

# Journal of the Senate

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WEDNESDAY, MAY 4, 2011

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

**Rules Suspended; Action Reconsidered; Rules Suspended; House Proposal of Amendment Concurred in with Proposal of Amendment; Rules Suspended; Bill Messaged**

### S. 108.

Senator Sears moved the rules be suspended for the purpose of reconsidering the action taken by the Senate to message S. 108 to the House.

Which was agreed to.

Assuring the Chair that he voted with the majority whereby the Senate messaged to the House, Senate bill entitled:

An act relating to effective strategies to reduce criminal recidivism.

Senator Sears moved that the Senate reconsider its action to message S. 108 to the House forthwith.

Which was agreed to.

Thereupon, pending the recurring question, Shall the rules be suspended to message the bill to the House forthwith?, was disagreed to.

Thereupon, Senator Sears, assuring the Chair that he voted with the majority moved that the Senate reconsider the question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment.

Was agreed to.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment?, Senator Sears moved to substitute a proposal of amendment for his proposal of amendment as follows:

First: By adding a new section to be numbered Sec. 1 to read as follows:

Sec. 1. SHORT TITLE

This act may be referred to and cited as “The War on Recidivism Act.”

And by renumbering the existing Sec. 1 to be Sec. 1a.

Second: In Sec. 3a, in 28 V.S.A. § 808a(c)(1), by striking out the last sentence, and in 28 V.S.A. § 808b, by striking out the last two sentences in subsection (b) and by striking subsection (e) in its entirety, and in 28 V.S.A. § 808c(a)(2), by striking out the last sentence

Third: By adding a new section to be numbered Sec. 3c to read as follows:

Sec. 3c. 28 V.S.A. §§ 808a–808d are amended to read:

§ 808a. TREATMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment furlough to participate in such programs administered by the department in the community that reduce the offender’s risk to reoffend or that provide reparation to the community in the form of supervised work activities.

(b) Provided the approval of the sentencing judge is first obtained, the department may place on treatment furlough an offender who has not yet served the minimum term of the sentence, who, in the department’s determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the department has determined should be addressed in order to reduce the offender’s risk to reoffend or cause harm to himself or herself or to others in the facility. The offender shall be released only to a hospital or residential treatment facility that provides services to the general population. The state’s share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within state agencies reflective of their shared responsibilities to maximize the efficient and effective use of state resources. In the event that a memorandum of agreement cannot be reached, the secretary of administration shall make a final determination as to the manner in which costs will be allocated.

~~(c)(1) Except as provided in subdivision (2) of this subsection, the department, in its own discretion, may place on treatment furlough an offender who has not yet served the minimum term of his or her sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.~~

~~(2) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(e) and boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be considered eligible misdemeanors for the sole purpose of subdivision (1) of this subsection.~~

#### § 808b. HOME CONFINEMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on home confinement furlough that restricts the defendant to a preapproved place of residence continuously, except for authorized absences. Home confinement furlough shall be enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the court, the department, or both.

~~(b) The department, in its own discretion, may place on home confinement furlough an offender who has not yet served the minimum term of the sentence for an eligible misdemeanor as defined in section 808d of this title if the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.~~

(c) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(1) to remain at a preapproved residence at all times except for scheduled and preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court may order; or

(2) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(d) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, all of the following shall be considered:

(1) The nature of the offense with which the defendant was charged and the nature of the offense of which the defendant was convicted.

(2) The defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight.

(3) Any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

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§ 808c. REINTEGRATION FURLOUGH

(a)(1) To prepare for reentry into the community, an offender sentenced to incarceration may be furloughed to the community up to 180 days prior to completion of the minimum sentence, at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (c) of this section. ~~Except as provided in subdivision (2) of this subsection, an~~ An offender sentenced to a minimum term of fewer than 365 days shall not be eligible for furlough under this subdivision until the offender has served at least one-half of his or her minimum term of incarceration.

~~(2) An offender sentenced to a minimum term of fewer than 365 days for an eligible misdemeanor as defined in section 808d of this title shall be eligible for furlough under this subdivision, provided the department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.~~

(b) Except as provided in subsection (d) of this section, an offender sentenced to incarceration is eligible to earn five days toward reintegration furlough, to be applied prior to the expiration of the offender's minimum term, for each month served in the correctional facility during which the offender has complied with the case plan prepared pursuant to subsection 1(b) of this title and has obeyed all rules and regulations of the facility. Days shall be awarded only if the commissioner determines, in his or her sole discretion, that they have been earned in accordance with rules adopted by the department pursuant to subsection (c) of this section and shall in no event be awarded automatically. The commissioner's determination shall be final. Days earned under this subsection may be awarded in addition to the reintegration furlough authorized in subsection (a) of this section. The commissioner shall have the discretion to determine the frequency with which calculations under this subsection shall be made provided they are made at least as frequently as every six months.

(c) The commissioner may authorize reintegration furlough under subsections (a) and (b) of this section only if the days are awarded in accordance with rules adopted pursuant to chapter 25 of Title 3 designed to do the following:

(1) Evaluate factors such as risk of reoffense, history of violent behavior, history of compliance with community supervision, compliance with the case plan, progress in treatment programs designed to reduce criminal risk, and obedience to rules and regulations of the facility.

(2) Ensure adequate departmental supervision of the offender when furloughed into the community.

(d) The commissioner may not award days toward reintegration furlough under subsection (b) of this section if the offender is sentenced to a minimum term of incarceration in excess of five years or is incarcerated for a conviction of one or more of the following crimes:

- (1) Arson causing death as defined in 13 V.S.A. § 501;
- (2) Assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) Assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) Aggravated assault as defined in 13 V.S.A. § 1024;
- (5) Murder as defined in 13 V.S.A. § 2301;
- (6) Manslaughter as defined in 13 V.S.A. § 2304;
- (7) Kidnapping as defined in 13 V.S.A. § 2405;
- (8) Unlawful restraint as defined in 13 V.S.A. §§ 2406 and 2407;
- (9) Maiming as defined in 13 V.S.A. § 2701;
- (10) Sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (2);
- (11) Aggravated sexual assault as defined in 13 V.S.A. § 3253;
- (12) Burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c); or
- (13) Lewd or lascivious conduct with a child as defined in 13 V.S.A. § 2602.

(e) An offender incarcerated for driving while under the influence of alcohol under 23 V.S.A. § 1210(d) or (e) may be furloughed to the community up to 180 days prior to completion of the minimum sentence at the commissioner's discretion and in accordance with rules adopted pursuant to subsection (d) of this section, provided that an offender sentenced to a minimum term of fewer than 270 days shall not be eligible for furlough under this subsection until the offender has served at least 90 days of his or her minimum term of incarceration and provided that the commissioner uses electronic equipment to monitor the offender's location and blood alcohol level continually, or other equipment such as an alcohol ignition interlock system, or both.

(f) Prior to release under this section, the department shall screen and, if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment

in preparing a reentry plan. The department shall attempt to identify all necessary services in the reentry plan and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.

~~§ 808d. DEFINITION; ELIGIBLE MISDEMEANOR; FURLOUGH AT THE DISCRETION OF THE DEPARTMENT~~

~~For purposes of sections 808a-808c of this title, “eligible misdemeanor” means a misdemeanor crime that is not one of the following crimes:~~

~~(1) Cruelty to animals involving death or torture as defined in 13 V.S.A. § 352(1) and (2).~~

~~(2) Simple assault as defined in 13 V.S.A. § 1023(a)(1).~~

~~(3) Simple assault with a deadly weapon as defined in 13 V.S.A. § 1023(a)(2).~~

~~(4) Simple assault of a law enforcement officer, firefighter, emergency medical personnel member, or health care worker while he or she is performing a lawful duty as defined in 13 V.S.A. § 1023(a)(1).~~

~~(5) Reckless endangerment as defined in 13 V.S.A. § 1025.~~

~~(6) Simple assault of a correctional officer as defined in 13 V.S.A. § 1028a(a)(1).~~

~~(7) Simple assault of a correctional officer as defined in 13 V.S.A. § 1028a(b).~~

~~(8) Violation of an abuse prevention order, first offense, as defined in 13 V.S.A. § 1030.~~

~~(9) Stalking as defined in 13 V.S.A. § 1062.~~

~~(10) Domestic assault as defined in 13 V.S.A. § 1042.~~

~~(11) Cruelty to children over 10 years of age by one over 16 years of age as defined in 13 V.S.A. § 1304.~~

~~(12) Cruelty by a person having custody of another as defined in 13 V.S.A. § 1305.~~

~~(13) Abuse, neglect, or exploitation of a vulnerable adult as provided in 13 V.S.A. §§ 1376-1381.~~

~~(14) Hate-motivated crime as defined in 13 V.S.A. § 1455 or burning of a cross or other religious symbol as defined in 13 V.S.A. § 1456.~~

~~(15) Voyeurism as defined in 13 V.S.A. § 2605.~~

- ~~(16) Prohibited acts as defined in 13 V.S.A. § 2632.~~
- ~~(17) Obscenity as defined in chapter 63 of Title 13.~~
- ~~(18) Possession of child pornography as defined in 13 V.S.A. § 2827.~~
- ~~(19) Possession of a dangerous or deadly weapon in a school bus or school building as defined in 13 V.S.A. § 4004(a).~~
- ~~(20) Possession of a dangerous or deadly weapon on school property with intent to injure as defined in 13 V.S.A. § 4004(b).~~
- ~~(21) Possession of a firearm in court as defined in 13 V.S.A. § 4016(b)(1).~~
- ~~(22) Possession of a dangerous or deadly weapon in court as defined in 13 V.S.A. § 4016(b)(2).~~
- ~~(23) Failure to comply with the sex offender registry as defined in 13 V.S.A. § 5409.~~
- ~~(24) Careless or negligent operation of a motor vehicle resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b).~~
- ~~(25) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(e).~~
- ~~(26) Boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323.~~

Fourth: In Sec. 4(b) , by adding a new subdivision (1) to read as follows:

(1) a former member of either the house committee on judiciary or the senate committee on judiciary appointed jointly by the speaker of the house and the senate committee on committees;

And by renumbering the existing subdivisions to be numerically correct.

Fifth: By striking out Sec. 6 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 6 to read as follows:

#### Sec. 6. PLACE-BASED STRATEGIES TO REDUCE RECIDIVISM

Some Vermont communities have a disproportionate number of residents who have been through the correctional system. Corrections and law enforcement officials are increasingly interested in sharing information that can lead to more effective resource allocation and coordination to reduce recidivism in communities with a high number of persons under the supervision of the department of corrections. Therefore, the department of corrections shall work with the Vermont League of Cities and Towns, the association of the chiefs of police, and other local law enforcement agencies to

develop strategies that coordinate services provided by state, local, and nonprofit entities to persons in the custody of the commissioner of corrections and that enhance public safety. The department shall keep the joint committee on corrections oversight, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of the groups' efforts on this matter.

Sixth: By striking out Sec. 10 in its entirety and inserting in lieu thereof a new Sec. 10 to read as follows:

Sec. 10. RECIDIVISM REDUCTION STUDY, EVALUATION OF WORK CAMPS; VERMONT CENTER FOR JUSTICE RESEARCH

(a) Research suggests that short, swift, and certain sanctions may be effective at reducing recidivism among certain groups of offenders. Programs that employ strategies such as those of Georgia's Probation Options Management (POM) and Hawaii's Opportunity Probation with Enforcement (HOPE) have shown reduced rates of recidivism, drug use, missed appointments with probation officers, and probation revocations for program participants versus rates for control group participants. The general assembly and representatives of all statewide criminal justice agencies have been working to develop an innovative pilot project to reduce recidivism based on such a model, but more information is needed to ascertain how these principles can be applied in Vermont to achieve clearly stated goals set forth by the joint committee on corrections oversight with respect to reductions in recidivism.

(b) The Vermont center for justice research has been engaged in discussions with stakeholders regarding the employment of strategies used in POM and HOPE and specializes in collecting and analyzing criminal and juvenile justice information and providing technical assistance to state and local criminal justice agencies.

(c) The center shall evaluate innovative programs and initiatives, including local programs and prison-based initiatives, best practices, and contemporary research regarding assessments of programmatic alternatives and pilot projects relating to reducing recidivism in the criminal justice system. The center's research shall focus on evidence-based initiatives related to swift and sure delivery of sanctions and effective interventions for offenders. The center shall make its recommendations to the senate and house committees on judiciary and the joint committee on corrections oversight by December 1, 2011.

Seventh: By striking out Sec. 11 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 11 to read as follows:



Sec. 11. DEPARTMENT OF CORRECTIONS; REDUCTION IN ADMINISTRATIVE BURDEN ON PROBATION AND PAROLE OFFICERS

(a) The general assembly finds that the current burden of administrative paperwork on probation and parole officers impedes their ability to supervise offenders in the community. Additionally, some paperwork, such as the offender responsibility plan, has diverged from its laudable original purpose and become unnecessarily time-consuming for staff and of little value to offenders. Rather than spending time in the field, visiting offenders at home, and checking on employment and housing, officers are forced to spend an inordinate amount of time at their desks filling out paperwork.

(b) To improve community supervision by getting more probation and parole officers out on the streets, the department of corrections shall undertake a review of the administrative burden placed on field officers and shall reduce paperwork handled by these officers by 50 percent as of July 1, 2012. In its efforts, the department shall strongly consider the use of technology to assist field officers and the efficiency of providing portable devices so that officers would not need to leave the field to file reports. The department shall report to the joint committee on corrections oversight by November 1, 2011 regarding its progress in achieving the goal of a 50-percent reduction in paperwork, and shall continue to keep the joint committee, the senate and house committees on judiciary, and the house committee on corrections and institutions informed of their efforts on this matter.

Eighth: By adding a new section to be numbered Sec. 11a to read as follows:

Sec. 11a. 28 V.S.A. § 122 is added to read:

§ 122. CONTRACTING FOR PROGRAMMING AND SERVICES

For the purpose of securing programming and services for offenders, the department of corrections shall publicly advertise or invite three or more bids. The contract for any such programming and services shall be awarded to one of the three lowest responsible bidders, conforming to specification, with consideration being given to the time required for provision of services, the purpose for which it is required, competency and responsibility of bidder, and his or her ability to render satisfactory services; but the commissioner with the approval of the secretary of human services shall have the right to reject any and all bids and to invite other bids.

Ninth: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 13 to read as follows:

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Sec. 13. EFFECTIVE DATES

- (a) Sec. 2 of this act shall take effect on passage.
- (b) Sec. 3c shall take effect on April 1, 2013.
- (c) The remainder of the act shall take effect on July 1, 2011.

Which was agreed to.

Thereupon, the recurring question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment, as substituted?, was agreed to.

Thereupon, on motion of Senator Campbell, the rules were suspended, and the bill was ordered messaged to the House forthwith.

**Recess**

On motion of Senator Campbell the Senate recessed until one o'clock and thirty minutes in the afternoon.

**Called to Order**

The Senate was called to order by the President.

**Message from the House No. 67**

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

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

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

**H. 73.** An act relating to establishing a government transparency office to enforce the public records act.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

#### **Message from the House No. 68**

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 Senate proposal of amendment to House bill of the following title:

**H. 264.** An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

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

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

Rep. Lippert of Hinesburg  
Rep. Grad of Moretown  
Rep. Koch of Barre Town

#### **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. 77, H. 24, H. 38, H 91.**

#### **Bill Ordered to Lie**

**H. 46.**

House bill entitled:

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

Was taken up.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Education?, on motion of Senator Campbell, the bill was ordered to lie.

**Proposal of Amendment; Third Reading Ordered**

**J.R.H. 19.**

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

Joint resolution supporting the administration's efforts to examine and provide recommendations for improving and increasing the effectiveness of Vermont's state and municipal environmental protection process.

Reported recommending that the Senate propose to the House that the Senate propose to the House that the joint resolution be amended by striking out all after the title and inserting in lieu thereof the following:

Whereas, our environment is the sum of everything around us, our beautiful mountains and valleys, our streams and lakes, the air we breathe and the winter's snow and summer's green grass, and

Whereas, to date, Vermont has managed to preserve many aspects of the state's environment, but this protective process could be administered more effectively and with greater certainty and transparency, and

Whereas, since 1970, Vermont's system of state and municipal environmental and land use regulation has grown and changed, resulting in overlapping laws and programs under the administrative jurisdiction of multiple state offices that do not always share the same regulatory objectives or coordinate in an optimal fashion, and

Whereas, the state of Vermont and local municipalities should be encouraging appropriate development at specific locations, and

Whereas, for example, attempts to effectively enforce water quality standards in Lake Champlain, promote a settlement pattern of compact urban and village centers surrounded by a rural, working landscape, and reduce greenhouse gas emissions have not resulted in achieving compliance with statutory goals and not infrequently have resulted in contentious disputes and litigation, and

Whereas, project developers and citizens concerned about projects often voice complaints expressing confusion about the specific permits required for a given project and objecting that the regulatory process can be expensive, daunting, and time-consuming and that it needs to be predictable, and

Whereas, Vermont must ensure that its permitting process appropriately utilizes the benefits of new technology to improve efficiency while simultaneously achieving protection of the natural environment, and

Whereas, Governor Shumlin has directed the chair of the natural resources board and the secretary of natural resources to review Vermont's environmental and land use permitting system and to provide recommendations for improving the system and increasing its effectiveness, and

Whereas, the General Assembly continues to propose policies that improve environmental permitting and ensure that development protects Vermont's working landscape and natural environment, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly supports the administration's efforts to examine and provide recommendations for improving and increasing the effectiveness of Vermont's environmental protection process, and be it further

Resolved: That the General Assembly requests that the chair of the natural resources board and the secretary of natural resources, in consultation with other state permitting officials including representatives of the agencies of agriculture, food and markets, commerce and community development, transportation, and the environmental division of superior court, and municipal permitting officials, and invite public input through public meetings, the use of the Internet, and other forms of outreach, and be it further

Resolved: That the General Assembly requests that the chair of the natural resources board and the secretary of natural resources regularly meet and consult with the chairs of the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources during this review process, and be it further

Resolved: That the General Assembly requests that the chair of the natural resources board and the secretary of natural resources develop recommendations intended to maintain standards assuring the environmental quality so important to Vermonters while making Vermont's land use and environmental permit process more efficient, more effective, more user-friendly, more open, more predictable, better coordinated, and quicker for applicants and citizens, and be it further

Resolved: That the General Assembly requests the chair of the natural resources board and the secretary of natural resources to report to the chairs of the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources by January 15, 2012 with recommendations to meet the intent of this resolution, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the chair of the natural resources board and the secretary of natural resources.

And that the joint resolution ought to be adopted in concurrence with such proposal of amendment.

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

### **House Proposal of Amendment Concurred In**

#### **S. 36.**

House proposal of amendment to Senate bill entitled:

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

Was taken up.

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

#### **\*\*\* Surplus Lines Insurance Multi-state Compliance Compact \*\*\***

Sec. 1. 8 V.S.A. chapter 138A is added to read:

#### **CHAPTER 138A. SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT**

##### **§ 5050. FINDINGS**

The general assembly makes the following findings of fact:

(1) The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, was signed into law on July 21, 2010. Title V, Subtitle B of that act is known as the Non-Admitted and Reinsurance Reform Act of 2010 (NRRA). NRRA states that:

(A) the placement of non-admitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home state; and

(B) any law, regulation, provision, or action of any state that applies or purports to apply to non-admitted insurance sold to, solicited by, or negotiated with an insured whose home state is another state shall be preempted with respect to such application; except that any state law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a non-admitted insurer shall not be preempted.

(2) In compliance with NRRA, no state other than the home state of an insured may require any premium tax payment for non-admitted insurance; and no state other than an insured's home state may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate non-admitted insurance with respect to such insured.

(3) NRRA intends that the states may enter into a compact or otherwise establish procedures to allocate among the states the premium taxes paid to an insured's home state; and that each state adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for non-admitted insurance.

(4) After the expiration of the two-year period beginning on the date of the enactment of NRRA, a state may not collect any fees relating to licensing of an individual or entity as a surplus lines licensee in the state unless the state has in effect at such time laws or regulations that provide for participation by the state in the national insurance producer database of the National Association of Insurance Commissioners (NAIC), or any other equivalent uniform national database, for the licensure of surplus lines licensees and the renewal of such licenses.

(5) A need exists for a system of regulation that will provide for surplus lines insurance to be placed with reputable and financially sound non-admitted insurers, and that will permit orderly access to surplus lines insurance in this state and encourage insurers to make new and innovative types of insurance available to consumers in this state.

(6) Protecting the revenue of this state and other compacting states may be accomplished by facilitating the payment and collection of premium tax on non-admitted insurance and providing for allocation of premium tax for non-admitted insurance of multi-state risks among the states in accordance with uniform allocation formulas.

(7) The efficiency of the surplus lines market may be improved by eliminating duplicative and inconsistent tax and regulatory requirements among the states, and by promoting and protecting the interests of surplus lines licensees who assist such insureds and non-admitted insurers, thereby ensuring the continued availability of non-admitted insurance to consumers.

(8) Regulatory compliance with respect to non-admitted insurance placements may be streamlined by providing for exclusive single-state regulatory compliance for non-admitted insurance of multi-state risks, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers.

(9) Coordination of regulatory resources and expertise between state insurance departments and other state agencies, as well as state surplus lines stamping offices, with respect to non-admitted insurance will be improved under the surplus lines insurance multi-state compliance compact.

(10) By July 21, 2011, if Vermont does not enter into a compact or other reciprocal agreement with other states for the purpose of collecting, allocating, and disbursing premium taxes and fees attributable to multi-state risks, the state could lose up to 20 percent of its surplus lines premium tax collected annually. In fiscal year 2010, Vermont's surplus lines premium tax was \$938,636.54. A revenue loss of 20 percent would be \$187,727.31.

§ 5051. INTENT; AUTHORITY TO ENTER OTHER AGREEMENT

(a) It is the intent of the general assembly to enact the surplus lines insurance multi-state compliance compact as provided under this chapter, and also to authorize the commissioner of banking, insurance, securities, and health care administration to enter into another agreement pursuant to subsections (b) and (c) of this section if the compact does not take effect.

(b) During the interim of the 2011–2012 legislative biennium and subject to subsection (c) of this section, if the surplus lines insurance multi-state compliance compact does not take effect under section 5064 of this title then, in accordance with NRRA, the commissioner of banking, insurance, securities, and health care administration may enter into a cooperative agreement, reciprocal agreement, or multi-state agreement with another state or states to provide for the reporting, payment, collection, and allocation of premium fees and taxes imposed on non-admitted insurance. The commissioner may also enter into other cooperative agreements with surplus lines stamping offices and other similar entities located in other states related to the capturing and processing of insurance premium and tax data. The commissioner is further authorized to participate in any clearinghouse established under any such agreement or agreements for the purpose of collecting and disbursing to reciprocal states any funds collected and applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the insured properties, risks, or exposures are located have failed to enter into a compact or reciprocal allocation procedure with Vermont, the net premium tax collected shall be retained by Vermont.

(c) Prior to entering into a cooperative agreement, reciprocal agreement, or multi-state agreement with another state or states pursuant to subsection (b) of this section, the commissioner shall:

(1) Determine that the agreement is in Vermont's financial best interest; does not create an undue administrative burden on the state; and is consistent with the requirements of NRRA.



(2) Obtain the prior approval of the joint fiscal committee, in consultation with the chairs of the senate committee on finance and the house committees on ways and means and on commerce and economic development.

(d) By July 21, 2011, if a clearinghouse is not established or otherwise in operation in order to implement NRRA, all payments and taxes that otherwise would be payable to such a clearinghouse shall be submitted to the commissioner or with a voluntary domestic organization of surplus lines brokers with which the commissioner has contracted for the purpose of collecting and allocating all payments and taxes.

(e) The commissioner may adopt rules deemed necessary to carry out the purposes of this section.

#### § 5052. PURPOSES

The purposes of this compact are to:

(1) implement the express provisions of NRRA;

(2) protect the premium tax revenues of the compacting states through facilitating the payment and collection of premium tax on non-admitted insurance; protect the interests of the compacting states by supporting the continued availability of such insurance to consumers; and provide for allocation of premium tax for non-admitted insurance of multi-state risks among the states in accordance with uniform allocation formulas to be developed, adopted, and implemented by the commission;

(3) streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the states; and promote and protect the interest of surplus lines licensees who assist such insureds and surplus lines insurers, thereby ensuring the continued availability of surplus lines insurance to consumers;

(4) streamline regulatory compliance with respect to non-admitted insurance placements by providing for exclusive single-state regulatory compliance for non-admitted insurance of multi-state risks, in accordance with rules to be adopted by the commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers;

(5) establish a clearinghouse for receipt and dissemination of premium tax and clearinghouse transaction data related to non-admitted insurance of multi-state risks, in accordance with rules adopted by the commission;

(6) improve coordination of regulatory resources and expertise between state insurance departments and other state agencies as well as state surplus lines stamping offices with respect to non-admitted insurance;

(7) adopt uniform rules to provide for premium tax payment, reporting, allocation, data collection and dissemination for non-admitted insurance of multi-state risks and single-state risks, in accordance with rules adopted by the commission, thereby promoting the overall efficiency of the non-admitted insurance market;

(8) adopt uniform mandatory rules with respect to regulatory compliance requirements for:

(A) foreign insurer eligibility requirements; and

(B) surplus lines policyholder notices;

(9) establish the surplus lines insurance multi-state compliance compact commission;

(10) coordinate reporting of clearinghouse transaction data on non-admitted insurance of multi-state risks among compacting states and contracting states; and

(11) perform these and such other related functions as may be consistent with the purposes of the compact.

#### § 5053. DEFINITIONS

For purposes of this chapter:

(1) “Admitted insurer” means an insurer that is licensed, or authorized, to transact the business of insurance under the laws of the home state. It shall not include a domestic surplus lines insurer as may be defined by applicable state law.

(2) “Affiliate” means with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) “Allocation formula” means the uniform methods adopted by the commission by which insured risk exposures will be apportioned to each state for the purpose of calculating premium taxes due.

(4) “Bylaws” means the bylaws established by the commission for its governance, or for directing or controlling the commission’s actions or conduct.

(5) “Clearinghouse” means the commission’s operations involving the acceptance, processing, and dissemination, among the compacting states, contracting states, surplus lines licensees, insureds and other persons, of

premium tax and clearinghouse transaction data for non-admitted insurance of multi-state risks, in accordance with this compact and rules adopted by the commission.

(6) "Clearinghouse transaction data" means the information regarding non-admitted insurance of multi-state risks required to be reported, accepted, collected, processed, and disseminated by surplus lines licensees for surplus lines insurance and insureds for independently procured insurance under this compact and rules adopted by the commission. Clearinghouse transaction data includes information related to single-state risks if a state elects to have the clearinghouse collect taxes on single-state risks for such state.

(7) "Commission" means the surplus lines insurance multi-state compliance compact commission established by this compact.

(8) "Commissioner" means the chief insurance regulatory official of a state including, commissioner, superintendent, director, or administrator, or their designees.

(9) "Compact" means the surplus lines insurance multi-state compliance compact established under this chapter.

(10) "Compacting state" means any state which has enacted this compact legislation and which has not withdrawn pursuant to subsection 5065(a), or been terminated pursuant to subsection 5065(b), of this chapter.

(11) "Contracting state" means any state which has not enacted this compact legislation but has entered into a written contract with the commission to use the services of and fully participate in the clearinghouse.

(12) "Control." An entity has "control" over another entity if:

(A) the entity directly or indirectly or acting through one or more other persons own, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(13)(A) "Home state" means, with respect to an insured:

(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term “home state” means the home state, as determined pursuant to subdivision (A) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(14) “Independently procured insurance” means insurance procured by an insured directly from a surplus lines insurer or other non-admitted insurer as permitted by the laws of the home state.

(15) “Insurer eligibility requirements” means the criteria, forms, and procedures established to qualify as a surplus lines insurer under the law of the home state provided that such criteria, forms, and procedures are consistent with the express provisions of NRRA on and after July 21, 2011.

(16) “Member” means the person or persons chosen by a compacting state as its representative or representatives to the commission provided that each compacting state shall be limited to one vote.

(17) “Multi-state risk” means a risk with insured exposures in more than one state.

(18) “Non-admitted insurance” means surplus lines insurance and independently procured insurance.

(19) “Non-admitted insurer” means an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state.

(20) “Noncompacting state” means any state which has not adopted this compact.

(21) “NRRA” means the Non-Admitted and Reinsurance Reform Act of 2010 which is Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203.

(22) “Policyholder notice” means the disclosure notice or stamp that is required to be furnished to the applicant or policyholder in connection with a surplus lines insurance placement.

(23) “Premium tax” means with respect to non-admitted insurance, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(24) “Principal place of business” means with respect to determining the home state of the insured, the state where the insured maintains its

headquarters and where the insured's high-level officers direct, control and coordinate the business activities of the insured.

(25) "Purchasing group" means any group formed pursuant to the Liability Risk Retention Act of 1986, Pub.L. 99-63, which has as one of its purposes the purchase of liability insurance on a group basis, purchases such insurance only for its group members and only to cover their similar or related liability exposure and is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operations and is domiciled in any state.

(26) "Rule" means a statement of general or particular applicability and future effect adopted by the commission designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission which shall have the force and effect of law in the compacting states.

(27) "Single-state risk" means a risk with insured exposures in only one state.

(28) "State" means any state, district, or territory of the United States of America.

(29) "State transaction documentation" means the information required under the laws of the home state to be filed by surplus lines licensees in order to report surplus lines insurance and verify compliance with surplus lines laws, and by insureds in order to report independently procured insurance.

(30) "Surplus lines insurance" means insurance procured by a surplus lines licensee from a surplus lines insurer or other non-admitted insurer as permitted under the law of the home state. It shall also mean excess lines insurance as may be defined by applicable state law.

(31) "Surplus lines insurer" means a non-admitted insurer eligible under the law of the home state to accept business from a surplus lines licensee. It shall also mean an insurer which is permitted to write surplus lines insurance under the laws of the state where such insurer is domiciled.

(32) "Surplus lines licensee" means an individual, firm, or corporation licensed under the law of the home state to place surplus lines insurance.

#### § 5054. ESTABLISHMENT OF THE COMMISSION; VENUE

(a) The compacting states hereby create and establish a joint public agency known as the surplus lines insurance multi-state compliance compact commission.

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(b) Pursuant to section 5055 of this chapter, the commission shall have the power to adopt mandatory rules which establish exclusive home state authority regarding non-admitted insurance of multi-state risks, allocation formulas, clearinghouse transaction data, a clearinghouse for receipt and distribution of allocated premium tax and clearinghouse transaction data, and uniform rulemaking procedures and rules for the purpose of financing, administering, operating, and enforcing compliance with the provisions of this compact, its bylaws, and rules.

(c) Pursuant to section 5055 of this chapter, the commission shall have the power to adopt mandatory rules establishing foreign insurer eligibility requirements and a concise and objective policyholder notice regarding the nature of a surplus lines placement.

(d) The commission is a body corporate and politic, and an instrumentality of the compacting states.

(e) The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

(f) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

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§ 5055. AUTHORITY TO ESTABLISH MANDATORY RULES

The commission shall adopt mandatory rules establishing:

(1) allocation formulas for each type of non-admitted insurance coverage, which allocation formulas must be used by each compacting state and contracting state in acquiring premium tax and clearinghouse transaction data from surplus lines licensees and insureds for reporting to the clearinghouse created by the compact commission. Such allocation formulas will be established with input from surplus lines licensees and be based upon readily available data with simplicity and uniformity for the surplus line licensee as a material consideration.

(2) Uniform clearinghouse transaction data reporting requirements for all information reported to the clearinghouse.

(3) Methods by which compacting states and contracting states require surplus lines licensees and insureds to pay premium tax and to report clearinghouse transaction data to the clearinghouse, including processing clearinghouse transaction data through state stamping and service offices, state insurance departments, or other state designated agencies or entities.

(4)(A) That non-admitted insurance of multi-state risks shall be subject to all of the regulatory compliance requirements of the home state exclusively. Home state regulatory compliance requirements applicable to surplus lines insurance shall include but not be limited to:

(i) persons required to be licensed to sell, solicit, or negotiate surplus lines insurance;

(ii) insurer eligibility requirements or other approved non-admitted insurer requirements;

(iii) diligent search; and

(iv) state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission.

(B) Home state regulatory compliance requirements applicable to independently procured insurance placements shall include but not be limited to providing state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules adopted by the commission.

(5) That each compacting state and contracting state may charge its own rate of taxation on the premium allocated to such state based on the applicable allocation formula provided that the state establishes one single rate of taxation

applicable to all non-admitted insurance transactions and no other tax, fee assessment, or other charge by any governmental or quasi-governmental agency be permitted. Notwithstanding the foregoing, stamping office fees may be charged as a separate, additional cost unless such fees are incorporated into a state's single rate of taxation.

(6) That any change in the rate of taxation by any compacting state or contracting state be restricted to changes made prospectively on not less than 90 days' advance notice to the compact commission.

(7) That each compacting state and contracting state shall require premium tax payments either annually, semiannually, or quarterly using one or more of the following dates only: March 1, June 1, September 1, and December 1.

(8) That each compacting state and contracting state prohibit any other state agency or political subdivision from requiring surplus lines licensees to provide clearinghouse transaction data and state transaction documentation other than to the insurance department or tax officials of the home state or one single designated agent thereof.

(9) The obligation of the home state by itself, through a designated agent, surplus lines stamping or service office, to collect clearinghouse transaction data from surplus line licensee and from insureds for independently procured insurance, where applicable, for reporting to the clearinghouse.

(10) A method for the clearinghouse to periodically report to compacting states, contracting states, surplus lines licensees and insureds who independently procure insurance, all premium taxes owed to each of the compacting states and contracting states, the dates upon which payment of such premium taxes are due and a method to pay them through the clearinghouse.

(11) That each surplus line licensee is required to be licensed only in the home state of each insured for whom surplus lines insurance has been procured.

(12) That a policy considered to be surplus lines insurance in the insured's home state shall be considered surplus lines insurance in all compacting states and contracting states, and taxed as a surplus lines transaction in all states to which a portion of the risk is allocated. Each compacting state and contracting state shall require each surplus lines licensee to pay to every other compacting state and contracting state premium taxes on each multi-state risk through the clearinghouse at such tax rate charged on surplus lines transactions in such other compacting states and contracting states on the portion of the risk in each such compacting state and contracting state as



determined by the applicable uniform allocation formula adopted by the commission. A policy considered to be independently procured insurance in the insured's home state shall be considered independently procured insurance in all compacting states and contracting states. Each compacting state and contracting state shall require the insured to pay every other compacting state and contracting state the independently procured insurance premium tax on each multi-state risk through the clearinghouse pursuant to the uniform allocation formula adopted by the commission.

(13) Uniform foreign insurer eligibility requirements as authorized by NRRA.

(14) A uniform policyholder notice.

(15) Uniform treatment of purchasing group surplus lines insurance placements.

#### § 5056. POWERS OF THE COMMISSION

The commission shall have the powers to:

(1) adopt rules and operating procedures, pursuant to section 5059 of this chapter, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(2) bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

(3) issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, provided however, the commission is not empowered to demand or subpoena records or data from non-admitted insurers;

(4) establish and maintain offices including the creation of a clearinghouse for the receipt of premium tax and clearinghouse transaction data regarding non-admitted insurance of multi-state risks, single-state risks for states which elect to require surplus lines licensees to pay premium tax on single state risks through the clearinghouse and tax reporting forms;

(5) purchase and maintain insurance and bonds;

(6) borrow, accept or contract for services of personnel, including, but not limited to, employees of a compacting state or stamping office, pursuant to an open, transparent, objective, competitive process and procedure adopted by the commission;

(7) hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications, pursuant to an open, transparent, objective competitive process and procedure adopted by the commission; and to establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel, and other related personnel matters;

(8) accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, use and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety and/or conflict of interest;

(9) lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(10) sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(11) provide for tax audit rules and procedures for the compacting states with respect to the allocation of premium taxes, including:

(A) Minimum audit standards, including sampling methods.

(B) Review of internal controls.

(C) Cooperation and sharing of audit responsibilities between compacting states.

(D) Handling of refunds or credits due to overpayments or improper allocation of premium taxes.

(E) Taxpayer records to be reviewed including a minimum retention period.

(F) Authority of compacting states to review, challenge, or re-audit taxpayer records.

(12) enforce compliance by compacting states and contracting states with rules, and bylaws pursuant to the authority set forth in section 5065 of this chapter;

(13) provide for dispute resolution among compacting states and contracting states;

(14) advise compacting states and contracting states on tax-related issues relating to insurers, insureds, surplus lines licensees, agents or brokers

domiciled or doing business in non-compacting states, consistent with the purposes of this compact;

(15) make available advice and training to those personnel in state stamping offices, state insurance departments or other state departments for record keeping, tax compliance, and tax allocations; and to be a resource for state insurance departments and other state departments;

(16) establish a budget and make expenditures;

(17) borrow money;

(18) appoint and oversee committees, including advisory committees comprised of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(19) establish an executive committee of not less than seven nor more than 15 representatives, which shall include officers elected by the commission and such other representatives as provided for herein and determined by the bylaws. Representatives of the executive committee shall serve a one year term. Representatives of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the commission, with the exception of rulemaking, during periods when the commission is not in session. The executive committee shall oversee the day to day activities of the administration of the compact, including the activities of the operations committee created under this section and compliance and enforcement of the provisions of the compact, its bylaws and rules, and such other duties as provided herein and as deemed necessary.

(20) establish an operations committee of not less than seven and not more than 15 representatives to provide analysis, advice, determinations, and recommendations regarding technology, software, and systems integration to be acquired by the commission and to provide analysis, advice, determinations and recommendations regarding the establishment of mandatory rules to be adopted to be by the commission.

(21) enter into contracts with contracting states so that contracting states can use the services of and fully participate in the clearinghouse subject to the terms and conditions set forth in such contracts;

(22) adopt and use a corporate seal; and

(23) perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

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§ 5057. ORGANIZATION OF THE COMMISSION

(a)(1) Membership, voting, and bylaws. Each compacting state shall have and be limited to one member. Each state shall determine the qualifications and the method by which it selects a member and set forth the selection process in the enabling provision of the legislation which enacts this compact. In the absence of such a provision the member shall be appointed by the governor of such compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists.

(2) Each member shall be entitled to one vote and shall otherwise have an opportunity to participate in the governance of the commission in accordance with the bylaws.

(3) The commission shall, by a majority vote of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact including:

(A) establishing the fiscal year of the commission;

(B) providing reasonable procedures for holding meetings of the commission, the executive committee, and the operations committee;

(C) providing reasonable standards and procedures for the establishment and meetings of committees, and for governing any general or specific delegation of any authority or function of the commission;

(D) providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' and surplus lines licensees' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting *in toto* or in part. As soon as practicable, the commission must make public:

(i) a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and

(ii) votes taken during such meeting;

(E) establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;

(F) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(G) adopting a code of ethics to address permissible and prohibited activities of commission members and employees;

(H) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and reserving of all of its debts and obligations;

(4) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

(b)(1) Executive committee, personnel, and chairperson. An executive committee of the commission shall be established. All actions of the executive committee, including compliance and enforcement are subject to the review and ratification of the commission as provided in the bylaws.

(2) The executive committee shall have no more than 15 representatives, or one for each state if there are less than 15 compacting states, who shall serve for a term and be established in accordance with the bylaws.

(3) The executive committee shall have such authority and duties as may be set forth in the bylaws, including:

(A) managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(B) establishing and overseeing an organizational structure within, and appropriate procedures for the commission to provide for the creation of rules and operating procedures.

(C) overseeing the offices of the commission; and

(D) planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

(4) The commission shall annually elect officers from the executive committee, with each having such authority and duties, as may be specified in the bylaws.

(5) The executive committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such

terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other persons as may be authorized by the commission.

(c)(1) Operations committee. An operations committee shall be established. All actions of the operations committee are subject to the review and oversight of the commission and the executive committee and must be approved by the commission. The executive committee will accept the determinations and recommendations of the operations committee unless good cause is shown why such determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the operations committee shall be resolved by the majority vote of the commission.

(2) The operations committee shall have no more than 15 representatives or one for each state if there are less than 15 compacting states, who shall serve for a term and shall be established as set forth in the bylaws.

(3) The operations committee shall have responsibility for:

(A) evaluating technology requirements for the clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the clearinghouse technology systems with state and state stamping office technology platforms and to minimize costs to the states, state stamping offices and the clearinghouse;

(B) making recommendations to the executive committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with existing state and state stamping office systems;

(C) evaluating the most suitable proposals for adoption as mandatory rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the executive committee its determinations and recommendations; and

(D) such other duties and responsibilities as are delegated to it by the bylaws, the executive committee, or the commission.

(4) All representatives of the operations committee shall be individuals who have extensive experience or employment in the surplus lines insurance business, including executives and attorneys employed by surplus line insurers, surplus line licensees, law firms, state insurance departments, or state stamping offices. Operations committee representatives from compacting states which use the services of a state stamping office must appoint the chief operating

officer or a senior manager of the state stamping office to the operations committee.

(d)(1) Legislative and advisory committees. A legislative committee comprised of state legislators or their designees shall be established to monitor the operations of and make recommendations to, the commission, including the executive committee. The manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget or other significant matter as may be provided in the bylaws, the executive committee shall consult with and report to the legislative committee.

(2) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(e) Corporate records of the commission. The commission shall maintain its corporate books and records in accordance with the bylaws.

(f)(1) Qualified immunity, defense, and indemnification. The members, officers, executive director, employees, and representatives of the commission, the executive committee, and any other committee of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. Nothing in this subdivision shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(2) The commission shall defend any member, officer, executive director, employee, or representative of the commission, the executive committee, or any other committee of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act error or omission did not result from that person's intentional or willful or wanton misconduct. Nothing herein shall be construed to prohibit that person from retaining his or her own counsel.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission, executive committee, or any other committee of the commission for the

amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional or willful or wanton misconduct of that person.

§ 5058. MEETINGS AND ACTS OF THE COMMISSION

(a) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(b) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(c) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(d) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or otherwise provided in the compact.

(e) The commission shall adopt rules concerning its meetings consistent with the principles contained in the "Government in the Sunshine Act," 5 U.S.C. § 552b, as may be amended.

(f) The commission and its committees may close a meeting, or portion thereof, where it determines by majority vote that an open meeting would be likely to:

(1) relate solely to the commission's internal personnel practices and procedures;

(2) disclose matters specifically exempted from disclosure by federal and state statute;

(3) disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) involve accusing a person of a crime, or formally censuring a person;

(5) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;



(6) disclose investigative records compiled for law enforcement purposes; or

(7) specifically relate to the commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(g) For a meeting, or a portion of a meeting, closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission.

§ 5059. RULES AND OPERATING PROCEDURES; RULEMAKING FUNCTIONS OF THE COMMISSION

(a) Rulemaking authority. The commission shall adopt reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force or effect.

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

(c) Effective date. All rules and amendments, thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

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

§ 5060. COMMISSION RECORDS; ENFORCEMENT

(a) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals, insurers, insureds, or surplus lines licensee trade secrets. State transaction documentation and clearinghouse transaction data collected by the clearinghouse shall be used for only those purposes expressed in or reasonably implied under the provisions of this compact and the commission shall afford this data the broadest protections as permitted by any applicable law for proprietary information, trade secrets, or personal data. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(b) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state member of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any member, and the commission shall maintain the confidentiality of any information provided by a member that is confidential under that member's state law.

(c) The commission shall monitor compacting states for compliance with duly adopted bylaws and rules. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws or rules. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in section 5065 of this chapter.

#### § 5061. DISPUTE RESOLUTION

(a) Before a member may bring an action in a court of competent jurisdiction for violation of any provision, standard, or requirement of the compact, the commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, contracting states or

noncompacting states, and the commission shall adopt a rule providing alternative dispute resolution procedures for such disputes.

(b) The commission shall also provide alternative dispute resolution procedures to resolve any disputes between insureds or surplus lines licensees concerning a tax calculation or allocation or related issues which are the subject of this compact.

(c) Any alternative dispute resolution procedures shall be used in circumstances where a dispute arises as to which state constitutes the home state.

#### § 5062. REVIEW OF COMMISSION DECISIONS

(a) Except as necessary for adopting rules to fulfill the purposes of this compact, the commission shall not have authority to otherwise regulate insurance in the compacting states.

(b) Not later than 30 days after the commission has given notice of any rule or allocation formula, any third party filer or compacting state may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in making compliance or tax determinations acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection 5054(f) of this chapter.

(c) The commission shall have authority to monitor, review and reconsider commission decisions upon a finding that the determinations or allocations do not meet the relevant rule. Where appropriate, the commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in subsection (b) of this section.

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§ 5063. FINANCE

(a) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations the commission may accept contributions, grants, and other forms of funding from the state stamping offices, compacting states, and other sources.

(b) The commission shall collect a fee payable by the insured directly or through a surplus lines licensee on each transaction processed through the compact clearinghouse, to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(c) The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in section 5059 of this chapter.

(d) The commission shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by any state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange.

(e) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements for all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but not less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner, the controller, or the stamping office of any compacting state upon request provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals, and licensees' and insurers' proprietary information, including trade secrets, shall remain confidential.

(f) No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

(g) The commission shall not make any political contributions to candidates for elected office, elected officials, political parties, nor political action committees. The commission shall not engage in lobbying except with respect to changes to this compact.

§ 5064. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(a) Any state is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states, provided the commission shall become effective for purposes of adopting rules, and creating the clearinghouse when there are a total of 10 compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than 40 percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance premium set forth in section 5069 of this chapter. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. Notwithstanding the foregoing, the clearinghouse operations and the duty to report clearinghouse transaction data shall begin on the first January 1 or July 1 following the first anniversary of the commission effective date. For states which join the compact subsequent to the effective date, a start date for reporting clearinghouse transaction data shall be set by the commission provided surplus lines licensees and all other interested parties receive not less than 90 days advance notice.

(c) Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

§ 5065. WITHDRAWAL; DEFAULT; TERMINATION

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

(2) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective.

except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the commission.

(3) The member of the withdrawing state shall immediately notify the executive committee of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(4) The commission shall notify the other compacting states of the introduction of such legislation within 10 days after its receipt of notice thereof.

(5) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state, the commission's determinations prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the commission.

(6) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(b)(1) Default. If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or duly adopted rules then after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Decisions of the commission that are issued on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subdivision (1) of this subsection.

(3) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(c)(1) Dissolution of compact. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall have no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the rules and bylaws.

#### § 5066. SEVERABILITY AND CONSTRUCTION

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

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

(c) Throughout this compact the use of the singular shall include the plural and vice-versa.

(d) The headings and captions of articles, sections, and subsections used in this compact are for convenience only and shall be ignored in construing the substantive provisions of this compact.

#### § 5067. BINDING EFFECT OF COMPACT AND OTHER LAWS

(a)(1) Other laws. Nothing herein prevents the enforcement of any other law of a compacting state except as provided in subdivision (2) of this subsection.

(2) Decisions of the commission, and any rules, and any other requirements of the commission shall constitute the exclusive rule or determination applicable to the compacting states. Any law or regulation regarding non-admitted insurance of multi-state risks that is contrary to rules of the commission is preempted with respect to the following:

(A) clearinghouse transaction data reporting requirements;

(B) the allocation formula;

(C) clearinghouse transaction data collection requirements;

(D) premium tax payment time frames and rules concerning dissemination of data among the compacting states for non-admitted insurance of multi-state risks and single-state risks;

(E) exclusive compliance with surplus lines law of the home state of the insured;

(F) rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to non-admitted insurance of multi-state risks;

(G) uniform foreign insurers eligibility requirements;

(H) uniform policyholder notice; and

(I) uniform treatment of purchasing groups procuring non-admitted insurance.

(3) Except as stated in subdivision (2) of this subsection, any rule, uniform standard, or other requirement of the commission shall constitute the exclusive provision that a commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict:

(A) the access of any person to state courts;

(B) the availability of alternative dispute resolution under section 5061 of this chapter;

(C) the remedies available under state law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations;

(D) state law relating to the construction of insurance contracts; or

(E) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

(b)(1) Binding effect of this compact. All lawful actions of the commission, including all rules adopted by the commission, are binding upon the compacting states, except as provided herein.

(2) All agreements between the commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute. This provision may be implemented by rule at the discretion of the commission.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that state and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or



jurisdiction are delegated by law in effect at the time this compact becomes effective.

§ 5068. VERMONT COMMISSION MEMBER; SELECTION

The Vermont member of the commission shall be the commissioner of banking, insurance, securities, and health care administration or designee.

§ 5069. SURPLUS LINE INSURANCE PREMIUMS BY STATE

<u>State</u>	<u>Premiums based on taxes paid (\$)</u>	<u>Share of Total Premiums (%)</u>
<u>Alabama</u>	<u>445,746,000</u>	<u>1.47</u>
<u>Alaska</u>	<u>89,453,519</u>	<u>0.29</u>
<u>Arizona</u>	<u>663,703,267</u>	<u>2.18</u>
<u>Arkansas</u>	<u>201,859,750</u>	<u>0.66</u>
<u>California</u>	<u>5,622,450,467</u>	<u>18.49</u>
<u>Colorado</u>	<u>543,781,333</u>	<u>1.79</u>
<u>Connecticut</u>	<u>329,358,800</u>	<u>1.08</u>
<u>Delaware</u>	<u>92,835,950</u>	<u>0.31</u>
<u>Florida</u>	<u>2,660,908,760</u>	<u>8.75</u>
<u>Georgia</u>	<u>895,643,150</u>	<u>2.95</u>
<u>Hawaii</u>	<u>232,951,489</u>	<u>0.77</u>
<u>Idaho</u>	<u>74,202,255</u>	<u>0.24</u>
<u>Illinois</u>	<u>1,016,504,629</u>	<u>3.34</u>
<u>Indiana</u>	<u>412,265,320</u>	<u>1.36</u>
<u>Iowa</u>	<u>135,130,933</u>	<u>0.44</u>
<u>Kansas</u>	<u>160,279,300</u>	<u>0.53</u>
<u>Kentucky</u>	<u>167,996,133</u>	<u>0.55</u>
<u>Louisiana</u>	<u>853,173,280</u>	<u>2.81</u>
<u>Maine</u>	<u>60,111,200</u>	<u>0.20</u>
<u>Maryland</u>	<u>434,887,600</u>	<u>1.43</u>
<u>Massachusetts</u>	<u>708,640,225</u>	<u>2.33</u>
<u>Michigan</u>	<u>703,357,040</u>	<u>2.31</u>

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<u>Minnesota</u>	<u>393,128,400</u>	<u>1.29</u>
<u>Mississippi</u>	<u>263,313,175</u>	<u>0.87</u>
<u>Missouri</u>	<u>404,489,860</u>	<u>1.33</u>
<u>Montana</u>	<u>64,692,873</u>	<u>0.21</u>
<u>Nebraska</u>	<u>92,141,167</u>	<u>0.30</u>
<u>Nevada</u>	<u>354,271,514</u>	<u>1.17</u>
<u>New Hampshire</u>	<u>102,946,250</u>	<u>0.34</u>
<u>New Jersey</u>	<u>1,087,994,033</u>	<u>3.58</u>
<u>New Mexico</u>	<u>67,608,458</u>	<u>0.22</u>
<u>New York</u>	<u>2,768,618,083</u>	<u>9.11</u>
<u>North Carolina</u>	<u>514,965,060</u>	<u>1.69</u>
<u>North Dakota</u>	<u>36,223,943</u>	<u>0.12</u>
<u>Ohio</u>	<u>342,000,000</u>	<u>1.12</u>
<u>Oklahoma</u>	<u>319,526,400</u>	<u>1.05</u>
<u>Oregon</u>	<u>312,702,150</u>	<u>1.03</u>
<u>Pennsylvania</u>	<u>780,666,667</u>	<u>2.57</u>
<u>Rhode Island</u>	<u>71,794,067</u>	<u>0.24</u>
<u>South Carolina</u>	<u>412,489,825</u>	<u>1.36</u>
<u>South Dakota</u>	<u>38,702,120</u>	<u>0.13</u>
<u>Tennessee</u>	<u>451,775,240</u>	<u>1.49</u>
<u>Texas</u>	<u>3,059,170,454</u>	<u>10.06</u>
<u>Utah</u>	<u>142,593,412</u>	<u>0.47</u>
<u>Vermont</u>	<u>41,919,433</u>	<u>0.14</u>
<u>Virginia</u>	<u>611,530,667</u>	<u>2.01</u>
<u>Washington</u>	<u>739,932,050</u>	<u>2.43</u>
<u>West Virginia</u>	<u>130,476,250</u>	<u>0.43</u>
<u>Wisconsin</u>	<u>248,758,333</u>	<u>0.82</u>
<u>Wyoming</u>	<u>40,526,967</u>	<u>0.13</u>
<u>Total</u>	<u>30,400,197,251</u>	<u>100.00</u>

**\*\*\* NRRA Conforming Amendments to Existing VT Laws \*\*\***

Sec. 2. 8 V.S.A. § 5022 is amended to read:

§ 5022. DEFINITIONS

~~For the purposes of this chapter:~~

~~(1) “Surplus lines insurance” means coverage not procurable from admitted insurers.~~

~~(2) “Surplus lines broker” means an individual licensed pursuant to this chapter and chapter 131 of this title.~~

~~(3) “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.~~

~~(4) “Domestic risk” means a subject of insurance which is resident, located or to be performed in this state.~~

~~(5) “To export” means to place surplus lines insurance with a non-admitted insurer.~~

~~(6) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.~~

~~(7) “Admitted insurer” means an insurer possessing a certificate of authority to transact business in this state issued by the commissioner pursuant to section 3361 of this title.~~

(a) Notwithstanding subsection (b) of this section, as used in this chapter, unless the context requires otherwise, words and phrases shall have the meaning given under Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, as amended.

(b) For purposes of this chapter:

(1) “Admitted insurer” means an insurer possessing a certificate of authority to transact business in this state issued by the commissioner pursuant to section 3361 of this title.

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

(3) “Domestic risk” means a subject of insurance which is resident, located, or to be performed in this state.

(4) “To export” means to place surplus lines insurance with a non-admitted insurer.

(5) “Home state” means, with respect to an insured:

(A)(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located outside the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term "home state" means the home state, as determined pursuant to subdivision (A) of this subdivision (5), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(6) "NAIC" means the national association of insurance commissioners.

(7) "Surplus lines broker" means an individual licensed under this chapter and chapter 131 of this title.

(8) "Surplus lines insurance" means coverage not procurable from admitted insurers.

(9) "Surplus lines insurer" means a non-admitted insurer with which insurance coverage may be placed under this chapter.

Sec. 3. 8 V.S.A. § 5024 is amended to read:

§ 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

(a) Insurance coverage, except as described in section 5025 of this chapter, shall not be placed with a nonadmitted insurer unless the full amount of insurance required is not reasonably procurable from admitted insurers actually transacting that kind and class of insurance in this state; and the amount of insurance exported shall be only the excess over the amount procurable from admitted insurers actually transacting and insuring that kind and class of insurance.

(b) Notwithstanding any other provision of this section, the commissioner may order eligible for export any class or classes of insurance coverage or risk for which he or she finds there to be an inadequate competitive market among admitted insurers either as to acceptance of the risk, contract terms or premium or premium rate.

(c) The due diligence search for reasonably procurable insurance coverage required under subsection (a) of this section is not required for an exempt commercial purchaser, provided:

(1) the surplus lines broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may be available from an admitted insurer and may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the surplus lines broker to procure or place such insurance from a nonadmitted insurer.

Sec. 4. 8 V.S.A. § 5025 is amended to read:

§ 5025. EXCEPTIONS CONCERNING PLACEMENT OF INSURANCE WITH NONADMITTED INSURERS; RECORDS

The provisions of this chapter controlling the placement of insurance with nonadmitted insurers shall not apply to life insurance, health insurance, annuities, or reinsurance, nor to the following insurance when so placed by any licensed producer in this state:

(1) insurance on subjects ~~located, resident, or to be performed wholly outside this state~~ whose home state is other than Vermont;

\* \* \*

Sec. 5. 8 V.S.A. § 5026 is amended to read:

§ 5026. SOLVENT INSURERS REQUIRED

(a) ~~Surplus~~ Where Vermont is the home state of the insured, surplus lines brokers shall not knowingly place or continue surplus lines insurance with nonadmitted insurers who are insolvent or unsound financially, and in no event shall any surplus lines broker place any insurance with a nonadmitted insurer unless such insurer:

(1) ~~has paid to the commissioner an initial fee of \$100.00 and an annual listing fee of \$300.00, payable before March 1 of each year;~~

(2) ~~has furnished the commissioner with a certified copy of its current annual statement; and~~

(3) ~~has and maintains capital, surplus or both to policyholders in an amount not less than \$10,000,000.00; and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:~~

(A) the minimum capital and surplus requirements under the law of this state; or

(B) \$15,000,000.00; and

~~(4)(2) if an alien insurer, in addition to the requirements of subdivisions (1), (2), and (3) of this subsection, has established a trust fund in a minimum amount of \$2,500,000.00 within the United States maintained in and administered by a bank that is a member of the Federal Reserve System and held for the benefit of all of its insurer's policyholders and beneficiaries in the United States. In the case of an association of insurers, which association~~

~~includes unincorporated individual insurers, they shall maintain in a bank that is a member of the Federal Reserve System assets held in trust for all their policyholders and beneficiaries in the United States of not less than \$50,000,000.00 in lieu of the foregoing trust fund requirement. These trust funds or assets held in trust shall consist of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance is listed on the quarterly listing of alien insurers maintained by the NAIC international insurers department.~~

(b) Notwithstanding the capital and surplus requirements of this section, a non-admitted insurer may receive approval upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment-income trends, market availability, and company record and reputation within the industry. In no event, however, shall the commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4,500,000.00.

(c) The commissioner may from time to time publish a list of all nonadmitted insurers deemed by him or her to be currently eligible surplus lines insurers under the provisions of this section, and shall mail a copy of such list to each surplus lines broker. The commissioner may satisfy this subsection by adopting the list of approved surplus lines insurers published by the Nonadmitted Insurers Information Office of the National Association of Insurance Commissioners. This subsection shall not be deemed to cast upon the commissioner the duty of determining the actual financial condition or claims practices of any nonadmitted insurer; and the status of eligibility, if granted by the commissioner, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the commissioner has no credible evidence to the contrary. While any such list is in effect, the surplus lines broker shall restrict to the insurers so listed all surplus lines insurance business placed by him or her. However, upon the request of a surplus lines broker or an insured, the commissioner may deem a nonadmitted insurer to be an eligible surplus lines insurer for purposes of this subsection prior to publication of the name of such surplus lines insurer on the list.

Sec. 6. 8 V.S.A. § 5027(a) is amended to read:

(a) Upon Where Vermont is the home state of the insured, the surplus lines broker, upon placing a domestic risk with a surplus lines insurer, the surplus lines broker shall promptly deliver to the insured the policy issued by the

surplus lines insurer, or if such policy is not then available, a certificate, cover note, or other confirmation of insurance, showing the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and surplus lines insurer. If the risk is assumed by more than one insurer, the document or documents shall state the name and address and proportion of the entire risk assumed by each insurer.

Sec. 7. 8 V.S.A. § 5028 is amended to read:

§ 5028. INFORMATION REQUIRED ON CONTRACT

~~Each~~ Where Vermont is the home state of the insured, each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number, and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped or written conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any, “The company issuing this policy has not been licensed by the state of Vermont and the rates charged have not been approved by the commissioner of insurance. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association.”

Sec. 8. 8 V.S.A. § 5033(a) is amended to read:

(a) ~~Each~~ Where Vermont is the home state of the insured, each surplus lines broker shall keep in his or her office a full and true record of each surplus lines insurance contract covering a domestic risk placed by or through him or her with a surplus lines insurer, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

\* \* \*

Sec. 9. 8 V.S.A. § 5035(a) is amended to read:

(a) ~~Gross~~ Where Vermont is the home state of the insured, gross premiums charged, less any return premiums, for surplus lines coverages placed with nonadmitted insurers are subject to a premium receipts tax of three percent, which shall be collected from the insured by the surplus lines broker at the time of delivery of policy or other confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance shall be returned to the policyholder by the surplus lines broker. Nothing contained in this section will preclude a surplus lines broker from charging a fee to the purchaser of the contract sufficient to recover the amount of this tax.

Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable shall be computed based on gross premiums charged, less any return premiums, as follows:

(1) An amount equal to three percent on that portion of the premiums applicable to properties, risks, or exposures located or to be performed in Vermont; plus

(2) An amount equal to a percentage on that portion of the premiums applicable to properties, risks, or exposures located or to be performed outside Vermont. Such percentage shall be determined based on the laws of the jurisdiction within which the property, risk, or exposure is located or to be performed.

Sec. 10. 8 V.S.A. § 5036 is amended to read:

§ 5036. DIRECT PLACEMENT OF INSURANCE

(a) Every insured and every self-insurer in this state for whom this is their home state who procures or causes to be procured or continues or renews insurance from any non-admitted insurer, covering a subject located or to be performed within this state, other than insurance procured through a surplus lines broker pursuant to this chapter, shall, before March 1 of the year after the year in which the insurance was procured, continued or renewed, file a written report with the commissioner on forms prescribed and furnished by the commissioner. The report shall show:

\* \* \*

Sec. 11. 8 V.S.A. § 5037(7) is amended to read:

(7) ~~Violation~~ Material violation of any provision of this chapter; or

Sec. 12. 8 V.S.A. § 4807 is amended to read:

§ 4807. SURPLUS LINES INSURANCE BROKER

(a) Every surplus lines insurance broker who solicits an application for insurance of any kind, in any controversy between the insured or his or her beneficiary and the insurer issuing any policy upon such application, shall be regarded as representing the insured and his or her beneficiary and not the insurer; except any insurer which directly or through its agents delivers in this state to any surplus lines insurance broker a policy or contract for insurance pursuant to the application or request of the surplus lines insurance broker, acting for an insured other than himself or herself, shall be deemed to have authorized the surplus lines insurance broker to receive on its behalf payment of any premium which is due on the policy or contract for insurance at the time of its issuance or delivery.



(b) [Repealed.]

(c) Notwithstanding any other provision of this title, a person licensed as a surplus lines insurance broker in his or her home state shall receive a nonresident surplus lines insurance broker license pursuant to section 4800 of this chapter.

(d) Not later than July 1, 2012, the commissioner shall participate in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

**\*\*\* Effective Date \*\*\***

Sec. 13. EFFECTIVE DATE

This act shall be effective on passage.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

**Proposal of Amendment Amended; Bill Passed in Concurrence with  
Proposal of Amendment**

**H. 428.**

House bill entitled:

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

Was taken up.

Thereupon, pending third reading of the bill, Senator White moved that the Senate propose to the House to amend the bill by adding a new section to be numbered Sec. 2a to read as follows:

Sec. 2a. PUTNEY EDUCATION PROPERTY TAX LIABILITY

Notwithstanding 32 V.S.A. § 5402(c), the commissioner of education shall use the corrected education grand list values provided by the town of Putney to the department of taxes after March 15, 2011 to calculate Putney's fiscal year 2012 education property tax liability.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

**Third Reading Ordered**

**H. 24.**

Senator Hartwell, for the Committee on Institutions, to which was referred House bill entitled:

An act relating to the maintenance and conveyance of Maidstone Lake Road.

Reported that the bill ought to pass in concurrence.

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

### **House Proposal of Amendment Concurred In with Amendment**

#### **S. 77.**

House proposal of amendment to Senate bill entitled:

An act relating to water testing of private wells.

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. FINDINGS

The general assembly finds and declares that:

(1) The U.S. Environmental Protection Agency and the Vermont department of health estimate that 40 percent of Vermont residents obtain drinking water from groundwater sources.

(2) Property owners currently are not required to test groundwater sources that are a potable water supply serving one single-family residence.

(3) In adults and especially in children, consumption of contaminated groundwater can cause serious health effects, such as digestive problems, kidney problems, blue baby syndrome, and brain damage.

(4) The state lacks a comprehensive database or map identifying where groundwater contamination is prevalent in the state.

(5) To help mitigate the potential health effects of consumption of contaminated groundwater, the state should require testing of all newly developed groundwater sources and should conduct education and outreach regarding the need for property owners to test the water quality of groundwater used in potable water supplies.

(6) The state should utilize tests of groundwater sources to construct a database and map of groundwater contamination in the state so that the department of health can recommend treatment options to property owners in certain parts of the state.

Sec. 2. 10 V.S.A. § 1981 is added to read:

§ 1981. TESTING OF NEW GROUNDWATER SOURCES

(a) As used in this section, “groundwater source” means that portion of a potable water supply that draws water from the ground, including a drilled well, shallow well, driven well point, or spring.

(b) Prior to use of a new groundwater source as a potable water supply, where testing is not otherwise required, the person who owns or controls the groundwater source shall test the groundwater source for the parameters set forth in subsection (c) of this section.

(c) A water sample collected under this section shall be analyzed for, at a minimum: arsenic; lead; uranium; gross alpha radiation; total coliform bacteria, total nitrate and nitrite, fluoride, manganese, and any other parameters required by the agency by rule.

(d) The secretary, after consultation with the department of health, the wastewater and potable water supply technical advisory committee, the Vermont association of realtors, the Vermont home inspectors’ association, private laboratories, and other interested parties, shall adopt by rule requirements regarding:

(1) when, prior to use of a new groundwater source, the test required under subsection (b) of this section shall be conducted;

(2) who shall be authorized to sample the source for the test required under subsection (b) of this section, provided that the rule shall include the person who owns or controls the groundwater source and licensed well drillers among those authorized to conduct the test;

(3) how a water sample shall be collected in order to comply with the requirements of the analyses to be performed; and

(4) any other requirements necessary to implement this section.

Sec. 3. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

(a) The commissioner may certify a laboratory to perform the testing and monitoring required under 10 V.S.A. chapter 56, 10 V.S.A. § 1981, and the federal Safe Drinking Water Act if such laboratory meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent.

(b)(1) The commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the commissioner finds that the certificate holder has:

(A) submitted materially false or materially inaccurate information;  
or

(B) violated any material requirement, restriction or condition of the certificate; or

(C) violated any statute, rule or order relating to this title.

(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the certificate holder to reapply for certification if a previous certificate has been revoked.

(c) A person may appeal the suspension or revocation of the certificate to the board under section 128 of this title.

\* \* \*

(f) In accrediting a laboratory to conduct testing under 10 V.S.A. § 1981, the commissioner shall require a laboratory accredited under this section to submit in an electronic format the results of groundwater analyses conducted pursuant to 10 V.S.A. § 1981 to the department of health and the agency of natural resources.

Sec. 4. 27 V.S.A. § 616 is added to read:

§ 616. GROUNDWATER SOURCE TESTING; DISCLOSURE OF EDUCATIONAL MATERIAL

(a) For purchase and sales agreements executed on or after January 1, 2012, the seller shall, within 72 hours of the execution of a purchase and sales agreement for a property with a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), that is not served by a public water system, as that term is defined in 10 V.S.A. § 1671(5), provide the buyer with informational materials developed by the department of health regarding:

(1) the potential health effects of the consumption of untreated groundwater; and

(2) the buyer's opportunity under the agreement to test the potable water supply.

(b) If a purchase and sales agreement for a property lacks a property inspection and contingency clause that allows for testing of a potable water supply, the buyer of the property may test a potable water supply on that property within 20 days of receipt of the informational materials required

under subsection (a) of this section. If a test taken pursuant to this section reveals the presence of contamination in excess of acceptable limits set by the agency of natural resources for one of the parameters listed in 10 V.S.A. § 1981(c), the buyer, within 20 days of receipt of the informational materials required under subsection (a) of this section, shall have the option to render the purchase and sales agreement unenforceable.

(c) Non-compliance with the requirements of subsection (a) of this section shall not affect the marketability of title.

**Sec. 5. DEPARTMENT OF HEALTH; EDUCATION AND OUTREACH ON SAFE DRINKING WATER**

The department of health, after consultation with the agency of natural resources, shall revise and update its education and outreach materials regarding the potential health effects of contaminants in groundwater sources of drinking water in order to improve citizen access to such materials and to increase awareness of the need to conduct testing of groundwater sources. In revising and updating its education and outreach materials, the department shall update the online safe water resource guide by incorporating the most current information on the health effects of contaminants, treatment of contaminants, and causes of contamination and by directly linking users to the department of health contaminant fact sheets.

**Sec. 6. EFFECTIVE DATES**

(a) This section and Secs. 1 (findings), 3 (certification of laboratories), and 5 (department of health; education and outreach) of this act shall take effect upon passage.

(b) Sec. 2 (testing of new groundwater sources) of this act shall take effect upon passage, except that 10 V.S.A. § 1981(b) (the requirement to test new groundwater sources) shall take effect on January 1, 2013.

(c) Sec. 4 (disclosure of educational material) of this act shall take effect on January 1, 2012.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Lyons moves that the Senate concur in the House proposal of amendment with a proposal of amendment in Sec. 4, 27 V.S.A. § 616, by striking out subsection (b) in its entirety and by relettering the remaining subsection to be alphabetically correct.

Which was agreed to.

**Report of Committee of Conference Accepted and Adopted on the Part of  
the Senate**

**H. 38.**

Senator Mullin, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

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

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

Respectfully reports that it has met and considered the same and recommends that it has met and considered the same and recommends that the House accede to the Senate proposals of amendment, and that the bill be further amended:

First: In Sec. 1, 16 V.S.A. § 806l, subsection A, subdivision 1, in the second sentence, by striking the words “provisions of this compact and the rules promulgated hereunder” and inserting in lieu thereof the words rules promulgated under this compact

Second: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 2 to read as follows:

Sec. 2. 16 V.S.A. § 164(20) is added to read:

(20) Pursuant to section 806g of this title, constitute the State Council for the Interstate Compact on Educational Opportunity for Military Children and appoint to the council a compact commissioner and military family education liaison, who may be the same person. The board may appoint additional members.

*KEVIN J. MULLIN  
ROBERT A. STARR  
VIRGINIA V. LYONS*

*Committee on the part of the Senate*

*PHILIP PELTZ  
BRIAN A. CAMPION  
PATTI J. LEWIS*

*Committee on the part of the House*

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

**Report of Committee of Conference Accepted and Adopted on the Part of the Senate; Point of Order Sustained; Report of Committee of Conference Discarded**

**H. 91.**

Senator Benning, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

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

An act relating to the management of fish and wildlife.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposal of amendment, and that the bill be further amended as follows:

First: By striking out Sec. 11 in its entirety.

Second: By striking out Secs. 13 and 14 in their entirety and inserting in lieu thereof the following:

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

Sec. 13. FINDINGS

The general assembly finds and declares:

(1) The forests of Vermont are integral to the economy, culture, beauty, and appeal of the state.

(2) Each 1,000 acres of forestland in Vermont supports 1.4 forest-based manufacturing, forestry, and logging jobs and 1.4 forest-related tourism and recreation jobs.

(3) Vermont landowners received estimated stumpage revenue in 2005 of \$31.5 million.

(4) The sale of Christmas trees, wreaths, and maple syrup contributed approximately \$22 million in 2005.

(5) White-tailed deer in Vermont are also important socially, culturally, ecologically, and economically.

(6) Under 10 V.S.A. § 4081, an abundant, healthy deer herd is a primary goal of fish and wildlife management in Vermont.

(7) Activities related to white-tailed deer such as hunting, photographing, and viewing generate in excess of \$157 million annually in Vermont, and the revenue generated from deer hunting is dispersed throughout the state's rural communities in the form of food, gasoline, and lodging expenditures.

(8) In parts of Vermont, however, the state's distinct interests in forestland and the deer herd are in conflict where deer populations have damaged existing woodlots and destroyed efforts to reseed or regenerate saplings.

(9) The existing authority to take deer doing damage to crops has been interpreted by the department of fish and wildlife as applying to trees or plantations cultivated for an annual or perennial crop and not to land managed for the production of other marketable forest products.

(10) An abundant, healthy deer herd is a primary goal of fish and wildlife management, but the deer herd should be managed in balance with other forest species, forest uses, and forest health.

(11) The general assembly should clarify the authority of a land owner to take deer doing damage to land managed for the production of marketable forest products in order to mitigate the existing conflicts between management of forestland and the management of the deer herd.



Sec. 13a. 10 V.S.A. § 4826 is amended to read:

§ 4826. TAKING DEER DAMAGING CROPS

(a) A person, including an authorized member of the person's family, an authorized regular on-premises employee, or an agent who holds a valid Vermont hunting license and who is designated by the person, may take, with the approval of a game warden, on land owned or ~~occupied~~ leased by the person, up to four deer per calendar year which the person can prove were doing damage to the following:

- (1) a tree which is being grown in a plantation, being grown for the production of a commercial sawlog, or being grown or cultivated for the purpose of harvesting an annual or perennial crop or producing any marketable item; or
- (2) a crop-bearing plant; or
- (3) a crop, except grass.

\* \* \*

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

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

(g) The commissioner may issue a permit to a person to take more than four deer under this section if:

- (1) the land owned by the person is not posted against hunting;
- (2) the person ~~can prove~~ proves that the property is sustaining additional and ongoing damage; and
- (3) the person has taken reasonable measures to prevent the deer from continuing to damage the crop or to damage trees on land managed for the production of marketable forest products.

\* \* \*

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

(a) The commissioner of fish and wildlife shall convene a working group to review and recommend methods for addressing or limiting damage by deer to trees, saplings, and seedlings on land managed for the production of

marketable forest products and to assess land access issues related to wildlife management. The working group shall consist of the commissioner or his or her designee and the following members to be appointed by the commissioner:

- (1) two qualified foresters;
- (2) two owners of land managed for the production of marketable forest products;
- (3) two members of the fish and wildlife board;
- (4) two wildlife biologists with knowledge of the state deer herd or of the impact of deer on forestland; and
- (5) two persons who hold a valid Vermont hunting license.

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

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

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

Sec. 14a. 10 V.S.A. § 4826 is amended to read:

§ 4826. TAKING DEER DAMAGING CROPS

(a) A person, including an authorized member of the person's family, an authorized regular on-premises employee, or an agent who holds a valid Vermont hunting license and who is designated by the person, may take, with the approval of a game warden, on land owned or leased by the person, up to four deer per calendar year which the person can prove were doing damage to the following:

- (1) a tree which is being grown in a plantation, ~~being grown for the production of a commercial sawlog, or being grown or~~ cultivated for the purpose of harvesting an annual or perennial crop or producing any marketable item; or
- (2) a crop-bearing plant; or
- (3) a crop, except grass.

\* \* \*

(f)(1) "Person" includes all people who jointly own or lease the land.

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

\* \* \*

(g) The commissioner may issue a permit to a person to take more than four deer under this section if:

- (1) the land owned by the person is not posted against hunting;
- (2) the person proves that the property is sustaining additional and ongoing damage; and
- (3) the person has taken reasonable measures to prevent the deer from continuing to damage the crop ~~or to damage trees on land managed for the production of marketable forest products.~~

\* \* \*

Third: In Sec. 15, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) This section and Secs. 9 (antlerless permit; post), 10 (landowner hunt exception; post), 11 (deer doing damage; post), 12 (bear doing damage; post), 13 (deer doing damage; findings), 13a (deer doing damage; taking of deer

damaging sawlog trees), 13b (working group on deer doing damage), and 14 (outreach and education) of this act shall take effect on passage.

And by inserting subsection (d) to read as follows:

(d) Sec. 14a (repeal of authority to take deer damaging land managed for commercial sawlogs) of this act shall take effect July 1, 2014.

*VIRGINIA V. LYONS*

*JOSEPH C. BENNING*

*RICHARD J. MCCORMACK*

*Committee on the part of the Senate*

*KATHRYN L. WEBB*

*DAVID L. DEEN*

*ROBERT C. KREBS*

*Committee on the part of the House*

Thereupon, pending the question, Shall the Senate accept and adopt the Report of the Committee of Conference?, Senator Starr raised a point of order on the ground that the Committee of Conference failed to adhere to the requirements of Sec. 771.2 of Mason's Manual of Legislative Procedure, as the Second proposal was not in the Senate proposal of amendment, nor in the bill as passed by the House, and that therefore the Committee of Conference did not confine itself to the differences between the two houses and therefore thereupon in its entirety was objectionable and could not be considered by the Senate.

Thereupon, the President sustained the point of order and ruled that the report of the Committee of Conference did go beyond the area of disagreement between the two Houses and therefore was *objectionable* and could *not* be considered by the Senate.

### **Rules Suspended; Joint Resolution Passed**

#### **J.R.H. 19.**

Pending entry on the Calendar for action tomorrow, on motion of Senator Carris, the rules were suspended and Joint House resolution entitled:

Joint resolution supporting the administration's efforts to examine and provide recommendations for improving and increasing the effectiveness of Vermont's state and municipal environmental protection process.

Was placed on all remaining stages of its adoption in concurrence with proposal of amendment.

Thereupon, the joint resolution was read the third time and adopted in concurrence with proposal of amendment.

**Rules Suspended; Bill Passed****H. 24.**

Pending entry on the Calendar for action tomorrow, on motion of Senator Carris, the rules were suspended and Senate bill entitled:

An act relating to the maintenance and conveyance of Maidstone Lake Road.

Was placed on all remaining stages of its passage forthwith.

Thereupon, the bill was read the third time and passed.

**Rules Suspended; Joint Resolution Messaged**

On motion of Senator Carris, the rules were suspended, and the following joint resolution was ordered messaged to the House forthwith:

**J.R.H. 19.****Rules Suspended; Bills Messaged**

On motion of Senator Carris, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

**S. 77, H. 24, H. 38, H. 428.****Rules Suspended; Report of Committee of Conference Accepted and Adopted on the Part of the Senate; Bill Messaged****S. 94.**

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

An act relating to miscellaneous amendments to the motor vehicle laws.

Was taken up for immediate consideration.

Senator Flory, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

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

**S. 94.** An act relating to miscellaneous amendments to the motor vehicle laws.

Respectfully reports that it has met and considered the same and recommends that the Senate concur with the House proposal of amendment, and that the bill be further amended as follows:

First: In Sec. 3, 23 V.S.A. § 304, in subdivision (d)(1), by striking out the following: “, or are “fighting words” inherently likely to provoke violent reaction when addressed to an ordinary citizen”

Second: In Sec. 14, 23 V.S.A. § 2045, in subsections (a) and (b), by striking out the following: “15” and inserting in lieu thereof the following: 12 in each subsection

*MARGARET K FLORY  
M. JANE KITCHEL  
RICHARD T. MAZZA*

*Committee on the part of the Senate*

*DIANE M. LANPHER  
CLEMENT J. BISSONNETTE  
MOLLIE SULLIVAN BURKE*

*Committee on the part of the House*

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was ordered delivered to the Governor forthwith.

### **Appointments Confirmed**

Under suspension of the rules (and particularly, Senate Rule 93), as moved by Senator Campbell, the following Gubernatorial appointments were confirmed together as a group by the Senate, without reports given by the Committees to which they were referred and without debate:

Post, Bruce of Essex Junction – Member, Board of Libraries – November 12, 2010, to February 28, 2014.

Gibbs, Jason of Duxbury – Member, Community High School of Vermont – January 1, 2011, to February 28, 2013

Fitzhugh, John of West Berlin – Member, Board of Libraries – August 19, 2010, to February 29, 2012.

Grillo, Amy W. of Dummerston – Member, Community High School of Vermont Board – November 10, 2010, to February 29, 2012.

Strano, Elizabeth of Bennington – Member State Board of Education – August 4, 2010, to June 30, 2012.

Pelletier, Thomas of Montpelier – Member, Vermont Housing Finance Agency – February 1, 2011, to January 31, 2015.

Boardman, Kathryn T. of Shelburne – Director, Vermont Municipal Bond Bank – February 1, 2011, to January 31, 2013.

Costes, David R. of Colchester – Director, Vermont Municipal Bond Bank – February 1, 2011, to January 31, 2013.

### **Appointments Confirmed**

The following Gubernatorial appointments were confirmed separately by the Senate, upon full reports given by the Committees to which they were referred:

Racine, Douglas A. of Richmond – Secretary of the Agency of Human Services – January 7, 2011, to February 28, 2013.

Flynn, Keith of Derby Line – Commissioner of the Department of Public Safety – January 7, 2011, to February 28, 2013.

Ide, Robert D. of Peacham - Commissioner of the Department of Motor Vehicles, - from January 7, 2011, to February 28, 2013.

Gerety, Robert P., Jr. of White River Junction – Superior Court Judge – December 28, 2010, to March 31, 2013.

Searles, Brian of Burlington – Commissioner of the Agency of Transportation – January 7, 2011, to February 28, 2013.

Reardon, Jim of Essex Junction - Commissioner of the Department of Finance and Management, - from January 7, 2011, to February 28, 2013.

Tomasi, Timothy B. of Montpelier – Superior Court Judge – December 30, 2010, to March 31, 2013.

Duffy, Kate of Williston - Commissioner of the Department of Human Resources, - from January 7, 2011, to February 28, 2013.

Ross, Chuck of Hinesburg - Secretary of Agency of Agriculture, - from January 7, 2011, to February 28, 2013.

Spaulding, George B. “Jeb” of Montpelier – Secretary of Administration, - from January 7, 2011, to February 28, 2013.

Peterson, Mary of Williston - Commissioner of the Department of Taxes, -

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from January 7, 2011, to February 28, 2013.

Wehry, Susan of Burlington – Commissioner of the Department of Disabilities, Aging and Independent Living – January 7, 2011, to February 28, 2013.

Yacovone, Dave of Morrisville – Commissioner of the Department of Children and Families – January 7, 2011, to February 28, 2013.

Oliver, Christine of Montpelier – Commission of the Department of Mental Health – January 7, 2011, to February 28, 2013.

Obuchowski, Michael of Montpelier – Commissioner of the Department of Building and General Services – January 7, 2011, to February 28, 2013.

Besio, Susan Ph.D. of Jericho – Commissioner of the Department of Vermont Health Access – July 1, 2010, to February 28, 2011.

Besio, Susan Ph.D. of Jericho – Commissioner of the Department of Vermont Health Access – January 7, 2011, to February 28, 2013.

Chen, Harry of Mendon – Commissioner of the Department of Health – January 7, 2011, to February 28, 2013.

Pallito, Andrew of Jericho – Commissioner of the Department of Corrections – January 7, 2011, to February 28, 2013.

Mears, David of Montpelier – Commissioner of the Department of Environmental Conservation – January 7, 2011, to February 28, 2013.

Berry, Patrick of Middlebury – Commissioner of the Department of Fish and Wildlife – January 7, 2011, to February 28, 2013.

Kimbell, Steve of Tunbridge - Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration, - from January 7, 2011, to February 28, 2013.

Markowitz, Deborah of Montpelier – Secretary of the Agency of Natural Resources – January 7, 2011, to February 28, 2013.

### **Recess**

On motion of Senator Campbell the Senate recessed until four o'clock and fifteen minutes.

### **Called to Order**

The Senate was called to order by the President.

**Rules Suspended; Report of Committee of Conference Accepted and Adopted on the Part of the Senate; Bill Messaged**



**H. 91.**

Pending entry on the Calendar for notice, on motion of Senator Carris, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to the management of fish and wildlife.

Was taken up for immediate consideration.

Senator Benning, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

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

**H. 91.** An act relating to the management of fish and wildlife.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposal of amendment

*VIRGINIA V. LYONS*

*JOSEPH C. BENNING*

*RICHARD J. MCCORMACK*

*Committee on the part of the Senate*

*KATHRYN L. WEBB*

*DAVID L. DEEN*

*ROBERT C. KREBS*

*Committee on the part of the House*

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Thereupon, on motion of Senator Carris, the rules were suspended and the bill was ordered messaged to the House forthwith.

**Rules Suspended; Third Reading Ordered, Rules Suspended; Bill Passed;  
Bill Messaged**

**H. 451.**

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

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

Was taken up for immediate consideration.

Senator Galbraith, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

Thereupon, on motion of Senator Carris, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence forthwith.

Thereupon, the bill was read the third time and passed in concurrence.

Thereupon, on motion of Senator Carris, the rules were suspended and the bill was ordered messaged to the House forthwith.

### **Rules Suspended; Third Reading Ordered**

#### **H. 455.**

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

An act relating to the enhanced 911 emergency response system.

Was taken up for immediate consideration.

Senator Galbraith, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

### **Committee of Conference Appointed**

#### **H. 264.**

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Nitka  
Senator White  
Senator Snelling

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

**Adjournment**

On motion of Senator Campbell, the Senate adjourned until ten o'clock in the morning.