secretary may at any time issue an emergency order prohibiting a producer from selling, and a handler from accepting, any milk until the milk tests negative for drugs.~~

* * *

Sec. 2. REPEAL

6 V.S.A. § 2753 (segregation of products) is repealed.

Sec. 3. 6 V.S.A. chapter 152 is amended to read:

CHAPTER 152. SALE OF UNPASTEURIZED (RAW) MILK

§ 2775. LIMITED SALE OF UNPASTEURIZED (RAW) MILK PERMISSIBLE

~~The~~ Notwithstanding section 2701 of this title, the production and sale of unpasteurized milk to a consumer for ~~fluid~~ personal consumption is permitted within the state of Vermont only when produced, marketed, and sold in conformance with this chapter.

§ 2776. DEFINITIONS

~~For the purposes of~~ In this chapter~~,~~:

(1) "Consumer" means a customer who purchases, barters for, or otherwise acquires unpasteurized milk from the farm or delivered from the farm.

(2) "Personal consumption" means the use by a consumer of unpasteurized milk for food or to create a food product made with or from unpasteurized milk which is intended to be ingested by the consumer, members of his or her household, or any nonpaying guests.

(3) "Unpasteurized milk" or "unpasteurized (raw) milk" means ~~unpasteurized milk sold for fluid consumption and does not include unpasteurized milk to be pasteurized or unpasteurized milk produced for use in manufacturing of milk products other than fluid~~ milk that is unprocessed.

(4) "Unprocessed" means milk that has not been modified from the natural state it was in as it left the animal, other than filtering, packaging, and cooling.

§ 2777. STANDARDS FOR THE SALE OF UNPASTEURIZED (RAW) MILK

(a) Unpasteurized milk ~~for fluid consumption~~ shall be sold directly from the producer to the ~~end user~~ consumer for personal consumption only and shall not be resold.

* * *

Sec. 4. 6 V.S.A. chapter 153 is amended to read:

CHAPTER 153. STANDARDS AND PURITY

§ 2801. ADULTERATION PROHIBITED

It is prohibited to sell, transfer, or offer for sale any adulterated dairy product ~~or adulterated imitation dairy product~~ which does not conform to Vermont statutes and regulations adopted thereunder. Nothing herein shall be construed to prohibit the salvage of milk solids for human consumption under regulations adopted by the secretary.

§ 2802. FOREIGN FATS PROHIBITED

A person, firm, or corporation, by himself or herself, his or her servant or agent, or as the servant or agent of another, shall not manufacture, sell, or exchange, or have in possession with intent to sell or exchange, any dairy products or any of the fluid or solid derivatives of any of them to which has been added any fat or oil other than milk fat, except chocolate ice cream and chocolate milk which may contain the amount of fats other than milk fat normally contained in the chocolate or cocoa used in the manufacture of chocolate ice cream and chocolate milk. This section does not prohibit a fat substitute if it is approved for insertion into a dairy product by the U.S. Food and Drug Administration and is clearly identified in the list of ingredients on the label.

* * *

§ 2811. MARKING OF RETAIL PACKAGES

(a)(1) All retail packages of dairy products~~,~~ and fluid dairy products ~~and imitation dairy products~~ sold or offered for sale shall be plainly and conspicuously marked with:

~~(1)~~(A) The true name of the product as defined by statute or regulation.

~~(2)~~(B) The true name of all ingredients in descending order of importance if it is not a single defined product.

~~(3)~~(C) The name and address of the producer or handler.

~~(4)~~(D) The net weight or volume of package contents.

(2) The secretary may assign identifying numbers for milk plants ~~and imitation dairy products plants~~, which may appear on the package.

(b) The following situations are exempted from the operation of subsection (a) of this section:

(1) Milk sold by a producer to a handler.

(2) A producer who ~~does not deliver and who does not sell or offer for sale more than 25 quarts of milk to the public in any one day~~ sells unpasteurized (raw) milk pursuant to chapter 152 of this title.

* * *

Sec. 5. 6 V.S.A. chapter 155 is amended to read:

CHAPTER 155. FROZEN DESSERTS

* * *

§ 2856. EXEMPTIONS

A person who holds a valid milk handler's license shall be exempt from all licensing provisions of this chapter.

Sec. 6. 6 V.S.A. chapter 157 is amended to read:

CHAPTER 157. BONDS

§ 2881. CONDITIONS AND AMOUNT; FAILURE TO FILE

(a) Except as provided in section 2882 of this title, no handler shall purchase milk from a Vermont ~~producers~~ producer or milk ~~cooperatives~~ cooperative, either directly or through a marketing service owned by one or more cooperatives, and the secretary shall not issue a handler's license, unless the handler furnishes the secretary a good and sufficient surety bond, executed by a surety company duly authorized to transact business in this state in an amount equal to 50 percent for all species other than cattle, and 100 percent for cattle, of the maximum amount due all milk producers in the state who ~~sell~~ sold milk to the handler for a 41-day period during the previous 12 months. ~~He or she~~ The secretary may accept, in lieu of such bond, a guaranteed irrevocable letter of credit. The bonds shall be taken for the benefit of Vermont milk producers and milk cooperatives in this state. At any time in his or her discretion, the secretary may require such handlers to file detailed statements of the business transacted by them in this state, and at any time may require them to give such additional bonds as he or she deems necessary. If the handler refuses or neglects to file the detailed statements or to give bonds required by the secretary, the secretary may suspend the license of the handler until he or she complies with the secretary's orders. The secretary shall report to the attorney general the name of any handler doing business in this state without a license or after suspension of its license by the secretary and the attorney general shall forthwith bring injunction proceedings against the handler. Renewals of bonds specified in this section shall be furnished the secretary 60 days before the effective date of the bond. If the handler fails to file the bonds as required, the secretary shall forthwith publish the name of the handler in four newspapers of general circulation in the state for a period of

three consecutive days and notify, by registered mail, producers supplying such handler.

(b) ~~[Deleted.]~~ A milk cooperative that sells milk from a Vermont producer either directly or through a marketing service owned by one or more cooperatives shall file a monthly detailed report that states where the milk from each bulk tank unit served is sold and shall specify the volume of milk that is sold by Vermont cooperative members and independent producers who market their milk through a milk cooperative either directly or through a marketing service owned by one or more cooperatives.

§ 2882. EXEMPTIONS FROM FILING BOND

* * *

(b) A handler who does not purchase milk from Vermont producers or milk cooperatives either directly or through a marketing service owned by one or more cooperatives shall not be required to furnish surety as provided under section 2881 of this title.

(c) A handler who pays ~~a milk cooperative~~ for milk in advance or at the time of delivery shall not be required to furnish surety as provided under section 2881 of this title. Every producer, or milk cooperative either directly or through a marketing service owned by the cooperatives, selling milk to handlers who pay for milk in advance or at the time of delivery shall, on ~~January 1 and~~ July 1 of each year, notify the secretary in writing of the identity of each handler and shall promptly notify the secretary, in writing, of any changes to the most recent notification.

(d) A handler who purchases fewer than 150,000 pounds of milk per month from a milk cooperative, either directly or through a marketing service owned by one or more cooperatives, shall not be required to furnish surety as provided under section 2881 of this title.

* * *

§ 2884. PROCEEDINGS FOR RECOVERY ON BOND

~~Upon breach of the condition of a bond or other security, upon application by the~~ When the condition of a bond or other security is breached, if a producer ~~of~~ or milk cooperative applies to a handler~~,~~ for payment of products furnished to that handler whose account ~~for products furnished such handler~~ remains unpaid as provided in section 2883 of this title, the secretary shall institute appropriate proceedings thereon in his name as trustee for the benefit of all the producers ~~of such~~ or milk cooperatives in this state supplying the handler ~~in this state~~ and to whom such handler may be indebted at the time the

proceedings are instituted. The proceedings may be commenced in any county in this state where a producer of the handler resides.

Sec. 7. 6 V.S.A. chapter 163 is amended to read:

CHAPTER 163. VERMONT DAIRY PROMOTION COUNCIL; PRODUCER TAX

§ 2971. CREATION OF COUNCIL

* * *

(b) The milk cooperatives shall provide the secretary of agriculture, food and markets with two nominees for each entitlement of whom one shall be appointed by the secretary. The second nominee shall become an alternate to serve in the absence of the appointee. The secretary of agriculture, food and markets shall appoint three producer members to the council and one alternate to serve in the absence of any one of these three members to represent those producers not members of a milk cooperative and those cooperatives not eligible under the terms of this section, and one distributor representative, after seeking the advice of producer associations, distributor associations and individual producers and distributors within the state. During the month of February, six members shall be appointed for a one-year term and the balance for a two-year term. Thereafter one-half of the members shall be appointed annually. The council shall serve at the discretion of the secretary. A milk producer who is serving on the Vermont dairy promotion council shall not be a member of the agency disbursing the funds. The appointive members shall each receive ~~$50.00~~ $75.00 per day for each day spent in actual attendance at meetings of the council, but not exceeding a total compensation of ~~$500.00~~ $750.00 per annum for each member, and they also shall receive their actual necessary expenses and mileage while attending to their duties. The secretary shall serve as chair of the council and administer and enforce the provisions of this act.

* * *

§ 2988. REFERENDUM

* * *

(f) All administration costs associated with the referendum vote shall be assessed against the ~~state dairy council~~ Vermont dairy promotion fund.

* * *

Sec. 8. 9 V.S.A. chapter 73 is amended to read:

CHAPTER 73. WEIGHTS AND MEASURES

* * *

§ 2692. BULK MILK TANKS

(a) When installing a farm bulk tank or reconstructing a floor area supporting a bulk tank, the tank shall not be placed in service and used as a commercial measuring device unless a foundation has been constructed with due consideration of frost penetration and of sufficient strength to support the completely liquid-laden tank without change of level, and a steel plate not less than six inches square and not less than one-quarter inch thick is placed under each leg and the steel plate and the tank legs are cemented to the floor. Bulk tanks shall be calibrated using accepted practices approved by the ~~weights and measures division~~ consumer protection section as soon as possible after the milk house and bulk tank installation has been approved by the dairy ~~division~~ section.

* * *

(c) If the secretary determines the bulk milk tank is not an accurate measure for milk~~,~~ (or because of continued movement of the tank caused by a poor foundation) ~~he~~, the secretary may condemn the tank and forbid its use as a measuring device. Any person who alters a bulk tank weight conversion chart, uses other than latest conversion chart issued, uses a condemned tank as a measure, uses a tank without the legs cemented to the floor or changes the level position of a bulk milk tank without immediately notifying the secretary of agriculture, food and markets shall be fined not more than ~~$200.00~~ $500.00 for each offense.

(d) The first handler receiving milk from a producer shall furnish competent personnel licensed by the consumer protection section to ~~assist in the calibration of~~ calibrate the producer's bulk milk tank. The word "handler" as used in this subsection shall mean a person, firm, unincorporated association, or corporation engaged in the business of buying, selling, assembling, packaging, or processing milk or other dairy products, for sale within or ~~without~~ outside the state of Vermont. ~~The handler shall pay $75.00 if the capacity of the tank being calibrated is 0-500 gallons, and another $25.00 for each additional 500 gallons capacity or part thereof.~~

* * *

Sec. 9. AGENCY OF AGRICULTURE, FOOD AND MARKETS EDUCATIONAL MATERIALS REGARDING THE REGULATION OF COMPOSTING ON FARMS

(a) The agency of agriculture, food and markets and the agency of natural resources, after consultation with the regional planning commissions and the compost association of Vermont, shall develop educational materials regarding the regulatory requirements for the operation of a compost facility on a farm. The educational materials shall include a summary of the state regulations for the operation of a compost facility, including the accepted composting practices, the solid waste management rules, and state land use planning under 10 V.S.A. chapter 151.

(b) The agency of agriculture, food and markets and the agency of natural resources shall post the educational materials required by this section on each agency's website and shall conduct outreach activities to inform farmers of the materials produced under this section.

Sec. 10. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Message from the House No. 64

A message was received from the House of Representatives by Mr. William M. MaGill, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 53. An act relating to the Interstate Wildlife Violator Compact.

In the passage of which the concurrence of the Senate is requested.

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

S. 100. An act relating to making miscellaneous amendments to education laws.

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

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

H. 6. An act relating to powers and immunities of the liquor control investigators.

And has severally concurred therein.

Proposal of Amendment; Third Reading Ordered

H. 264.

Senator Sears, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

This act is intended to help prevent the harm caused to Vermonters and their families and friends by chronic DUI offenders who repeatedly operate motor vehicles while under the influence of alcohol or other drugs.

* * * Permitting Unlicensed or Impaired Person to Operate * * *

Sec. 2. 23 V.S.A. § 1130 is amended to read:

§ 1130. PERMITTING UNLICENSED OR IMPAIRED PERSON TO OPERATE

(a) No person shall knowingly employ~~, as operator of a motor vehicle, a~~ another person as an operator of a motor vehicle knowing that the other person is not licensed as provided in this title.

(b) No person shall ~~knowingly~~ permit a motor vehicle owned by him or her or under his or her control to be operated by ~~a~~ another person ~~who~~ if the person who owns or controls the vehicle knows that the other person has no legal right to ~~do so, or in violation of a provision of this title~~ operate the vehicle.

(c)(1) No person who owns or is under control of a vehicle shall intentionally enable another person to operate the vehicle if the person who owns or controls the vehicle has actual knowledge that the operator is:

(A) under the influence of intoxicating liquor; or

(B) under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely.

(2) In a prosecution under this section, the state shall have the burden of proving beyond a reasonable doubt that the defendant was not placed under duress or subjected to coercion by the other person at the time the defendant enabled the other person to operate the motor vehicle.

(3) As used in this section, "intentionally enable another person to operate the motor vehicle" means to intentionally create a direct and immediate opportunity for another person to operate the motor vehicle.

(d)(1) A person who violates subsection (c) of this section shall be fined not more than $1,000.00 or imprisoned for not more than six months, or both.

(2) If the death or if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of subsection (c) of this section, the person convicted of the violation shall be fined not more than $5,000.00 or imprisoned not more than two years, or both. The provisions of this subdivision do not limit or restrict prosecutions for manslaughter.

* * * DUI penalties, alternative sanctions, and innovative responses * * *

Sec. 3. 23 V.S.A. § 1201 is amended to read:

§ 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL REFUSAL

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person's alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title or has been convicted of a violation of this section within the preceding three years when the person's alcohol concentration was 0.16 or greater; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely; or

(4) when the person's alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title.

* * *

Sec. 4. 23 V.S.A. § 1210 is amended to read:

§ 1210. PENALTIES

* * *

(d) Third ~~or subsequent~~ offense. A person convicted of violating section 1201 of this title who has ~~twice~~ previously been convicted two times of a violation of that section shall be fined not more than $2,500.00 or imprisoned not more than five years, or both. At least ~~400 hours of community service shall be performed, or~~ ~~100~~ 96 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. The court may impose a sentence that does not include a term of imprisonment or that does not require that the 96 hours of imprisonment be served consecutively only if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

(e) Fourth or subsequent offense. A person convicted of violating section 1201 of this title who has previously been convicted three times of a violation of that section shall be fined not more than $5,000.00 or imprisoned not more than ten years, or both. At least 192 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. The court shall not impose a sentence that does not include a term of imprisonment unless the court makes written findings on the record that there are compelling reasons why such a sentence will serve the interests of justice and public safety.

~~(e)(1)~~(f)(1) Death resulting. If the death of any person results from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than $10,000.00 or imprisoned not less than one year nor more than 15 years, or both. The provisions of this subsection do not limit or restrict prosecutions for manslaughter.

(2) If the death of more than one person results from a violation of section 1201 of this title, the operator may be convicted of a separate violation of this subdivision for each decedent.

(3)(A) If the death of any person results from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of that section, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if the death of any person results from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of that section, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

~~(f)(1)~~(g)(1) Injury resulting. If serious bodily injury, as defined in 13 V.S.A. § 1021(2), results to any person other than the operator from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than $5,000.00, or imprisoned not more than 15 years, or both.

(2) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to more than one person other than the operator from a violation of section 1201 of this title, the operator may be convicted of a separate violation of this subdivision for each person injured.

(3)(A) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of section 1201, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of section 1201, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

~~(g)~~(h) Determination of fines. In determining appropriate fines under this section the court may take into account the total cost to a defendant of alcohol screening, participation in the alcohol and driving education program and therapy and the income of the defendant.

~~(h)~~(i) A person convicted of violating section 1201 of this title shall be assessed a surcharge of $60.00, which shall be added to any fine imposed by the court. The court shall collect and transfer such surcharge to the department of ~~health~~ public safety for deposit in the health department's laboratory services special fund.

~~(i)~~(j) A person convicted of violating section 1201 of this title shall be assessed a surcharge of $50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to the office of defender general for deposit in the public defender special fund specifying the source of the monies being deposited. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

~~(j)~~(k) A person convicted of violating section 1201 of this title shall be assessed a surcharge of $50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to be credited to the DUI enforcement fund. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

Sec. 5. REPEAL

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

Sec. 6. 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 $125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock RDL 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 $125.00.

(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 $125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock RDL 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 $125.00.

(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 $125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock RDL 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 $125.00.

Sec. 7. 23 V.S.A. § 1220a is amended to read:

§ 1220a. DUI ENFORCEMENT SPECIAL FUND

(a) There is created a DUI enforcement special fund which shall be a special fund established and managed pursuant to 32 V.S.A. chapter 7 subchapter 5. The DUI enforcement special fund shall be a continuation of and successor to the DUI enforcement special fund established under subsection 1205(r) of this title.

(b) The DUI enforcement special fund shall consist of:

(1) receipts from the surcharges assessed under section 206 and subsections 674(i), 1091(d), 1094(f), 1128(d), 1133(d), 1205(r), and 1210(j) of this title;

(2) beginning in fiscal year 2000 and thereafter, the first $150,000.00 of revenues collected from fines imposed under subchapter 13 of chapter 13 of this title pertaining to DUI related offenses;

(3) beginning in fiscal year 2000 and thereafter, two percent of the revenues raised by the motor fuel tax on gasoline imposed by chapter 28 of this title; and

(4) any additional funds transferred or appropriated by the general assembly.

(c) The DUI enforcement special fund shall be used for the implementation and enforcement of this subchapter for purposes specified and in amounts appropriated by the general assembly. At least 40 percent of the money collected by the fund each year shall be awarded as grants to municipalities or law enforcement agencies for innovative programs designed to reduce DUI offenses. Priority shall be given to grants requested jointly by more than one law enforcement agency or municipality.

Sec. 8. DEDICATED BEDS FOR CHRONIC REPEAT DUI OFFENDERS

The department of corrections shall report to the joint committee on

corrections oversight on or before November 15, 2011 on the feasibility of dedicating 25 beds at the southeast state correctional facility exclusively for chronic repeat DUI offenders. As used in this section, "chronic repeat DUI offender" means a person convicted three or more times of a violation of 23 V.S.A. § 1201.

Sec. 9. COMPREHENSIVE SYSTEM TO REDUCE REPEAT DUI OFFENSES

On or before January 15, 2012, the director of the governor's highway safety program, in consultation with the defender general and the departments of motor vehicles, of public safety, of health and of corrections shall report to the house and senate committees on judiciary a plan for implementation of a comprehensive system of penalties, alternative sanctions, and treatment to reduce the number of persons with repeat offenses of operating motor vehicles while under the influence of alcohol or other drugs. The system may include, among other measures, the following:

(1) a mandatory sobriety program for repeat DUI offenders similar to South Dakota's "24/7 Sobriety Program";

(2) increased penalties for operating a vehicle with an alcohol concentration substantially greater than the legal limit;

(3) methods of responding to DUI offenders who fail to complete the alcohol and driving education program (CRASH) required by 23 V.S.A. § 1209a(a)(1);

(4) enhanced use of ignition interlock devices, with respect to which the ignition interlock effectiveness study required by Sec. 14 of No. 126 of the Acts of 2009 shall be considered;

(5) mandatory alcohol and drug counseling and treatment for persons convicted of operating a motor vehicle while under the influence of alcohol or other drugs;

(6) establishment of a secure facility for housing and treatment of persons convicted of operating a motor vehicle while under the influence of alcohol or drugs;

(7) the circumstances under which the operator of a motor vehicle may be required to submit to a blood test to determine whether he or she has been operating the vehicle while under the influence of a drug other than alcohol;

(8) revisions that may be appropriate to the DUI statutes when the circumstances involve operating a motor vehicle under the influence of a drug that has been legally prescribed to the operator; and

(9) a proposal to permit conditional operator's licenses, which may be issued to a person who has been convicted of DUI for travel to limited places such as work, drug or alcohol treatment, school, or a doctor's office.

* * * Detention of operator * * *

Sec. 10. 23 V.S.A. § 1212 is amended to read:

§ 1212. CONDITIONS OF RELEASE AND PAROLE; ARREST UPON VIOLATION

* * *

(d) A law enforcement officer who observes a person violating a condition of parole requiring that the person not operate a motor vehicle may promptly arrest the person for violating the condition and may detain the person pursuant to 28 V.S.A. § 551. The officer shall immediately notify the parole board of the suspected violation. If the parole board determines pursuant to 28 V.S.A. § 552 that a parole violation has occurred, the board shall notify the state's attorney in the county where the violation occurred.

* * * Miscellaneous * * *

Sec. 11. REPORTS; STUDIES

(a) The court administrator shall report to the senate and house committees on judiciary on or before January 15, 2012 on the number of persons convicted of violating 23 V.S.A. § 1130(c) (permitting impaired person to operate motor vehicle) since the passage of this act.

(b) Notwithstanding any other provision of law, the court administrator shall conduct a weighted caseload study and analysis or equivalent study within the probate division of the superior court for use by the senate and house committees on appropriations during development of the fiscal year 2013 budget. The results of the study shall be reported to the senate and house committees on judiciary and on appropriations on or before January 15, 2012. The study may be used to review and consider adjustments to the compensation of probate judges.

(c)(1) A committee is established to study modifying the number of interested parties who must be served with notice when a probate proceeding is commenced involving a decedent's estate and reducing the amount of time notice by publication is required to be published in newspapers. The committee shall consider whether reducing the number of interested parties would reduce costs to the estate without unduly prejudicing the rights of potential beneficiaries, and whether constitutional issues would be raised if such changes were made. The committee shall report its findings, together

with any recommendations for legislative action, to the senate and house committees on judiciary no later than December 15, 2011.

(2) The committee established by this subsection shall consist of the following members:

(A) one member appointed by the Vermont Probate Judges Association;

(B) one member with experience in probate practice appointed by the Vermont Bar Association; and

(C) one member appointed by the Committee on Vermont Elders.

(3) Members of the committee who are not employees of the state of Vermont shall be entitled to reimbursement at the per diem rate set in 32 V.S.A. § 1010.

Sec. 12. Sec. 22(a) of No. 157 of the Acts of the 2009 Adj. Sess. (2010), as amended by Sec. 1 of No. 5 of the Acts of 2011, is amended to read:

(a) Sec. 18 of this act shall take effect on ~~July 1, 2011~~ July 1, 2012.

Sec. 13. 13 V.S.A. § 5241 is added to read:

§ 5241. MALPRACTICE CLAIM AGAINST DEFENDER GENERAL; SUCCESSFUL INEFFECTIVE ASSISTANCE CLAIM REQUIRED

No action shall be brought for professional negligence against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance of counsel against that criminal defense attorney in the same or a substantially related matter. Failure to prevail in a claim for post-conviction relief based upon ineffective assistance of counsel against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general shall bar any claim against the attorney based upon the attorney's representation in the same or a substantially related matter.

Sec. 14. 23 V.S.A. § 1203 is amended to read:

§ 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND VIDEOTAPE

* * *

(c) When a breath test which is intended to be introduced in evidence is taken with a crimper device or when blood is withdrawn at an officer's request, a sufficient amount of breath or blood, as the case may be, shall be taken to enable the person to have made an independent analysis of the sample, and

shall be held for at least 45 days from the date the sample was taken. At any time during that period the person may direct that the sample be sent to an independent laboratory of the person's choosing for an independent analysis. The department of ~~health~~ public safety shall adopt rules providing for the security of the sample. At no time shall the defendant or any agent of the defendant have access to the sample. A preserved sample of breath shall not be required when an infrared breath-testing instrument is used. A person tested with an infrared breath-testing instrument shall have the option of having a second infrared test administered immediately after receiving the results of the first test.

(d) In the case of a breath test administered using an infrared breath testing instrument, the test shall be analyzed in compliance with rules adopted by the department of ~~health~~ public safety. The analyses shall be retained by the state. A sample is adequate if the infrared breath testing instrument analyzes the sample and does not indicate the sample is deficient. Analysis of the person's breath or blood which is available to that person for independent analysis shall be considered valid when performed according to methods approved by the department of ~~health~~ public safety. The analysis performed by the state shall be considered valid when performed according to a method or methods selected by the department of ~~health~~ public safety. The department of ~~health~~ public safety shall use rule making procedures to select its method or methods. Failure of a person to provide an adequate breath sample constitutes a refusal.

(e) [Repealed.]

(f) When a law enforcement officer has reason to believe that a person may be violating or has violated section 1201 of this title, the officer may request the person to provide a sample of breath for a preliminary screening test using a device approved by the commissioner of ~~health~~ public safety for this purpose. The person shall not have the right to consult an attorney prior to submitting to this preliminary breath alcohol screening test. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and whether to request an evidentiary test and shall not be used in any court proceeding except on those issues. Following the screening test additional tests may be required of the operator pursuant to the provisions of section 1202 of this title.

* * *

(i) The commissioner of ~~health~~ public safety shall adopt emergency rules relating to the operation, maintenance and use of preliminary alcohol screening devices for use by law enforcement officers in enforcing the provisions of this title. The commissioner shall consider relevant standards of the National Highway Traffic Safety Administration in adopting such rules. Any

preliminary alcohol screening device authorized for use under this title shall be on the qualified products list of the National Highway Traffic Safety Administration.

* * *

Sec. 15. 23 V.S.A. § 1203a is amended to read:

§ 1203a. INDEPENDENT CHEMICAL TEST; BLOOD TESTS

* * *

(d) The physician, licensed nurse, medical technician, physician's assistant, medical technologist, or laboratory assistant drawing a sample of blood shall use a sample collection kit provided by the department of ~~health~~ public safety or another type of collection kit. The sample shall be identified as to donor, date, and time, sealed and mailed to the department of ~~health~~ public safety where it shall be held for a period of at least 45 days from the date the sample was taken. At any time during that period the person may direct that the sample be sent to an independent laboratory of the person's choosing for an independent analysis. The department of ~~health~~ public safety may recover its costs of supplies, handling and storage.

* * *

Sec. 16. 23 V.S.A. § 1205(h)(1)(D) is amended to read:

(D) whether the test was taken and the test results indicated that the person's alcohol concentration was 0.08 or more 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~~ public safety 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;

Sec. 17. 23 V.S.A. § 1216 is amended to read:

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

* * *

(d) If a law enforcement officer has reasonable grounds to believe that a person is violating this section, the officer may request the person to submit to a breath test using a preliminary screening device approved by the commissioner of ~~health~~ public safety. A refusal to submit to the breath test

shall be considered a violation of this section. Notwithstanding any provisions to the contrary in sections 1202 and 1203 of this title:

* * *

Sec. 18. BLOOD ALCOHOL TESTING AND ALCOHOL SCREENING DEVICES; AUTHORITY OF DEPARTMENT OF PUBLIC SAFETY; RULEMAKING

(a) Notwithstanding any other provision of law, authority and supervision over operation, maintenance, and use of blood alcohol testing and alcohol screening devices shall be transferred from the department of health to the department of public safety. The department of public safety shall adopt emergency rules to establish a processes for the authority granted by this section, and to provide for transfer of the authority this section requires.

(b) The administration shall, in consultation with the Vermont state employees association, ensure that no reduction in positions occurs as a result of the transfer required by this section.

(c) On or before January 15, 2012, and on or before January 15 of each of the following two years, the department of public safety shall report to the senate and house committees on judiciary on progress toward identifying and implementing an accreditation process for the blood alcohol testing and alcohol screening program transferred to the department by this section.

Sec. 19. EFFECTIVE DATES

This act shall take effect on passage, except as follows:

(1) Sec. 5 shall take effect on June 30, 2011.

(2) Sec. 6 shall take effect on July 1, 2011.

(3) Secs. 14, 15, 16, and 17 shall take effect on March 1, 2012.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Judiciary? Senator Illuzzi raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the grounds that Sec. 13 of the recommendation of proposal of amendment was *not germane* to the bill and therefore could not be considered by the Senate.

Thereupon, the President *sustained* the point of order and ruled that Sec. 13 of the proposal of amendment recommended by the Committee on Judiciary was *not germane* to the bill as it did not satisfy the criteria of Mason's Rule 402 regarding germaneness in that it was not naturally related to and did not follow in a logical sequence the subject matter of the original proposal.

The President thereupon declared that Sec. 13 of proposal of amendment recommended by the Committee on Judiciary could *not* be considered by the Senate and Sec. 13 of the proposal of amendment was ordered stricken.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommend by the Committee on Judiciary without Sec. 13.

Was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears moved to amend the Senate proposal of amendment in Sec.18, after the word "blood" by inserting the words and breath

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears moved to amend the Senate proposal of amendment by striking out Sec.3 in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. 23 V.S.A. § 1201 is amended to read:

§ 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL REFUSAL

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person's alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely; or

(4) when the person's alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title; or

(5) when the person's alcohol concentration is 0.02 or more if the person has previously been convicted of a second or subsequent violation of

this section within the preceding three years and the person's alcohol concentration for the second or subsequent violation was 0.16 or greater.

* * *

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed; Bill Messaged

H. 73.

Senator White, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to establishing a government transparency office to enforce the public records act.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 1 V.S.A. § 315 is amended to read:

§ 315. STATEMENT OF POLICY

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed ~~with the view towards carrying out the above declaration of public policy~~ to implement this policy, and the burden of proof shall be on the public agency to sustain its action.

Sec. 2. 1 V.S.A. § 316 is amended to read:

§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

(a) Any person may inspect or copy any public record ~~or document~~ of a public agency, as follows:

(1) For any agency, board, department, commission, committee, branch, instrumentality, or authority of the state, a person may inspect a public record

on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and 12 o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; ~~provided, however, if the public agency is not regularly open to the public during those hours, inspection or copying may be made~~

(2) For any agency, board, committee, department, instrumentality, commission, or authority of a political subdivision of the state, a person may inspect a public record during customary ~~office~~ business hours.

(b) If copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy the actual cost of providing the copy. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

(c) In the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the time directly involved in complying with the request exceeds 30 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.

(d) The secretary of state, after consultation with the secretary of administration, shall establish the actual cost of providing a copy of a public record that may be charged by state agencies. The secretary shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine "actual cost" the secretary shall consider the following only: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record and any utility charges directly associated with copying a record. The secretary of state shall adopt, by rule, a uniform schedule of public record charges for state agencies.

(e) After public hearing, the legislative body of a political subdivision shall establish actual cost charges for copies of public records. The legislative body

shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine actual cost charges, the legislative body shall use the same factors used by the secretary of state. If a legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision shall be the uniform schedule of charges established by the secretary of state until the local legislative body establishes such a schedule. A schedule of public records charges shall be posted in prominent locations in the town offices.

* * *

Sec. 3. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

(a) As used in this subchapter~~,~~:

(1) "Business day" means a day that a public agency is open to provide services.

(2) "~~public~~ Public agency" or "agency" means any agency, board, department, commission, committee, branch, instrumentality, or authority of the state or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the state.

(b) As used in this subchapter, "public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.

(c) The following public records are exempt from public inspection and copying:

* * *

(5) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, that records relating to management and direction of a law enforcement agency ~~and~~; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2301; and records reflecting the charge of a person shall be public;

* * *

Sec. 4. 1 V.S.A. § 318 is amended to read:

§ 318. PROCEDURE

(a) Upon request, the custodian of a public record shall promptly produce the record for inspection, except that:

(1) if the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so certify this fact in writing to the applicant and set a date and hour within one calendar week of the request when the record will be available for examination;

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, the custodian shall so certify in writing. Such certification shall identify the records withheld and the basis for the denial. ~~The~~ A record shall be produced for inspection or a certification shall be made that a record is exempt within ~~two~~ three business days of receipt of the request, unless otherwise provided in subdivision (5) of this subsection. The certification shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial. The custodian shall also notify the person of his or her right to appeal to the head of the agency any adverse determination;

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five business days~~, excepting Saturdays, Sundays, and legal public holidays,~~ after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of this title;

(4) if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to the custodian by the applicant or by any other name known to the custodian;

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten ~~working~~ business days from receipt of the request. As used in this subdivision, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

(A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the attorney general.

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted the person's administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.

(c)(1) Any denial of access by the custodian of a public record may be appealed to the head of the agency. The head of the agency shall make a written determination on an appeal within five business days after the receipt of the appeal. A written determination shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial.

(2) If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request. A failure by the agency to comply with any of the time limit provisions of this section shall be deemed a final denial of the request for records by the agency.

(d) In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (a)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.

(e) A public agency shall not withhold any record in its entirety on the basis that it contains some exempt content if the record is otherwise subject to disclosure; instead, the public agency shall redact the information it considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.

(f) If a person making the request has a disability which requires accommodation to gain equal access to the public record sought, the person shall notify the public agency of the type of accommodation requested. The public agency shall give primary consideration to the accommodation choice expressed by the requestor, but may propose an alternative accommodation so long as it achieves equal access. The public agency shall provide accommodation to the person making the request unless the agency can demonstrate that accommodation would result in a fundamental alteration in the nature of its service, programs, activities, or in undue financial and administrative burden.

(g) The secretary of state may provide municipal public agencies and members of the public information and advice regarding the requirements of the public records act and may utilize informational websites, toll-free telephone numbers, or other methods to provide such information and advice.

Sec. 5. 1 V.S.A. § 319 is amended to read:

§ 319. ENFORCEMENT

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the civil division of the superior court in the county in which the complainant resides, or has his or her personal place of business, or in which the public records are situated, or in the civil division of the superior court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden ~~is~~ of proof shall be on the public agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the civil division of the superior court, as authorized by this section, and appeals there from, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(d)(1) ~~The~~ Except as provided in subdivision (2) of this section, the court ~~may~~ shall assess against the public agency reasonable attorney fees and other

litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(2) The court may, in its discretion, assess against a public agency reasonable attorney fees and other litigation costs reasonably incurred in a case under this section in which the complainant has substantially prevailed provided that the public agency, within the time allowed for service of an answer under Rule 12(a)(1) of the Vermont Rules of Civil Procedure:

(A) concedes that a contested record or contested records are public; and

(B) provides the record or records to the complainant.

(3) The court may assess against the complainant reasonable attorney fees and other litigation costs reasonably incurred in any case under this section when the court finds that the complainant has violated Rule 11 of the Vermont Rules of Civil Procedure.

Sec. 6. 1 V.S.A. § 320(b) is amended to read:

(b) In the event of noncompliance with the order of the court, the civil division of the superior court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.

Sec. 7. 1 V.S.A. § 313(a)(6) is amended to read:

(6) Discussion or consideration of records or documents excepted from the access to public records provisions of ~~subsection~~ section 317~~(b)~~ of this title. Discussion or consideration of the excepted record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

Sec. 8. 3 V.S.A. § 218(d) is amended to read:

(d) The head of each state agency or department shall designate a member of his or her staff as the records officer for his or her agency or department, and shall notify the Vermont state archives and records administration in writing of the name and title of the person designated, and shall post the name and contact information of the person on the agency or department website, if one exists.

Sec. 9. 9 V.S.A. § 4113(b) is amended to read:

(b) Reports filed pursuant to this section shall be an exempt record and confidential pursuant to ~~subdivision 317(b)(1) of Title 1~~ 1 V.S.A. § 317(c)(1) and shall be maintained for the sole and confidential use of the commissioner, except that the reports may be disclosed to the federal government or to the

appropriate energy agency or department of another state with substantially similar confidentiality statutes for regulations with respect to such reports. However, the commissioner shall make available to appropriate committees of the general assembly statistical information derived from the reports required by this section, provided that this may be done in a manner which preserves the confidentiality of the reports submitted by particular persons.

Sec. 10. 32 V.S.A. § 3755(e) is amended to read:

(e) Any applicant for appraisal under this subchapter bears the burden of proof as to his or her qualification. Any documents submitted by an applicant as evidence of income shall be held in confidence by any person accepting or reviewing them pursuant to provisions of this subchapter, and shall not be made available for public examination, whether or not such person is subject to the provisions of ~~subdivision 317(a)(6) of Title 1~~ 1 V.S.A. § 317(c)(6).

Sec. 11. PUBLIC RECORDS LEGISLATIVE STUDY COMMITTEE

(a) There is established a legislative study committee to review the requirements of the public records act and the numerous exemptions to that act in order to assure the integrity, viability, and the ultimate purposes of the act. The review committee shall consist of:

(1) Three members of the house of representatives, appointed by the speaker of the house; and

(2) Three members of the senate, appointed by the committee on committees.

(b) The review committee shall review the exemptions set forth in 1 V.S.A. § 317 or elsewhere in the Vermont Statutes Annotated to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Prior to each legislative session, the committee shall submit to the house and senate committees on government operations and the house and senate committees on judiciary recommendations concerning whether the public records act and exemptions under the act from inspection and copying of a public record should be repealed, amended, or remain unchanged. The report of the committee may take the form of draft legislation.

(c) In reviewing and making a recommendation under subsection (b) of this section, the study committee may review:

(1) Whether the public records act requires revision;

(2) Whether an exemption to inspection or copying under the public records act is necessary, antiquated, or in need of revision;

(3) Whether an exemption to inspection or copying under the public records act is as narrowly tailored as possible, including the need to clarify the term "personal documents" referenced in 1 V.S.A. § 317(c)(7) in order to ensure that it does not unintentionally limit access to public records that are not personnel records; and

(4) Whether the public records act should be amended to clarify application of the act to contracts between a public agency and a private entity for the performance of a governmental function;

(5) Whether or not to authorize a public agency to charge for staff time associated with responding to a request to inspect or copy a public record, including whether an agency should be authorized to charge for the staff time incurred in locating, reviewing, or redacting a public record; and

(6) Any other criteria that assist the review committee in determining the value of an exemption as compared to the public's interest in the public record protected by the exemption.

(d) In developing recommendations authorized under subsection (a) of this section, the study committee shall consult with the secretary of administration, the secretary of state, the office of the attorney general, representatives of

municipal interests, representatives of school or education interests, representatives of the media, and advocates for access to public records.

(e) The study committee shall elect co-chairs from among its members. For attendance at a meeting when the general assembly is not in session, legislative members of the commission shall be entitled to the same per diem compensation and reimbursement for actual and necessary expenses as provided members of standing committees under 2 V.S.A. § 406. The study committee is authorized to meet no more than three times each year during the interim between sessions of the general assembly.

(f) Legislative council shall provide legal and administrative services to the study committee. The study committee may utilize the legal, research, and administrative services of other entities, such as educational institutions and, when necessary for the performance of its duties, the Vermont state archives and records administration.

Sec. 12. LEGISLATIVE COUNCIL; LIST OF PUBLIC RECORDS ACT EXEMPTIONS

The legislative council, under its statutory revision authority set forth in 2 V.S.A. § 421, shall compile a list of all known Vermont statutory exemptions to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Legislative council shall publish the list of exemptions compiled under this section as a statutory revision note to 1 V.S.A. § 317 and shall update the list as necessary.

Sec. 13. STATE AGENCY PUBLIC RECORDS REQUEST SYSTEM

(a) Beginning July 1, 2011, all state agencies that receive a request to inspect or copy a public record shall catalogue the request in the public records request system that the secretary of administration established in response to the requirements of Sec. 3 of No. 132 of the Acts of the 2005 Adj. Sess. (2006).

(b) The secretary of administration shall revise and update the public records request system so that it includes: the date a public records request is received; the state agency that received the request; the organization or individual that made the request, including a contact name; the status of the request, including whether the request was fulfilled in whole, fulfilled in part, or denied; if the request was fulfilled in part or denied, the exemption or other grounds asserted as the basis for partial fulfillment or denial; the estimated hours necessary to respond to the request; the date the state agency closed the request; and the elapsed time between receipt of the request and the date the agency closed the request.

(c) On or before January 15, 2012, and annually thereafter, the secretary of administration shall submit to the senate and house committees on government operations a copy of the records requests catalogued in the public records request system in the preceding calendar year.

(d)(1) As a part of the report issued on or before January 15, 2012 to the senate and house committees on government operations under subsection (c) of this section, the secretary of administration, after consultation with the department of information and innovation and the Vermont state archives and records administration, shall submit a report regarding implementation by state agencies of an electronic documents management system for the creation, management, archiving, redaction, and confidential designation of records produced or acquired by state agencies. The report shall include a recommendation as to whether a documents management system should be implemented by state agencies.

(2) If the secretary recommends implementation of a document management system, the recommendation shall:

(A) identify a specific document management system for implementation by state agencies. The report shall summarize the operation or application of the system, provide a short explanation of the basis for selection of the system, and describe how the system will improve efficiency of state agencies in managing public records;

(B) estimate the cost of implementation by state agencies of the recommended document system;

(C) propose a schedule for implementation of the recommended document management system by all state agencies.

Sec. 14. PUBLIC RECORDS REQUESTS; MUNICIPALITIES

(a) The secretary of state, after consultation with the Vermont League of Cities and Towns, annually shall survey municipalities in the state regarding whether municipalities are receiving an increased number of requests to inspect records, whether requests for inspection of public records are being used to circumvent copying of a record by a municipality, and whether requests to inspect records pose any administrative burdens on municipalities. For purposes of this subsection, "municipality" shall mean a city, town, village, or school district of the state. On or before January 15, 2012 and annually thereafter, the secretary of state shall submit the results of the survey to the senate and house committees on government operations.

(b) As part of the report required under subsection (a) of this section to be submitted to the senate and house committees on government operations on January 15, 2012, the secretary of state, after consultation with the Vermont

League of Cities and Towns and other interested parties, shall submit a recommendation for increasing municipal understanding and compliance with the requirements of the Public Records Act, as set forth in 1 V.S.A. chapter 5, subchapter 4.

Sec. 15. COURT ADMINISTRATOR REPORT ON PUBLIC RECORDS CASES

On or before January 15, 2012 and annually thereafter, the Vermont court administrator's office shall report to the senate and house committees on government operations regarding contested cases filed in the civil division of the superior court involving disputes under the Public Records Act, as set forth in 1 V.S.A. chapter 5, subchapter 4. The report shall include the number of Public Records Act contested cases filed annually in the civil division of the superior court, the disposition of such cases, and whether attorney's fees were awarded in any of the cases. The court administrator shall submit a copy of a report required under this section to the secretary of state at the same time the report is submitted to the senate and house committees on government operations.

Sec. 16. REPEAL

Sec. 11 of this act (public records legislative study committee) is repealed on January 15, 2015.

Sec. 17. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Nitka, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Government Operations.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

Thereupon, on motion of Senator Campbell, the rules were suspended, and the bill was ordered messaged to the House forthwith.

Rules Suspended; House Proposal of Amendment Not Concurred In; Committee of Conference Requested; Committee of Conference Appointed; Bill Messaged

S. 100.

Pending entry on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and House proposal of amendment to Senate bill entitled:

An act relating to making miscellaneous amendments to education laws.

Was taken up for immediate consideration.

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

* * * Technical Corrections; Miscellaneous * * *

Sec. 1. 16 V.S.A. § 563(12) is amended to read:

(12) Shall employ such persons as may be required to carry out the work of the school district ~~and dismiss any employee when necessary. The school board shall consider the recommendation of the superintendent before employing or dismissing any person~~ pursuant to the provisions of subdivision 242(3) of this title.

Sec. 2. 16 V.S.A. § 1122 is amended to read:

§ 1122. PUPILS OVER ~~SIXTEEN~~ 16

A person having the control of a child over ~~sixteen~~ 16 years of age who allows ~~such~~ the child to become enrolled in a public school~~,~~ shall cause ~~such~~ the child to attend ~~such~~ the school continually for the full number of the school days of the term in which he or she is ~~so~~ enrolled, unless ~~such~~ the child is mentally or physically unable to continue, or is excused in writing by the superintendent or a majority of the school directors. In case of such enrollment, ~~such~~ the person, and the teacher, child, superintendent, and school directors shall be under the laws and subject to the penalties relating to the attendance of children between the ages of ~~seven~~ six and ~~sixteen~~ 16 years.

Sec. 3. 16 V.S.A. § 1221 is amended to read:

~~§ 1221. CONTROL AND REGULATION~~

~~The board of school directors shall control and regulate the transportation and board of pupils in the schools under its charge as hereinafter provided, and contracts therefor shall be made by it. To transport such pupils properly, the board may purchase, maintain and operate the necessary equipment in the name of the school district pursuant to section 559 of this title.~~

* * * Special Education * * *

Sec. 4. 16 V.S.A. § 2945(a) and (b) are amended to read:

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

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

(A) teachers ~~of children with disabilities,~~;

(B) representatives of ~~other~~ state agencies involved in the financing or delivery of related services to children with disabilities~~, representatives~~;

(C) a representative of independent schools~~,~~;

(D) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities~~, representatives~~;

(E) a representative from the state juvenile and adult corrections agency~~, handicapped~~;

(F) individuals~~,~~ with disabilities;

(G) parents of children with disabilities, provided the child shall be younger than 26 years old at the time his or her parent is appointed to the council;

(H) state and local education ~~administrators~~ officials, including officials who carry out activities under the McKinney-Vento Homeless Assistance Act;

(I) a representative of higher education who prepares special education and related services personnel;

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

(K) special education ~~program~~ administrators. ~~A majority of the members must be either individuals with disabilities or parents of children with disabilities.~~

(2) In addition, two members of the general assembly shall be appointed, one from the house of representatives and one from the senate. The speaker shall appoint the house member ~~shall be appointed by the speaker,~~ and the committee on committees shall appoint the senate member ~~shall be appointed by the committee on committees. All members of the council shall serve for a term of three years, beginning from April 1 of the year of appointment or until their successors are appointed. For the purpose of implementing this section, the governor shall make initial appointments as follows: Approximately one-third of the members shall be appointed to one-year terms, one-third to two-year terms, and one-third to three-year terms. As the terms expire, the new appointees shall be appointed to fill three-year terms~~.

(b) The council shall elect its own ~~chairman~~ chair from among its membership. The council shall meet annually at the call of the ~~chairman~~ chair, and other meetings may be called by the ~~chairman~~ chair at such times and places as he or she may determine to be necessary.

Sec. 5. 16 V.S.A. § 2967(b) is amended to read:

(b) The total expenditures made by the state in any fiscal year pursuant to this chapter shall be 60 percent of the statewide total special education expenditures of funds ~~which~~ that are not derived from federal sources. Special education expenditures shall include:

(1) costs eligible for grants and reimbursements under sections 2961 through 2963a of this title;

(2) costs for services for the visually ~~handicapped~~ impaired and hearing impaired;

(3) costs for the interdisciplinary team program;

(4) costs for regional ~~multi-handicapped~~ specialists in multiple disabilities;

(5) funds expended for training and programs to meet the needs of students with emotional behavioral problems under subsection 2969(c) of this title; and

(6) funds expended for training under subsection 2969(d) of this title.

Sec. 6. 16 V.S.A. § 4014(d) is amended to read:

(d) The commissioner shall evaluate proposals based on the following criteria:

(1) The program will serve additional children with special needs, such as those who are economically disadvantaged, those who have limited English language skills, those with ~~handicapping~~ disabling conditions or those who have suffered from or are at risk of, abuse or neglect.

* * *

(8) The program enables children with ~~handicapping~~ disabling conditions to be served in settings with ~~their nonhandicapped~~ peers who do not have a disability.

(9) The program includes voluntary training for parents.

* * * Data Corrections * * *

Sec. 7. 16 V.S.A. § 4030 is amended to read:

§ 4030. DATA SUBMISSION; CORRECTIONS

(a) Upon discovering an error or change in data submitted to the commissioner for the purpose of determining payments to or from the education fund, a school district shall report the error or change to the commissioner as soon as possible. Any budget deficit or surplus due to the error or change shall be carried forward to the following year.

(b) The commissioner shall use data submitted on or before January 15 prior to the fiscal year which begins the following July 1, in order to calculate the amounts due each school district for any fiscal year for the following:

(1) ~~the adjusted education payments due under section 4011 of this title;~~

~~(2)~~ transportation aid due under ~~Sec. 98 of Act No. 71 of 1998~~ section 4016 of this title; and

~~(3)~~(2) the small school support grant due under section 4015 of this title.

(c) The commissioner shall use data corrections regarding local education budget amounts submitted on or before June 15 prior to the fiscal year which begins the following July 1, in order to calculate the ~~amounts due each school district~~ education payments due under section ~~4027~~ 4011 of this title. However, the commissioner may use data submitted after June 15 and prior to July 15 due to unusual or exceptional circumstances as determined by the commissioner.

(d) The commissioner shall not use data corrected due to an error submitted following the deadlines to recalculate the equalized pupil ratio under subdivision 4001(3) of this title. The commissioner shall not adjust ~~payments~~

~~to or from the education fund~~ average daily membership counts if an error or change is reported more than three fiscal years following the date that the original data was due. ~~Adjustments to payments to or from the education fund under this section shall be made on the earliest date possible after the fiscal year in which the error was reported, and in accordance with the schedules set forth in subsection 4028(a) of this title and section 5402 of Title 32, and after the necessary appropriation by the general assembly.~~

(e) The board may adopt rules as necessary to implement the provisions of this section.

* * * Agency of Human Services * * *

Sec. 8. 16 V.S.A. § 212(13) is amended to read:

(13) Ensure the provision of services to children and adolescents with a severe emotional disturbance in coordination with the ~~departments of mental health and mental retardation and social and rehabilitation services in accordance with the provisions of chapter 2 of Title 3~~ department of mental health, the department for children and families, and the department of disabilities, aging, and independent living pursuant to the provisions of chapter 43 of Title 33.

Sec. 9. 16 V.S.A. § 910 is amended to read:

§ 910. COORDINATION OF SERVICES TO CHILDREN AND ADOLESCENTS WITH A SEVERE EMOTIONAL DISTURBANCE

Each town, city, interstate, incorporated, unified, or union school district shall cooperate with the ~~departments of mental health and mental retardation, social and rehabilitation services~~ department of mental health, the department for children and families, the department of disabilities, aging, and independent living, and the department of education in coordinating educational services to children and adolescents with a severe emotional disturbance~~, in accordance with the provisions of chapter 2 of Title 3~~ pursuant to the provisions of chapter 43 of Title 33.

Sec. 10. 16 V.S.A. § 1075(i) is amended to read:

(i) The commissioner ~~of social and rehabilitation services~~ for children and families shall continue to provide social services and financial support in accordance with ~~16 V.S.A. §~~ section 2950 of this title on behalf of individuals under his or her care and custody while in a residential placement, until they reach their ~~nineteenth~~ 19th birthday.

Sec. 11. 16 V.S.A. § 1166(b)(1) is amended to read:

(1) A provision that any student who brings a firearm to or possesses a firearm at school shall be referred to a law enforcement agency. In addition to any other action the law enforcement agency may take, it may report the incident to the department ~~of social and rehabilitation services~~ for children and families.

Sec. 12. 16 V.S.A. § 2845 is amended to read:

§ 2845. TRUST FUND; GRANTS; STUDENTS IN ~~SRS~~ DCF CUSTODY

(a) The board shall establish a trust fund to be used to provide grants for students who do not have parental support and are or have been under the custody of the commissioner ~~of social and rehabilitation services~~ for children and families. The board may draw up to 90 percent of the assets in the fund for these purposes.

* * *

(e) A child who is under the custody of the commissioner ~~of social and rehabilitation services~~ for children and families, or a young adult between the ages of 18 and 24 who was under the custody of the commissioner ~~of social and rehabilitation services~~ for children and families for at least six months when that person was between the ages of 16 and 18, and who is accepted for degree study at the Vermont state colleges, the University of Vermont, or a Vermont independent college, is eligible for an annual grant under this section, to the extent that funds are available in the trust fund. Upon certification by the Vermont state colleges, the University of Vermont, or a Vermont independent college that a Vermont resident student who is eligible under this section has matriculated in a degree program at a Vermont college or university, the student may receive a grant if the student's financial aid eligibility leaves remaining financial need following the student and the family contributions, if any, and the availability of all other sources of gift aid. Each grant, together with the student and the family contributions, if any, and all other sources of gift aid, shall not exceed the full cost of tuition, fees, room and board, and no individual annual grant may exceed $3,000.00. The board may prorate the funds appropriated for use under this section where the collective need of the eligible applicants exceeds the funds appropriated. In addition, the board may prorate a grant based on a student's full- or part-time enrollment status.

* * *

(g) The board shall coordinate implementation of this section with the commissioner ~~of social and rehabilitation services~~ for children and families, the president of the association of Vermont independent colleges, the chancellor of the Vermont state colleges, and the president of the University of

Vermont. The board may establish procedures and policies or adopt rules to implement this section.

Sec. 13. 16 V.S.A. § 2943 is amended to read:

§ 2943. COMMISSIONER OF EDUCATION FOR CHILDREN WITH DISABILITIES; POWERS

The commissioner of education, by virtue of ~~his~~ the office, shall be commissioner of education for children with disabilities~~,~~ and~~, as such commissioner~~ shall superintend all matters relating to the essential early education and special education of children with disabilities~~, and~~. In addition, the commissioner, in coordination with the ~~departments of mental health and mental retardation and social and rehabilitation services~~ department of mental health, the department of disabilities, aging, and independent living, and the department for children and families, shall ensure that appropriate educational services are provided to children and adolescents with a severe emotional disturbance in accordance with the provisions of chapter 43 of Title 33 and may accept gifts, grants, or other donations to carry out the purpose of this chapter.

Sec. 14. 16 V.S.A. § 2948(f) is amended to read:

(f) If a student is being provided education or special education or both in a school operated by the department of corrections ~~or the department of mental health and mental retardation~~, the ~~agency~~ department of corrections shall serve the student as if the ~~agency~~ department were the school district of residence of the student.

Sec. 15. 16 V.S.A. § 2948(n) is amended to read:

(n) If a student is being provided education or special education, or both in a school operated by the department ~~of social and rehabilitation services~~ for children and families, the funding and provision of services shall be the responsibility of the department ~~of social and rehabilitation services~~ for children and families and special education procedural responsibility shall be the responsibility of the district of residence of the student's parent, parents, or guardian.

Sec. 16. 16 V.S.A. § 2950(b) is amended to read:

(b) Residential payments.

(1) For a student in the care and custody of the commissioner ~~of social and rehabilitation services~~ for children and families who is placed in a 24-hour residential facility within or outside Vermont, the commissioner of education shall pay the education costs, and the commissioner ~~of social and rehabilitation services~~ for children and families shall arrange for the payment of the

remainder of the costs. However, ~~where~~ if the state interagency team, as defined in ~~section~~ 33 V.S.A. § 4302 ~~of Title 33~~, ~~has found~~ finds such placement inappropriate for the student's education needs, then the commissioner of education shall pay none of the education costs of the placement and the commissioner ~~of social and rehabilitation services~~ for children and families shall arrange for the payment of the full cost of the placement.

(2) For a student who is placed in a 24-hour residential facility within or outside Vermont by a Vermont licensed child placement agency, a designated community mental health agency, any other agency as defined by the commissioner of education, or a Vermont state agency or department other than the department of corrections or the department ~~of social and rehabilitation services~~ for children and families, the commissioner of education shall pay the education costs and the agency or department in whose care the student is placed shall arrange for the payment of the remainder of the costs. However, ~~where~~ if the state interagency team, as defined in ~~section~~ 33 V.S.A. § 4302 ~~of Title 33~~, ~~has found~~ finds such placement inappropriate for the student's education needs, then the commissioner of education shall pay none of the education costs of the placement and the agency or department in whose care the student is placed shall arrange for payment of the full cost of the placement. This subdivision does not apply to a student for whom a residential placement is:

(A) specified in the student's individualized education program; and

(B) funded in collaboration with another agency.

Sec. 17. 16 V.S.A. § 4001(8) is amended to read:

(8) "Poverty ratio" means the number of persons in the school district who are aged six through 17 and who are from economically deprived backgrounds, divided by the long-term membership of the school district. A person from an economically deprived background means a person who resides with a family unit receiving ~~Food Stamps~~ nutrition benefits. A person who does not reside with a family unit receiving ~~Food Stamps~~ nutrition benefits but for whom English is not the primary language shall also be counted in the numerator of the ratio. The commissioner shall use a method of measuring the ~~Food Stamps~~ nutrition benefits population which produces data reasonably representative of long-term trends. Persons for whom English is not the primary language shall be identified pursuant to subsection 4010(e) of this title.

* * * Supervisory Union Duties; Transportation Employees;

Transitional Language * * *

Sec. 18. Sec. 18 of No. 153 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. 18. TRANSITION

Each supervisory union shall provide for any transition of employment of special education and transportation staff by member districts to employment by the supervisory union, pursuant to Sec. 9 of this act, 16 V.S.A. § 261a(6) and (8)(E), by:

(1) providing that the supervisory union assumes all obligations of each existing collective bargaining agreement in effect between the member districts and their special education employees and their transportation employees until the agreement's expiration, subject to employee compliance with performance standards and any lawful reduction in force, layoff, nonrenewal, or dismissal;

(2) providing, in the absence of an existing recognized representative of its employees, for the immediate and voluntary recognition by the supervisory union of the recognized representatives of the employees of the member districts as the recognized representatives of the employees of the supervisory union;

(3) ensuring that an employee of a member district who is not a probationary employee shall not be considered a probationary employee upon transition to the supervisory union; and

(4) containing an agreement with the recognized representatives of the employees of the member districts that is effective on the day the supervisory union assumes obligations of existing agreements regarding how the supervisory union, prior to reaching its first collective bargaining agreement with its special education employees and with its transportation employees, will address issues of seniority, reduction in force, layoff, and recall.

* * * Postsecondary Approval; Fees * * *

Sec. 19. 16 V.S.A. § 176 is amended to read:

§ 176. POSTSECONDARY SCHOOLS CHARTERED IN VERMONT

(a) Applicability. ~~All postsecondary schools whose primary operation is in the state of Vermont are~~ Except as provided in subsection (d) of this section, any postsecondary school that operates primarily or exclusively in the state of Vermont is subject to this section.

(b) Definitions. As used in this section:

(1) "Postsecondary school" means any person who offers or operates a program of college or professional education for credit or a degree and enrolls or intends to enroll students.

(2) ~~"Offer" means, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person in this state, directly or indirectly, in any form, to perform the act described.~~ "Offer" includes the use in the name of an institution or in its promotional material~~,~~ of a term such as "college," "university," or "institute" ~~which~~ that is intended to indicate that ~~the business~~ it is an institution ~~which~~ that offers postsecondary education.

(3) "Degree" means any award ~~which~~ that is given by a postsecondary school for completion of a program or course and ~~which~~ that is designated by the term degree, associate, bachelor, baccalaureate, masters, or doctorate, or any similar award ~~which~~ that the state board includes by rule.

(4) "Operate" means to establish, keep, or maintain any facility or location from or through which education is offered or given, or educational degrees are offered or granted. The term includes contracting with any person to perform any such act.

(5) "Accredited" means accredited by any regional ~~or~~, national, or programmatic institutional accrediting agency recognized by the ~~state board~~ U.S. Department of Education.

(c) State board approval.

(1) Every postsecondary school ~~which~~ that is subject to this section shall:

(A) apply for a certificate of approval from state board prior to registering its name with the secretary of state pursuant to Title 11, Title 11A, or Title 11B;

(B) apply for and receive a certificate of approval from the state board prior to offering postsecondary credit-bearing courses or programs and prior to admitting the first student; and

(C) ~~notify~~ provide written notification to each applicant for admission or enrollment ~~in writing~~, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable at the discretion of the receiving school.

(2) Every postsecondary school shall secure a certificate of degree-granting authority from the state board before it confers or offers to confer a degree.

(d) Exemptions. The following are exempt from ~~all~~ the requirements of this section except for the requirements of subdivision (c)(1)(C) of this section:

(1) Programs of education sponsored by a ~~bona fide~~ trade, labor, business, or professional organization ~~recognized by the state board if they are:~~

~~(A)~~ that are conducted solely for that organization's membership or for members of the particular industries or professions served by that organization~~; and~~

~~(B) not available to the public on a fee basis~~.

(2) The University of Vermont and the Vermont State Colleges.

(3) Postsecondary schools currently licensed or approved by a Vermont state occupational licensing board.

(4) Postsecondary schools ~~which~~ that are accredited. The following postsecondary institutions are accredited, meet the criteria for exempt status, and are authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate: Bennington College, Burlington College, Champlain College, College of St. Joseph, Goddard College, Green Mountain College, Landmark College, Marlboro College, Middlebury College, New England Culinary Institute, Norwich University, Saint Michael's College, SIT, Southern Vermont College, Sterling College, Vermont College of Fine Arts, and Vermont Law School. This authorization is provided solely to the extent necessary to ensure institutional compliance with federal financial aid-related regulations, and it does not affect, rescind, or supersede any preexisting authorizations, charters, or other forms of recognition or authorization.

(5) Nondegree-granting and noncredit-granting postsecondary schools ~~which~~ that offer only training in ~~the~~ specific trades or vocations.

(6) Religious instruction ~~which~~ that does not result in earning credits or a degree.

(e) Issuance. On proper application, the state board shall issue a certificate of approval or a certificate of degree-granting authority, or both, to an applicant whose goals, objectives, programs, and resources, including personnel, curriculum, finances, and facilities, are found by the state board to be adequate and appropriate for the stated purpose and for the protection of students and the public interest. ~~In the case of a course or program offered by correspondence, the applicant shall provide proof of application for a license pursuant to chapter 85 of this title.~~ The certificate shall be for a term not exceeding five years. The certificate may be subject to conditions, terms, or limitations.

* * *

Sec. 20. 16 V.S.A. § 176a is amended to read:

§ 176a. POSTSECONDARY SCHOOLS NOT CHARTERED IN VERMONT

(a) Applicability. ~~All~~ Except as provided in subsection (e) of this section, a postsecondary ~~schools whose primary operation lies~~ school that operates primarily outside the state of Vermont ~~are~~, offers or operates a program of college or professional education for credit or a degree, and wishes to operate in Vermont is subject to this section and to subsections 176(g) through (l) of this title.

(b) Definitions. All words and phrases defined in section 176 of this title shall have the same meanings in this section.

(c) ~~State board approval. Every~~ Requirements. A postsecondary school subject to this section shall:

(1) ~~apply for a certificate of approval from the state board prior to registering~~ register its name with the secretary of state pursuant to Title 11, Title 11A, or Title 11B;

(2) secure accreditation by any regional, national, or programmatic institutional accrediting agency recognized by the U.S. Department of Education;

(3) apply for and receive a certificate of approval or a certificate of degree-granting authority or both pursuant to subsection 176(e) of this title prior to offering postsecondary credit-bearing courses or programs ~~and prior to~~, admitting the first student~~;~~

~~(3) secure a certificate of degree-granting authority from the state board before it confers or offers to confer~~, or conferring or offering to confer a degree to a student enrolled in its Vermont school;

(4) meet any requirements for approval in its state of primary operation for the specific degree or credit-bearing course or program that it intends to offer in Vermont ~~as a condition of approval to operate in Vermont~~;

(5) register with the department of education pursuant to state board rule; and

(6) provide written notification to each applicant for admission or enrollment, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable at the discretion of the receiving school.

(d) Renewal. After receiving initial approval, a postsecondary school subject to this section shall register annually with the state board of education by providing evidence of accreditation and approval by the state in which it primarily operates and any other documentation the board requires. The state board may refuse or revoke registration at any time for good cause.

(e) Exemptions. The following are exempt from ~~all the requirements of this section except for the requirements of subdivision (e)(2) of this section~~ the provisions of this section:

(1) Programs of education sponsored by a ~~bona fide~~ trade, labor, business, or professional organization ~~recognized by the state board if they~~ that are~~:~~

~~(A)~~ conducted solely for that organization's membership or for members of the particular industries or professions served by that organization~~;~~ ~~and~~

~~(B) not available to the public on a fee basis~~.

(2) Postsecondary schools currently licensed or approved by a Vermont occupational licensing board.

(3) Nondegree-granting or noncredit-granting postsecondary schools ~~which~~ that offer only training in ~~the~~ specific trades or vocations.

(4) Religious instruction ~~which~~ that does not result in earning credits or a degree.

(5) Programs of education offered solely via correspondence, the Internet, or electronic media, provided that the postsecondary school has no physical presence in Vermont. Evidence of a "physical presence" includes the existence of administrative offices, seminars conducted by a person who is physically present at the seminar location, the provision of direct services to students, and required physical gatherings.

~~(e) Other provisions:~~

~~(1) All provisions of subsections (e) through (l) of 16 V.S.A. § 176 shall apply to all postsecondary schools subject to this section~~.

~~(2) All postsecondary schools subject to this section shall notify each applicant for enrollment in writing, on an application, enrollment, or registration form to be signed by the applicant, that credits earned at the school are transferable only at the discretion of the receiving school.~~

Sec. 21. 16 V.S.A. § 177 is amended to read:

§ 177. ~~COSTS OF APPROVAL~~ POSTSECONDARY APPROVAL; FEES

(a) ~~Fees for certification of postsecondary schools shall be $2,000.00, except that certification for degree-granting schools shall be $2,500.00~~ A postsecondary school subject to section 176 of this title shall pay:

(1) a fee of $4,000.00 for an application for approval to offer credit-bearing courses;

(2) a fee of $5,000.00 for an application for degree-granting authority if the postsecondary school is approved to offer credit-bearing courses; and

(3) a fee of $7,500.00 if the school seeks approval under subdivisions (1) and (2) of this subsection simultaneously.

(b) ~~Fees for~~ If a postsecondary ~~schools~~ school that is subject to section 176 of this title ~~seeking~~ and is operating within an unexpired certification period files an application to offer a new degree at the same level as a degree previously approved by the state board~~, while operating within a certification period previously granted by the state board~~, then the fee shall be based upon the actual costs to the department but shall not be less than $1,000.00 for each new degree.

(c) A postsecondary school subject to section 176a of this title shall pay:

(1) the fees set forth in subsection (a) of this section for initial review and approval pursuant to subdivision 176a(c)(3) of this title;

(2) a fee of $1,000.00 for initial registration with the department pursuant to subdivision 176a(c)(5) of this title; and

(3) an annual fee of $500.00 to renew its registration to operate in Vermont pursuant to subsection 176a(d) of this title.

(d) Fees assessed under this section are not refundable.

(e) ~~These fees~~ Fees assessed under this section shall be credited to a special fund established and managed pursuant to chapter 7, subchapter 5 of Title 32, and shall be available to the department to offset the costs of ~~approvals~~ approval.

* * * School Food Services * * *

Sec. 22. 16 V.S.A. chapter 27, subchapter 2 is amended to read:

Subchapter 2. School Lunches

§ 1261a. DEFINITIONS

For the purposes of this subchapter:

(1) "Food programs" means provisions of food to persons under programs meeting standards for assistance under the National School Lunch Act, 42 U.S.C. § 1751 et seq., and any amendment thereto, and in the Child Nutrition Act, 42 U.S.C. § 1779 et seq., and any amendments thereto.

(2) "School board" means the governing body responsible for the administration of a public school~~, or~~.

(3) "Independent school board" means a governing body responsible for the administration of a nonprofit independent school exempt from United States income taxes.

§ 1262a. AWARD OF GRANTS

(a)(1) The state board of education may, from funds appropriated for this subsection to the department of education, award grants to:

(A) supervisory unions for the use of member school boards ~~which~~ that establish and operate food programs~~, provided the~~;

(B) independent school boards that establish and operate food programs; and

(C) approved education programs, as defined in subdivision 11(a)(34) of this title and operating under private nonprofit ownership as defined in the National School Lunch Act, that establish and operate food programs for students engaged in a teen parent education program or students enrolled in a Vermont public school.

(2) The amount of any grant awarded under this subsection shall not be more than the amount necessary, in addition to the charge made for the meal and any reimbursement from federal funds, to pay the actual cost of the meal.

(b) The state board may, from funds available to the department of education for this subsection, award grants to supervisory unions consisting of one or more school districts ~~which~~ that need to initiate or expand food programs in order to meet the requirements of section 1264 of this title and ~~which~~ that seek assistance in meeting the cost of initiation or expansion. The amount of the grants shall be limited to ~~seventy-five~~ 75 percent of the cost deemed necessary by the commissioner to construct, renovate or acquire additional facilities and equipment to provide lunches to all pupils, and shall be reduced by the amount of funds available from federal or other sources, including those funds available under section 3448 of this title. The state board, upon recommendation of the commissioner, shall direct ~~school districts~~ supervisory unions seeking grants under this section to share facilities and equipment within the supervisory union and with other supervisory unions for the provision of lunches wherever more efficient and effective operation of food programs can be expected to result.

(c) On a quarterly basis, from state funds appropriated to the department of education for this subsection, the state board shall award to each ~~school district~~ supervisory union, independent school board, and approved education program as described in subsection (a) of this section a sum equal to the amount that would have been the student share of the cost of all breakfasts actually

provided in the district during the previous quarter to students eligible for a reduced price breakfast under the federal school breakfast program.

§ 1262b. REGULATIONS

The state board of education shall adopt regulations governing grants under section 1262a of this title. Such regulations shall provide for grants ~~to local school programs~~ from state funds in accordance with guidelines of food programs as defined under federal law. The state board of education may adopt such other rules and regulations as are necessary to carry out the provisions of this subchapter.

§ 1264. FOOD PROGRAM

(a)(1) Each school board operating a public school shall cause to operate within the school district a food program that makes available a school lunch, as provided in the National School Lunch Act as amended, and a school breakfast, as provided in the National Child Nutrition Act as amended, to each attending pupil every school day.

(2) Each school board operating a public school shall offer a summer snack or meals program funded by the Summer Food Service program or the National School Lunch Program for participants in a summer educational or recreational program or camp if:

(A) At least 50 percent of the students in a school in the district were eligible for free or reduced-price meals under subdivision (1) of this subsection for at least one month in the preceding academic year;

(B) The district operates or funds the summer educational or recreational program or camp; and

(C) The summer educational or recreational program or camp is offered 15 or more hours per week.

(b) In the event of an emergency, the school board may apply to the department for a temporary waiver of the requirements in subsection (a) of this section. The commissioner shall grant the requested waiver if he or she finds that it is unduly difficult for the school district to provide a school lunch, breakfast, or summer meals program, or any combination of the three, and if he or she finds that the school district ~~has~~ and supervisory union have exercised due diligence ~~in its efforts~~ to avoid the emergency situation that gives rise to the need for the requested waiver. In no event shall the waiver extend for a period to exceed 20 school days or, in the case of a summer meals program, the remainder of the summer vacation.

(c) The state shall be responsible for the student share of the cost of breakfasts provided to all students eligible for a reduced price breakfast under the federal school breakfast program.

§ 1265. EXEMPTION; PUBLIC DISCUSSION

(a) The school board of a public school district ~~which~~ that wishes to be exempt from the provisions of section 1264 of this title may vote at a meeting warned and held for that purpose to exempt itself from the requirement to ~~operate~~ offer either the school lunch program or the school breakfast program, or both, for a period of one year.

(b) If a public school ~~board~~ is exempt from ~~operating~~ offering a breakfast or lunch program, ~~annually it~~ its school board shall conduct a discussion annually on whether to continue the exemption. The pending discussion shall be included on the agenda at a regular or special school board meeting publicly noticed in accordance with ~~subsection~~ 1 V.S.A. § 312(c) ~~of Title 1~~, and citizens shall be provided an opportunity to participate in the discussion. The school board shall send a copy of the notice to the commissioner and to the superintendent of the supervisory union at least ten days prior to the meeting. Following the discussion, the school board shall vote on whether to continue the exemption for one additional year.

(c) On or before the first day of November ~~1, previous~~ prior to the date on which an exemption voted under this section is due to expire, the commissioner shall notify the ~~school board~~ boards of the affected school district and supervisory union in writing that the exemption will expire.

(d) Following a meeting held pursuant to subsection (b) of this section, the school board shall send a copy of the agenda and minutes to the commissioner and the superintendent of the supervisory union.

(e) The commissioner may grant a supervisory union or a school district a waiver from duties required of it under this subchapter upon a demonstration that the duties would be performed more efficiently and effectively in another manner.

* * * Secondary Credits; Dual Enrollment * * *

Sec. 23. 16 V.S.A. § 913 is added to read:

§ 913. SECONDARY CREDIT; POSTSECONDARY COURSES

(a) Each public school and approved independent school offering secondary education shall award credit toward graduation requirements to a student who receives prior approval from the school and successfully completes a course offered by an accredited postsecondary institution. The secondary school shall determine the number and nature of credits it will

award to the student for successful completion of the course, including whether the course will satisfy one or more requirements of the school, and shall inform the student prior to enrollment. Credits awarded shall be based on performance and not solely on Carnegie units; provided, however, that unless the school determines otherwise, a three-credit postsecondary course shall be presumed to equal one-half of a Carnegie unit. A school shall not withhold approval or credit without reasonable justification. A student may request that the superintendent review the school's determination regarding course approval or credits. The superintendent's decision shall be final.

(b) For purposes of this section:

(1) "Accredited postsecondary institution" means a postsecondary institution that has been accredited by the New England Association of Schools and Colleges or a similar national or regional accrediting agency recognized by the U.S. Department of Education.

(2) "Carnegie unit" means a time-based unit of measuring secondary student attainment under which one unit equals 50 minutes of class time if the class is taken five days per week for 30 weeks.

Sec. 24. EXPANDED LEARNING OPPORTUNITIES; DUAL ENROLLMENT; POLICY

(a) It is the policy of the state of Vermont to:

(1) encourage increased access to expanded learning opportunities for publicly funded students enrolled in public and approved independent secondary schools, including dual enrollment, flexible learning pathways, and personalized learning;

(2) encourage increased dual enrollment opportunities for a wide range of students, particularly those from groups who attend college at disproportionately low rates, which will contribute to the statewide intent to increase the rigor of high school coursework, improve high school graduation rates, raise postsecondary aspiration rates, and better prepare more secondary students for the transition to college and career;

(3) encourage increased opportunities for secondary students to enroll in dual enrollment courses and earn both transcripted high school credit and transcripted postsecondary credit for successful completion of the course;

(4) recognize that instructors for dual enrollment courses are selected by the postsecondary institution and may include qualified high school faculty;

(5) recognize that dual enrollment courses may be taught at the secondary school, on the postsecondary campus, or by means of electronic or other distance media; and

(6) encourage collaborative partnerships among the New England states to create sustainable strategies to close the achievement gap among students.

(b) For purposes of this section, "dual enrollment" means enrollment by a secondary student in a course offered by an accredited postsecondary institution as defined in 16 V.S.A. § 913 and for which, upon successful completion of the course, the student will receive:

(1) credit toward graduation from the secondary school in which the student is enrolled; and

(2) postsecondary credit from the institution that offered the course if the course is a credit-bearing course at that institution.

* * * Reports * * *

Sec. 25. DRIVER EDUCATION; RESTRUCTURING

(a) The department of education, in consultation with the department of motor vehicles, the Vermont Driver and Traffic Safety Education Association, the Vermont Superintendents Association, and other interested entities, shall explore options for restructuring the delivery of driver education to Vermonters between the ages of 15 and 20, including consideration of:

(1) the development, implementation, evaluation, and enforcement of standards for teen driver education programs and instructors;

(2) the development and public dissemination of information regarding teen driver education issues;

(3) the creation of an advisory board to oversee all teen driver education programs, program instructors, and public communication efforts; and

(4) available funding sources for driver education programs and advisory board responsibilities.

(b) On or before January 15, 2012, the department shall present a detailed restructuring proposal to the house and senate committees on education and on transportation.

Sec. 26. TECHNOLOGY IN SCHOOLS; REPORT

On or before January 15, 2012, the department of education shall report to the senate and house committees on education regarding the current and planned use of technology and Internet service in public schools designed to increase educational opportunities for students, including:

(1) each school's type of Internet service, speed of connection, service provider, and projected upgrades available or planned before July 1, 2015;

(2) efforts to increase the availability of individual learning opportunities, dual enrollment, online, and other alternative learning programs;

(3) expansion of flexible learning environments, including efforts to develop and increase opportunities with out-of-state providers;

(4) results of the department's research concerning the possible development of a statewide open document format that could be standardized across the K–12 structure in Vermont, including consideration of tools available, security risk inherent in each, and the viability of state agencies to join efforts to help standardize systems and reduce costs on proprietary software and solutions;

(5) implementation of the department's communication and collaboration tool during the summer of 2011, focusing on uses of the tool by both schools and department staff and addressing incentives and value-added aspects of the tool; and

(6) review by the department and the state board of education of the school quality standards and consideration of amendments focusing on the continued evolution of teaching and learning supported by technology.

Sec. 27. SPECIAL EDUCATION INFORMATION MANAGEMENT SYSTEM; REPORT AND PROPOSAL

(a) The department of education, in consultation with the Vermont Superintendents Association, the Vermont School Boards Association, the Vermont Principals' Association, the Vermont-National Education Association, the Vermont council of special education administrators, the advisory council on special education created in 16 V.S.A. § 2945, and the Vermont association for school business officials, shall investigate, evaluate, and develop proposals for a statewide special education information management system designed to improve the delivery of special education services and student outcomes and to support:

(1) the department's mandated auditing responsibilities;

(2) the development and implementation of individualized education plans pursuant to 16 V.S.A. § 261a(a)(6) and chapter 101;

(3) the integration and dissemination of financial and educational information to supervisory unions and school districts necessary for effective operation of the new management system; and

(4) a uniform approach to Medicaid reimbursement.

(b) On or before January 15, 2012, the department shall provide a report to the senate and house committees on education detailing its proposal for the

information system designed pursuant to subsection (a) of this section and identifying all statutory amendments necessary to implement the system.

Sec. 28. EARLY EDUCATION OFFERED BY AND THROUGH PUBLIC SCHOOLS; REGULATION; REPORT

(a) The departments of education and for children and families, in consultation with the Vermont Superintendents Association, the Vermont School Boards Association, the Vermont Principals' Association, the Vermont-National Education Association, the Vermont council of special education administrators, Pre-K Vermont, the Vermont community preschool collaborative, the Vermont Business Roundtable, Kids Are Priority One Coalition, the Building Bright Futures Council, and other interested entities, shall review the statutes and rules regarding prekindergarten education programs offered by and through school districts and supervisory unions and shall determine ways in which the regulation of these programs can be simplified.

(b) On or before January 15, 2012, the departments shall report jointly to the senate and house committees on education detailing their proposal for simplified regulations and identifying all statutory amendments necessary to implement the proposal.

* * * Elementary School Tuition Inconsistencies * * *

Sec. 29. 16 V.S.A. § 821(d) is amended to read:

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

~~(1) The statewide average announced tuition of Vermont union elementary schools.~~

~~(2) The average per-pupil tuition the district pays for its other resident elementary pupils in the year in which the pupil is enrolled in the approved independent school.~~

~~(3) The tuition charged by the approved independent school in the year in which the pupil is enrolled~~.

Sec. 30. 16 V.S.A. § 823(b) is amended to read:

(b) ~~The~~ Unless the electorate of a school district authorizes payment of a higher amount at an annual or special meeting warned for the purpose, the tuition paid to an approved independent elementary school or an independent school meeting school quality standards shall not exceed the ~~lesser~~ least of:

(1) the average announced tuition of Vermont union elementary schools for the year of attendance; ~~or~~

(2) the tuition charged by the approved independent school for the year of attendance; or

(3) the average per-pupil tuition the district pays for its other resident elementary pupils in the year in which the pupil is enrolled in the approved independent school. ~~However, the electorate of a school district may authorize the payment of a higher amount at an annual or special meeting warned for the purpose.~~

* * * Educational Films * * *

Sec. 31. REPEAL

16 V.S.A. § 144a (appropriation for visual educational films) is repealed.

Sec. 32. 16 V.S.A. § 562 is amended to read:

§ 562. POWERS OF ELECTORATE

At a school district meeting, the electorate:

* * *

(11) ~~[Repealed.]~~ May grant general authority to the school board, at the request of the board, to incur debt at any time within the subsequent five years to finance the cost of school-building energy improvements not to exceed $200,000.00 per building in any three-year period and payable over a maximum term coextensive with the useful life of the financed improvements, but not to exceed ten years, provided that the avoided costs attributable to the financed improvements exceed the annual payment of principal and interest of the indebtedness. No indebtedness shall be incurred under this subdivision unless the entity appointed as an energy efficiency utility under 30 V.S.A. § 209(d)(2), an independent licensed engineer, or an independent licensed architect has certified to the district the cost of the improvements to be financed, the avoided costs attributable to the improvements, and the adequacy of debt service coverage from the avoided costs over the term of the proposed indebtedness.

Sec. 33. [Deleted.]

* * * Energy Financing * * *

* * *

* * * SU Duties; Effective Date Extension * * *

Sec. 34. Sec. 23(b) of No. 153 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

(b) Secs. 9 through 12 of this act shall take effect on passage and shall be fully implemented on July 1, ~~2012~~ 2013, subject to the provisions of existing contracts.

* * * Harassment and Bullying;

Electronic and Nonschool Activities * * *

Sec. 35. 16 V.S.A. § 11(a)(26)(A) is amended to read:

(26)(A) "Harassment" means an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a student's or a student's family member's actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability that has the purpose or effect of objectively and substantially undermining and detracting from or interfering

with a student's educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment.

Sec. 36. 16 V.S.A. § 11(a)(32) is amended to read:

(32) "Bullying" means any overt act or combination of acts, including an act conducted by electronic means, directed against a student by another student or group of students and which:

(A) is repeated over time;

(B) is intended to ridicule, humiliate, or intimidate the student; and

(C)(i) occurs during the school day on school property, on a school bus, or at a school-sponsored activity, or before or after the school day on a school bus or at a school-sponsored activity; or

(ii) does not occur during the school day on school property, on a school bus, or at a school-sponsored activity and can be shown to pose a clear and substantial interference with another student's right to access educational programs.

Sec. 37. 16 V.S.A. § 1162 is amended to read:

§ 1162. SUSPENSION OR EXPULSION OF PUPILS

(a) A superintendent or principal may, pursuant to policies adopted by the school board that are consistent with state board rules, suspend a pupil for up to 10 school days or, with the approval of the board of the school district, expel a pupil for up to the remainder of the school year or up to 90 school days, whichever is longer, for misconduct:

(1) on school property, on a school bus, or at a school-sponsored activity when the misconduct makes the continued presence of the pupil harmful to the welfare of the school ~~or for misconduct~~;

(2) not on school property, on a school bus, or at a school-sponsored activity where direct harm to the welfare of the school can be demonstrated; or

(3) not on school property, on a school bus, or at a school-sponsored activity where the misconduct can be shown to pose a clear and substantial interference with another student's equal access to educational programs.

(b) Nothing contained in this section shall prevent a superintendent or principal, subject to subsequent due process procedures, from removing immediately from a school a pupil who poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process of the school, or from expelling a pupil who brings a weapon to school pursuant to section 1166 of this title.

~~(b)~~(c) Principals, superintendents, and school boards are authorized and encouraged to provide alternative education services or programs to students during any period of suspension or expulsion authorized under this section.

* * * Food Processing * * *

Sec. 38. CAREER AND TECHNICAL CENTERS; INTEGRATION WITH FOOD PROCESSING SECTORS

The department of education, in consultation with the agency of agriculture, food and markets, the Vermont association of career and technical center directors, the workforce development council, slaughterhouse operators, meat processors, chefs, and livestock farmers shall integrate the value added food processing sectors, including meat cutting and processing, into the programs of study offered at the state's regional career and technical education centers.

* * * Effective Date * * *

Sec. 39. FINDINGS

The general assembly finds:

(1) A concussion is a disturbance to brain function that can range from mild to severe and can disrupt the way the brain normally works.

(2) A concussion is caused by a blow to or motion of the head or body that causes the brain to move rapidly inside the skull.

(3) A concussion can occur with or without loss of consciousness, but most concussions occur without loss of consciousness.

(4) The risks of catastrophic injuries or death are significant when a concussion or other head injury is not properly evaluated and managed.

(5) Concussions can occur during any organized or unorganized sport or recreational activity and can result from a fall or from a person colliding with one or more other people, with the ground, or with other obstacles.

(6) The Centers for Disease Control and Prevention estimates that as many as 3,900,000 sports-related and recreation-related concussions occur in the United States each year.

(7) Concussions are one of the most commonly reported injuries in children and adolescents who participate in athletic and recreational activities.

(8) Continuing to participate in athletic and recreational activities with a concussion or symptoms of a head injury causes children and adolescents to be vulnerable to greater injury or even death.

(9) Despite the existence of recognized return-to-play standards for concussions and other head injuries, some children and adolescents in Vermont

with a concussion or symptoms of a head injury are prematurely permitted to participate in athletic and recreational activities, resulting in actual or potential physical injury or death.

Sec. 40. 16 V.S.A. chapter 31, subchapter 3 is added to read:

Subchapter 3. Health and Safety Generally

§ 1431. CONCUSSIONS AND OTHER HEAD INJURIES

(a) Definitions. For purposes of this subchapter:

(1) "School athletic team" means an interscholastic athletic team or club sponsored by a public or approved independent school for elementary or secondary students.

(2) "Coach" means a person who instructs or trains students on a school athletic team.

(3) "Youth athlete" means an elementary or secondary student who is a member of a school athletic team.

(4) "Licensed health care provider" means:

(A) a physician licensed pursuant to chapter 23 or 33 of Title 26;

(B) an advanced practice registered nurse licensed pursuant to chapter 28 of Title 26;

(C) a physician's assistant licensed pursuant to chapter 31 of Title 26;

(D) an athletic trainer licensed pursuant to chapter 83 of Title 26; or

(E) a physical therapist licensed pursuant to chapter 38 of Title 26.

(b) Guidelines and other information. The commissioner of education or designee, assisted by members of the Vermont Principals' Association and the Vermont School Boards Association selected by those associations, shall develop statewide guidelines, forms, and other materials, and update them when necessary, that are designed to educate coaches, youth athletes, and the parents and guardians of youth athletes regarding:

(1) the nature and risks of concussions and other head injuries;

(2) the risks of premature participation in athletic activities after receiving a concussion or other head injury; and

(3) the importance of obtaining a medical evaluation of a suspected concussion or other head injury and receiving treatment when necessary.

(c) Notice and training. The principal or headmaster of each public and approved independent school in the state, or a designee, shall ensure that:

(1) the information developed pursuant to subsection (b) of this section is provided annually to each youth athlete and the athlete's parents or guardians;

(2) each youth athlete and a parent or guardian of the athlete annually sign a form acknowledging receipt of the information provided pursuant to subdivision (1) of this subsection and return it to the school prior to the athlete's participation in training or competition associated with a school athletic team;

(3)(A) each coach of a school athletic team receive training no less frequently than every two years on how to recognize the symptoms of a concussion or other head injury; and

(B) each coach who is new to coaching at the school receive training prior to beginning his or her first coaching assignment for the school.

(d) Participation in athletic activity.

(1) A coach shall not permit a youth athlete to continue to participate in any training session or competition associated with a school athletic team if the coach has reason to believe that the athlete has sustained a concussion or other head injury during the training session or competition.

(2) A coach shall not permit a youth athlete who has been prohibited from training or competing pursuant to subdivision (1) of this subsection to train or compete with a school athletic team until the athlete has been examined by and received written permission to participate in athletic activities from a licensed health care provider trained in the evaluation and management of concussions and other head injuries.

Sec. 41. EFFECTIVE DATE; IMPLEMENTATION

This act shall take effect on passage, provided that:

(1) Section 3 of this act shall be fully implemented by July 1, 2013, subject to the provisions of existing contracts;

(2) the guidelines, forms, and other materials required by Sec. 40 of this act, 16 V.S.A. § 1431(b), shall be developed and published on the websites of the Vermont Principals' Association and the department of education no later than July 1, 2011; and

(3) the requirements of Sec. 40 of this act, 16 V.S.A. § 1431(c) (notice and training) and (d) (participation), shall be in effect beginning in the autumn 2011 sports season.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment? On motion of Senator Mullin, the Senate refused to

concur in the House proposal of amendment and requested a Committee of Conference.

Thereupon, pursuant to the request of the Senate, the President announced the appointment of

Senator Mullin
Senator Baruth
Senator Kittell

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was ordered messaged to the House forthwith.

Committees of Conference Appointed

S. 37.

An act relating to expungement of a nonviolent misdemeanor criminal history record.

Was taken up. Pursuant to the request of the Senate, the President announced the appointment of

Senator Nitka
Senator Sears
Senator Snelling

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

S. 94.

An act relating to miscellaneous amendments to the motor vehicle laws.

Was taken up. Pursuant to the request of the Senate, the President announced the appointment of

Senator Flory
Senator Kitchel
Senator Mazza

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

H. 287.

An act relating to job creation and economic development.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Illuzzi
Senator Ashe
Senator Carris

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

Rules Suspended; Bills Messaged

On motion of Senator Campbell, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 37, S. 94.

Rules Suspended; Action Messaged

On motion of Senator Campbell, the rules were suspended, and the action on the following bills was ordered messaged to the House forthwith:

H. 287.

Rules Suspended; Bills Delivered

On motion of Senator Campbell, the rules were suspended, and the following bills were severally ordered delivered to the Governor forthwith:

S. 30, S. 73, S. 90, S. 101, S. 105.

Adjournment

On motion of Senator Campbell, the Senate adjourned until ten o’clock in the morning.