House Calendar

Monday, March 18, 2013

69th DAY OF THE BIENNIAL SESSION

House Convenes at 1:00 P.M.

TABLE OF CONTENTS

ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 315

An act relating to group health coverage for same-sex spouses

Committee Bill for Second Reading

H. 511

An act relating to "zappers" and automated sales suppression devices.

(Rep. Goodwin of Weston will speak for the Committee on **Judiciary.)**

Favorable with Amendment

H. 136

An act relating to cost-sharing for preventive services

Rep. Till of Jericho, for the Committee on **Health Care,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 4100a is amended to read:

§ 4100a. MAMMOGRAMS; COVERAGE REQUIRED

(a) Insurers shall provide coverage for screening by ~~low-dose~~ mammography for the presence of occult breast cancer, as provided by this subchapter. Benefits provided shall cover the full cost of the mammography service~~, subject to a co-payment no greater than the co-payment applicable to care or services provided by a primary care physician under the insured's policy, provided that no co-payment shall exceed $25.00. Mammography services~~ and shall not be subject to any co-payment, deductible, ~~or~~ coinsurance ~~requirements~~, or other cost-sharing requirement or additional charge.

(b) For females 40 years or older, coverage shall be provided for an annual screening. For females less than 40 years of age, coverage for screening shall be provided upon recommendation of a health care provider.

(c) After January 1, 1994, this section shall apply only to screening procedures conducted by test facilities accredited by the American College of Radiologists.

(d) For purposes of this subchapter:

(1) "Insurer" means any insurance company which provides health insurance as defined in subdivision 3301(a)(2) of this title, nonprofit hospital and medical service corporations, and health maintenance organizations. The term does not apply to coverage for specified disease or other limited benefit coverage.

(2) ~~"Low-dose mammography"~~ "Mammography" means the x-ray examination of the breast using equipment dedicated specifically for mammography, including the x-ray tube, filter, compression device, screens, films and cassettes. ~~The average radiation dose to the breast shall be the lowest dose generally recognized by competent medical authority to be practicable for yielding acceptable radiographic images.~~

(3) "Screening" includes the ~~low-dose~~ mammography test procedure and a qualified physician's interpretation of the results of the procedure, including additional views and interpretation as needed.

Sec. 2. 8 V.S.A. § 4100g is amended to read:

§ 4100g. COLORECTAL CANCER SCREENING, COVERAGE REQUIRED

(a) For purposes of this section:

(1) "Colonoscopy" means a procedure that enables a physician to examine visually the inside of a patient's entire colon and includes the concurrent removal of polyps, biopsy, or both.

(2) "Insurer" means insurance companies that provide health insurance as defined in subdivision 3301(a)(2) of this title, nonprofit hospital and medical services corporations, and health maintenance organizations. The term does not apply to coverage for specified disease or other limited benefit coverage.

(b) Insurers shall provide coverage for colorectal cancer screening, including:

(1) Providing an insured 50 years of age or older with the option of:

(A) Annual fecal occult blood testing plus one flexible sigmoidoscopy every five years; or

(B) One colonoscopy every 10 years.

(2) For an insured who is at high risk for colorectal cancer, colorectal cancer screening examinations and laboratory tests as recommended by the treating physician.

(c) For the purposes of subdivision (b)(2) of this section, an individual is at high risk for colorectal cancer if the individual has:

(1) A family medical history of colorectal cancer or a genetic syndrome predisposing the individual to colorectal cancer;

(2) A prior occurrence of colorectal cancer or precursor polyps;

(3) A prior occurrence of a chronic digestive disease condition such as inflammatory bowel disease, Crohn's disease, or ulcerative colitis; or

(4) Other predisposing factors as determined by the individual's treating physician.

(d) ~~Benefits provided shall cover the colorectal cancer screening subject to a co-payment no greater than the co-payment applicable to care or services provided by a primary care physician under the insured's policy, provided that no co-payment shall exceed $100.00 for services performed under contract with the insurer.~~ Colorectal cancer screening services performed under contract with the insurer ~~also~~ shall not be subject to any co-payment, deductible, ~~or~~ coinsurance ~~requirements~~, or other cost-sharing requirement. In addition, an insured shall not be subject to any additional charge for any service associated with a procedure or test for colorectal cancer screening, which may include one or more of the following:

(1) removal of tissue or other matter;

(2) laboratory services;

(3) physician services;

(4) facility use; and

(5) anesthesia.

(e) ~~If determined to be permitted by Centers for Medicare and Medicaid Services, for a patient covered under the Medicare program, the patient's out-of-pocket expenditure for a colorectal cancer screening shall not exceed $100.00, with the hospital or other health care facility where the screening is performed absorbing the difference between the Medicare payment and the Medicare negotiated rate for the screening.~~ [Deleted.]

Sec. 3. STATUTORY CONSTRUCTION; LEGISLATIVE INTENT

The express enumeration of the services associated with a procedure or test for colorectal cancer in 8 V.S.A. § 4100g(d) shall not be construed to suggest that those services should not also be covered as part of any other procedure or test, even if the provisions of law applicable to the other procedure or test do

not expressly list the associated services in the same manner or to the same extent that they are enumerated in 8 V.S.A. § 4100g(d).

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 11-0-0)

H. 431

An act relating to mediation in foreclosure actions

Rep. Koch of Barre Town, for the Committee on **Judiciary,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. chapter 163, subchapter 9 is amended to read:

Subchapter 9. Mediation in Foreclosure Actions

§ 4631. MEDIATION PROGRAM ESTABLISHED

(a) This subchapter establishes a program to assure the availability of mediation and application of ~~the federal Home Affordable Modification Program ("HAMP")~~ government loss mitigation program requirements in actions for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence.

(b) The requirements of this subchapter shall apply ~~only~~ to all foreclosure actions ~~involving loans that are subject to the federal HAMP guidelines~~ on dwelling houses of four units or less that are occupied by the owner as a principal residence unless:

(1) the loan involved is not subject to any government loss mitigation program requirements;

(2) prior to commencing the foreclosure action, the mortgagee or a representative of the mortgagee met with or made reasonable efforts to meet with the mortgagor in person in Vermont to discuss any applicable loss mitigation options; and

(3) the plaintiff in the foreclosure action certifies in its complaint that the requirements of subdivisions (1) and (2) of this subsection have been satisfied and describes its efforts to meet with the mortgagor in person to discuss applicable loss mitigation efforts.

(c) To be qualified to act as a mediator under this subchapter, an individual shall be licensed to practice law in the ~~state~~ State and shall be periodically required to ~~have taken a~~ take specialized, continuing legal education training

~~course~~ courses on foreclosure prevention or loss mitigation approved by the Vermont Bar Association.

(d) This subchapter shall not apply to a commercial loan.

(e) As used in this subchapter:

(1) "Commercial loan" means any loan described in 9 V.S.A. § 46(1), (2), or (3).

(2) "Government loss mitigation program" means:

(A) the federal Home Affordable Modification Program ("HAMP");

(B) any loss mitigation program for loans owned or guaranteed by government-sponsored entities such as the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the U.S. Federal Housing Administration, or the U.S. Department of Veterans Affairs;

(C) any loss mitigation program for loans guaranteed by the U.S. Department of Agriculture-Rural Development that are not owned by an instrumentality of the United States or the State of Vermont; or

(D) a settlement agreement with a government entity, or any state or federal law or regulation, regarding the notification, consideration, or offer of loss mitigation options.

§ 4632. OPPORTUNITY TO MEDIATE

(a) In an action for foreclosure ~~of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence~~ subject to this subchapter, whenever the mortgagor ~~enters an appearance in the case or~~ requests mediation prior to four months after judgment is entered and before the end of the redemption period specified in the decree, the court shall refer the case to mediation pursuant to this subchapter, except that the court may:

(1) for good cause, shorten the four-month period or thereafter decline to order mediation; or

(2) decline to order mediation if the mortgagor requests mediation after judgment has been entered and the court determines that the mortgagor is attempting to delay the case, or the court may for good cause decline to order mediation if the mortgagor requests mediation after judgment has been entered.

(b) Unless the mortgagee ~~agrees~~ and mortgagor agree otherwise or the court so orders for good cause shown, all mediation shall be completed prior to the expiration of the redemption period specified in the decree and within 120

days of the mediator's appointment. The redemption period shall not be stayed on account of pending mediation.

(c) In an action for foreclosure of a mortgage ~~on any dwelling house of four units or less that is occupied by the owner as a principal residence~~ subject to this subchapter, the mortgagee shall serve upon the mortgagor two copies of the notice described in subsection (d) of this section with the summons and complaint. The ~~supreme court~~ Supreme Court may by rule consolidate this notice with other foreclosure-related notices as long as the consolidation is consistent with the content and format of the notice under this subsection.

(d) The notice required by subsection (c) of this section shall:

(1) be on a form approved by the court administrator;

(2) advise the homeowner of the homeowner's rights in foreclosure proceedings under this subchapter;

(3) state the importance of participating in mediation even if the homeowner is currently communicating with the mortgagee or servicer;

(4) provide contact information for legal services; and

(5) incorporate a form that can be used by the homeowner to request mediation from the court.

(e) ~~The court may, on motion of a party, find that the requirements of this subchapter have been met and that the parties are not required to participate in mediation under this subchapter if the mortgagee files a motion and establishes to the satisfaction of the court that it has complied with the applicable requirements of HAMP and supports its motion with sworn affidavits that:~~

~~(1) include the calculations and inputs required by HAMP and employed by the mortgagee; and~~

~~(2) demonstrate that the mortgagee or servicer met with the mortgagor in person or via videoconferencing or made reasonable efforts to meet with the mortgagor in person.~~

The Vermont Bar Association (VBA) shall have the authority to establish a fair and neutral mediator-selection process. If the mortgagee and mortgagor are unable to select a mediator through the selection process established by the VBA, the court shall appoint a qualified mediator for the case.

§ 4633. MEDIATION

(a) During all mediations under this subchapter:

(1) The parties shall address the available foreclosure prevention tools and, if disputed, the amount due on the note for the principal, interest, and

costs or fees.

~~(1)~~(2) ~~the~~ The mortgagee shall use and consider available foreclosure prevention tools, including reinstatement, loan modification, forbearance, and short sale, and the ~~calculations, assumptions, and forms established by the HAMP guidelines, including all HAMP-related~~ applicable government loss mitigation program requirements and any related "net present value" calculations used in considering a loan modification conducted under this subchapter~~;~~.

~~(2)~~(3) ~~the~~ The mortgagee shall produce for the mortgagor and mediator ~~documentation of its consideration of the options available in this subdivision and subdivision (1) of this subsection, including the data used in and the outcome of any HAMP-related "net present value" calculation; and~~:

(A) if a modification or other agreement is not offered, an explanation why the mortgagor was not offered a modification or other agreement; and

(B) for any applicable government loss mitigation program, the criteria for the program and the inputs and calculations used in determining the homeowner's eligibility for a modification or other program.

~~(3)~~(4) ~~where~~ Where the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, the mortgagee shall produce a copy of the agreement. All agreement documents shall be confidential and shall not be included in the mediator's report.

(b)(1) In all mediations under this subchapter, the mortgagor shall make a good faith effort to provide to the mediator ~~20 days prior to the first mediation, or~~ within a time determined by the ~~mediator to be appropriate in order to allow for verification of the information provided by the mortgagee~~ court or mediator, information on his or her household income, and any other information required by ~~HAMP unless already provided~~ any applicable government loss mitigation program.

(2) Within 45 days of appointment, the mediator shall hold a premediation telephone conference to help the mortgagee and mortgagor complete any necessary document exchange and address other premediation issues. At the premediation telephone conference, the mediator shall at a minimum document and maintain records of the progress the mortgagee and mortgagor are making on financial document production, any review of information that occurs during the conference, any request for additional information, the anticipated time frame for submission of any additional information and the lender's review of the information, the scheduling of the mediation session, and which of the persons identified in subdivision (d)(1) of

this section will be present in person at the mediation or that the parties and the mediator have agreed pursuant to subsection (e) of this section that personal presence at the mediation is not required.

(3) During the mediation, the mediator shall document and maintain records of:

(A) agreements about information submitted to the mediator;

(B) whether a modification or other foreclosure alternative is available and, if so, the terms of the modification;

(C) if a modification or other foreclosure alternative is not available, the reasons for the unavailability; and

(D) the steps necessary to finalize the mediation.

(c) The parties to a mediation under this subchapter shall cooperate in good faith under the direction of the mediator to produce the information required by subsections (a) and (b) of this section in a timely manner so as to permit the mediation process to function effectively.

(d)(1) The following persons shall participate in person or by telephone in any mediation under this subchapter:

(A) the mortgagee, or any other person, including the mortgagee's servicing agent, who meets the qualifications required by subdivision (2) of this subsection;

(B) counsel for the mortgagee; and

(C) the mortgagor, and counsel for the mortgagor, if represented.

(2) The mortgagee or mortgagee's servicing agent, if present, shall have:

(A) authority to agree to a proposed settlement, loan modification, or dismissal of the foreclosure action;

(B) real time access during the mediation to the mortgagor's account information and to the records relating to consideration of the options available in subdivisions ~~(a)(1) and (2)~~ (a)(2) and (a)(3) of this section, including the data and factors considered in evaluating each such foreclosure prevention tool; and

(C) the ability and authority to perform ~~necessary HAMP-related~~ government loss mitigation program-related "net present value" calculations and to consider other options available in subdivisions ~~(a)(1) and (2)~~ (a)(2) and (a)(3) of this section during the mediation.

(e) The mediator may permit a party identified in subdivision (d)(1) of this

section to participate in mediation by telephone or videoconferencing. The mortgagee and mortgagor shall each have at least one of the persons identified in subdivision (d)(1) of this section present in person at the mediation unless all parties and the mediator agree otherwise in writing.

(f) The mediator may include in the mediation process under this subchapter any other person the mediator determines would assist in the mediation.

(g) Unless the ~~parties~~ mortgagee and mortgagor agree otherwise, all mediations under this subchapter shall take place in the county in which the foreclosure action is brought pursuant to subsection ~~4523(a)~~ 4932(a) of this title.

§ 4634. MEDIATION REPORT

(a) Within seven days of the conclusion of any mediation under this subchapter, the mediator shall report in writing the results of the process to the court and both parties, and shall provide a copy of the report to the Office of the Attorney General for data collection purposes. The report shall otherwise be confidential, and shall be exempt from public copying and inspection under 1 V.S.A. § 317.

(b) The report required by subsection (a) of this section shall not disclose the mediator's assessment of any aspect of the case or substantive matters discussed during the mediation, except as is required to report the information required by this section. The report shall contain all of the following items:

(1) The date on which the mediation was held, including the starting and finishing times.

(2) The names and addresses of all persons attending, showing their role in the mediation and specifically identifying the representative of each party who had decision-making authority.

(3) A summary of any substitute arrangement made regarding attendance at the mediation.

(4) All ~~HAMP-related "net present value" calculations and other foreclosure avoidance tool~~ applicable government loss mitigation program criteria, inputs, and calculations performed prior to or during the mediation and all information related to the requirements in subsection 4633(a) of this title.

(5) The results of the mediation, stating whether full or partial settlement was reached and appending any agreement of the parties.

(6)(A) A statement as to whether any person required under subsection ~~(d) of section~~ 4633(d) of this title to participate in the mediation

failed to:

(i) attend the mediation;

(ii) make a good faith effort to mediate; or

(iii) supply documentation, information, or data as required by subsections 4633(a)–(c) of this title.

(B) If a statement is made under subdivision (6)(A) of this subsection (b), it shall be accompanied by a brief description of the applicable reason for the statement.

§ 4635. COMPLIANCE WITH OBLIGATIONS

(a) Upon receipt of a mediator's report required by subsection 4634(a) of this title, the court shall determine whether the mortgagee or servicer has complied with all of its obligations under subsection 4633(a) of this title, and, at a minimum, with any ~~modification obligations under HAMP~~ applicable government loss mitigation program requirements. The court may make such a determination without a hearing unless the court, in its discretion, determines that a hearing is necessary.

(b) If the mediator's report includes a statement under subdivision ~~4635(b)(6)~~ 4634(b)(6) of this title, or if the court makes a determination of noncompliance with the ~~obligations~~ requirements under subsection 4635(a) of this title, the court may impose appropriate sanctions against the noncomplying party, including:

(1) tolling of interest, fees, and costs;

(2) reasonable attorney's fees;

(3) monetary sanctions;

(4) dismissal without prejudice; and

(5) prohibiting the mortgagee from selling or taking possession of the property that is the subject of the action with or without opportunity to cure as the court deems appropriate.

(c) No mediator shall be required to testify in an action subject to this subchapter.

§ 4636. ~~EFFECT OF MEDIATION PROGRAM ON FORECLOSURE ACTIONS FILED PRIOR TO EFFECTIVE DATE~~

~~The court shall, on request of a party prior to judgment or on request of a party and showing of good cause after judgment, require mediation in any foreclosure action on a mortgage on any dwelling house of four units or less~~

~~that is occupied by the owner as a principal residence that was commenced prior to the effective date of this subchapter but only up to 30 days prior to the end of the redemption period.~~ [Repealed.]

§ 4637. NO WAIVER OF RIGHTS; COSTS OF MEDIATION

(a) The parties' rights in a foreclosure action are not waived by their participation in mediation under this subchapter.

(b) The mortgagee shall pay the required costs for any mediation under this subchapter except that the mortgagor shall be responsible for mortgagor's own costs, including the cost of mortgagor's attorney, if any, and travel costs.

(c) If the foreclosure action results in a sale with a surplus, the mortgagee may recover the full cost of mediation to the extent of the surplus. Otherwise, the mortgagee may not shift to the mortgagor the costs of the mortgagee's or the servicing agent's attorney's fees or travel costs related to mediation but may shift up to one-half of the costs of the mediator.

Sec. 2. EFFECTIVE DATE

This act shall take effect on December 1, 2013 and shall apply to any mortgage foreclosure proceeding instituted after that date.

(Committee Vote: 11-0-0)

Favorable

H. 2

An act relating to the Governor's Snowmobile Council

Rep. McCarthy of St. Albans City, for the Committee on **Transportation,** recommends the bill ought to pass.

(Committee Vote: 10-0-1)

Committee Relieved

H. 107

An act relating to health insurance, Medicaid, and the Vermont Health Benefit Exchange

Rep. Woodward of Johnson, for the Committee on **Health Care,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Health Insurance * * *

Sec. 1. 8 V.S.A. § 4079 is amended to read:

§ 4079. GROUP INSURANCE POLICIES; DEFINITIONS

Group health insurance is hereby declared to be that form of health insurance covering one or more persons, with or without their dependents, and issued upon the following basis:

(1)(A) Under a policy issued to an employer, who shall be deemed the policyholder, insuring at least one employee of such employer, for the benefit of persons other than the employer. The term "employees," as used herein, shall be deemed to include the officers, managers, and employees of the employer, the partners, if the employer is a partnership, the officers, managers, and employees of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms, the business of which is controlled by the insured employer through stock ownership, contract, or otherwise. The term "employer," as used herein, may be deemed to include any municipal or governmental corporation, unit, agency, or department thereof and the proper officers as such, of any unincorporated municipality or department thereof, as well as private individuals, partnerships, and corporations.

(B) In accordance with section 3368 of this title, an employer domiciled in another jurisdiction that has more than 25 certificate- holder employees whose principal worksite and domicile is in Vermont and that is defined as a large group in its own jurisdiction and under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1304, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, may purchase insurance in the large group health insurance market for its Vermont-domiciled certificate-holder employees.

* * *

Sec. 2. 8 V.S.A. § 4089a is amended to read:

§ 4089a. MENTAL HEALTH CARE SERVICES REVIEW

* * *

(b) Definitions. As used in this section:

* * *

(4) "Review agent" means a person or entity performing service review activities within one year of the date of a fully compliant application for licensure who is either affiliated with, under contract with, or acting on behalf of a business entity in this ~~state; or a third party~~ State and who provides or administers mental health care benefits to ~~citizens of Vermont~~ members of health benefit plans subject to the Department's jurisdiction, including a health insurer, nonprofit health service plan, health insurance service organization, health maintenance organization or preferred provider organization, including

organizations that rely upon primary care physicians to coordinate delivery of services~~, authorized to offer health insurance policies or contracts in Vermont~~.

* * *

(g) ~~Members of the independent panel of mental health care providers shall be compensated as provided in 32 V.S.A. § 1010(b) and (c).~~ [Deleted.]

* * *

Sec. 3. 8 V.S.A. § 4089i(d) is amended to read:

(d) For prescription drug benefits offered in conjunction with a high-deductible health plan (HDHP), the plan may not provide prescription drug benefits until the expenditures applicable to the deductible under the HDHP have met the amount of the minimum annual deductibles in effect for self-only and family coverage under Section 223(c)(2)(A)(i) of the Internal Revenue Code of 1986 for self-only and family coverage, respectively, except that a plan may offer first-dollar prescription drug benefits to the extent permitted under federal law. Once the foregoing expenditure amount has been met under the HDHP, coverage for prescription drug benefits shall begin, and the limit on out-of-pocket expenditures for prescription drug benefits shall be as specified in subsection (c) of this section.

Sec. 4. 8 V.S.A. § 4092(b) is amended to read:

(b) Coverage for a newly born child shall be provided without notice or additional premium for no less than ~~31~~ 60 days after the date of birth. If payment of a specific premium or subscription fee is required in order to have the coverage continue beyond such ~~31-day~~ 60-day period, the policy may require that notification of birth of newly born child and payment of the required premium or fees be furnished to the insurer or nonprofit service or indemnity corporation within a period of not less than ~~31~~ 60 days after the date of birth.

Sec. 5. 18 V.S.A. § 9418 is amended to read:

§ 9418. PAYMENT FOR HEALTH CARE SERVICES

(a) Except as otherwise specified, as used in this subchapter:

* * *

(17) "Product" means, to the extent permitted by state and federal law, one of the following types of categories of coverage for which a participating provider may be obligated to provide health care services pursuant to a health care contract:

(A) ~~Health~~ health maintenance organization;

(B) ~~Preferred~~ preferred provider organization;

(C) ~~Fee-for-service~~ fee-for-service or indemnity plan;

(D) Medicare Advantage HMO plan;

(E) Medicare Advantage private fee-for-service plan;

(F) Medicare Advantage special needs plan;

(G) Medicare Advantage PPO;

(H) Medicare supplement plan;

(I) ~~Workers~~ workers compensation plan; or

(J) ~~Catamount Health; or~~

~~(K)~~ ~~Any~~ any other commercial health coverage plan or product.

(b) No later than 30 days following receipt of a claim, a health plan, contracting entity, or payer shall do one of the following:

(1) Pay or reimburse the claim.

(2) Notify the claimant in writing that the claim is contested or denied. The notice shall include specific reasons supporting the contest or denial and a description of any additional information required for the health plan, contracting entity, or payer to determine liability for the claim.

(3) Pend a claim for services rendered to an enrollee during the second and third months of the consecutive three-month grace period required for recipients of advance payments of premium tax credits pursuant to 26 U.S.C. § 36B. In the event the enrollee pays all outstanding premiums prior to the exhaustion of the grace period, the health plan, contracting entity, or payer shall have 30 days following receipt of the outstanding premiums to proceed as provided in subdivision (1) or (2) of this subsection, as applicable.

* * *

* * * Catamount Health and VHAP * * *

Sec. 6. 8 V.S.A. § 4080d is amended to read:

§ 4080d. COORDINATION OF INSURANCE COVERAGE WITH MEDICAID

Any insurer as defined in section 4100b of this title is prohibited from considering the availability or eligibility for medical assistance in this or any other state under 42 U.S.C. § 1396a (Section 1902 of the Social Security Act), herein referred to as Medicaid, when considering eligibility for coverage or making payments under its plan for eligible enrollees, subscribers,

policyholders, or certificate holders. ~~This section shall not apply to Catamount Health, as established by section 4080f of this title.~~

Sec. 7. 8 V.S.A. § 4080g(b) is amended to read:

(b) Small group plans.

* * *

(11)(A) A registered small group carrier may require that 75 percent or less of the employees or members of a small group with more than 10 employees participate in the carrier's plan. A registered small group carrier may require that 50 percent or less of the employees or members of a small group with 10 or fewer employees or members participate in the carrier's plan. A small group carrier's rules established pursuant to this subdivision shall be applied to all small groups participating in the carrier's plans in a consistent and nondiscriminatory manner.

(B) For purposes of the requirements set forth in subdivision (A) of this subdivision (11), a registered small group carrier shall not include in its calculation an employee or member who is already covered by another group health benefit plan as a spouse or dependent or who is enrolled in ~~Catamount Health,~~ Medicaid~~, the Vermont health access plan,~~ or Medicare. Employees or members of a small group who are enrolled in the employer's plan and receiving premium assistance under ~~33 V.S.A. chapter 19~~ the Health Insurance Premium Payment program established pursuant to Section 1906 of the Social Security Act, 42 U.S.C. § 1396e, shall be considered to be participating in the plan for purposes of this subsection. If the small group is an association, trust, or other substantially similar group, the participation requirements shall be calculated on an employer-by-employer basis.

* * *

Sec. 8. 8 V.S.A. § 4088i is amended to read:

§ 4088i. COVERAGE FOR DIAGNOSIS AND TREATMENT OF EARLY CHILDHOOD DEVELOPMENTAL DISORDERS

(a)(1) A health insurance plan shall provide coverage for the evidence-based diagnosis and treatment of early childhood developmental disorders, including applied behavior analysis supervised by a nationally board-certified behavior analyst, for children, beginning at birth and continuing until the child reaches age 21.

(2) Coverage provided pursuant to this section by Medicaid~~, the Vermont health access plan,~~ or any other public health care assistance program shall comply with all federal requirements imposed by the Centers for Medicare and Medicaid Services.

* * *

(f) As used in this section:

* * *

(7) "Health insurance plan" means Medicaid~~, the Vermont health access plan,~~ and any other public health care assistance program, any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this ~~state~~ State by a health insurer, as defined in 18 V.S.A. § 9402. The term does not include benefit plans providing coverage for specific diseases or other limited benefit coverage.

* * *

Sec. 9. 8 V.S.A. § 4089j is amended to read:

§ 4089j. RETAIL PHARMACIES; FILLING OF PRESCRIPTIONS

* * *

(c) This section shall apply to Medicaid~~, the Vermont health access plan, the VScript pharmaceutical assistance program,~~ and any other public health care assistance program.

Sec. 10. 8 V.S.A. § 4089w is amended to read:

§ 4089w. OFFICE OF HEALTH CARE OMBUDSMAN

* * *

(h) As used in this section, "health insurance plan" means a policy, service contract or other health benefit plan offered or issued by a health insurer, as defined by 18 V.S.A. § 9402, and includes ~~the Vermont health access plan and~~ beneficiaries covered by the Medicaid program unless such beneficiaries are otherwise provided ombudsman services.

Sec. 11. 8 V.S.A. § 4099d is amended to read:

§ 4099d. MIDWIFERY COVERAGE; HOME BIRTHS

* * *

(d) As used in this section, "health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid~~, the Vermont health access plan,~~ and any other public health care assistance program offered or administered by the ~~state~~ State or by any subdivision or instrumentality of the ~~state~~ State. The term shall not include policies or plans providing coverage for specific disease or

other limited benefit coverage.

Sec. 12. 8 V.S.A. § 4100b is amended to read:

§ 4100b. COVERAGE OF CHILDREN

(a) As used in this subchapter:

(1) "Health plan" shall include~~, but not be limited to,~~ a group health plan as defined under Section 607(1) of the Employee Retirement Income Security Act of 1974~~,~~ and a nongroup plan as defined in section 4080b of this title~~, and a Catamount Health plan as defined in section 4080f of this title~~.

* * *

Sec. 13. 8 V.S.A. § 4100e is amended to read:

§ 4100e. REQUIRED COVERAGE FOR OFF-LABEL USE

* * *

(b) As used in this section, the following terms have the following meanings:

(1) "Health insurance plan" means a health benefit plan offered, administered, or issued by a health insurer doing business in Vermont.

(2) "Health insurer" is defined by ~~section~~ 18 V.S.A. § 9402 ~~of Title 18~~. As used in this subchapter, the term includes the ~~state~~ State of Vermont and any agent or instrumentality of the ~~state~~ State that offers, administers, or provides financial support to state government, including Medicaid~~, the Vermont health access plan, the VScript pharmaceutical assistance program,~~ or any other public health care assistance program.

* * *

Sec. 14. 8 V.S.A. § 4100j is amended to read:

§ 4100j. COVERAGE FOR TOBACCO CESSATION PROGRAMS

* * *

(b) As used in this subchapter:

(1) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid~~, the Vermont health access plan,~~ and any other public health care assistance program offered or administered by the ~~state~~ State or by any subdivision or instrumentality of the ~~state~~ State. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

* * *

Sec. 15. 8 V.S.A. § 4100k is amended to read:

§ 4100k. COVERAGE FOR TELEMEDICINE SERVICES

* * *

(g) As used in this subchapter:

(1) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid~~, the Vermont health access plan,~~ and any other public health care assistance program offered or administered by the ~~state~~ State or by any subdivision or instrumentality of the ~~state~~ State. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

* * *

Sec. 16. 13 V.S.A. § 5574(b) is amended to read:

(b) A claimant awarded judgment in an action under this subchapter shall be entitled to damages in an amount to be determined by the trier of fact for each year the claimant was incarcerated, provided that the amount of damages shall not be less than $30,000.00 nor greater than $60,000.00 for each year the claimant was incarcerated, adjusted proportionally for partial years served. The damage award may also include:

(1) Economic damages, including lost wages and costs incurred by the claimant for his or her criminal defense and for efforts to prove his or her innocence.

(2) ~~Notwithstanding the income eligibility requirements of the Vermont Health Access Plan in section 1973 of Title 33, and notwithstanding the requirement that the individual be uninsured, up~~ Up to 10 years of eligibility for ~~the Vermont Health Access Plan using state-only funds~~ state-funded health coverage equivalent to Medicaid services.

* * *

Sec. 17. 18 V.S.A. § 1130 is amended to read:

§ 1130. IMMUNIZATION PILOT PROGRAM

(a) As used in this section:

* * *

(5) "State health care programs" shall include Medicaid, ~~the Vermont health access plan,~~ Dr. Dynasaur, and any other health care program providing immunizations with funds through the Global Commitment for Health waiver

approved by the Centers for Medicare and Medicaid Services under Section 1115 of the Social Security Act.

* * *

Sec. 18. 18 V.S.A. § 3801 is amended to read:

§ 3801. DEFINITIONS

As used in this subchapter:

(1)(A) "Health insurer" shall have the same meaning as in section 9402 of this title and shall include:

(i) a health insurance company, a nonprofit hospital and medical service corporation, and health maintenance organizations;

(ii) an employer, a labor union, or another group of persons organized in Vermont that provides a health plan to beneficiaries who are employed or reside in Vermont; and

(iii) except as otherwise provided in section 3805 of this title, the ~~state~~ State of Vermont and any agent or instrumentality of the ~~state~~ State that offers, administers, or provides financial support to state government.

(B) The term "health insurer" shall not include Medicaid~~, the Vermont health access plan, Vermont Rx,~~ or any other Vermont public health care assistance program.

* * *

Sec. 19. 18 V.S.A. § 4474c(b) is amended to read:

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

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

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

(3) an employer; or

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

Sec. 20. 18 V.S.A. § 9373 is amended to read:

§ 9373. DEFINITIONS

As used in this chapter:

* * *

(8) "Health insurer" means any health insurance company, nonprofit hospital and medical service corporation, managed care organization, and, to the extent permitted under federal law, any administrator of a health benefit plan offered by a public or a private entity. The term does not include Medicaid~~, the Vermont health access plan,~~ or any other state health care assistance program financed in whole or in part through a federal program.

* * *

Sec. 21. 18 V.S.A. § 9471 is amended to read:

§ 9471. DEFINITIONS

As used in this subchapter:

* * *

(2) "Health insurer" is defined by section 9402 of this title and shall include:

(A) a health insurance company, a nonprofit hospital and medical service corporation, and health maintenance organizations;

(B) an employer, labor union, or other group of persons organized in Vermont that provides a health plan to beneficiaries who are employed or reside in Vermont;

(C) the ~~state~~ State of Vermont and any agent or instrumentality of the ~~state~~ State that offers, administers, or provides financial support to state government; and

(D) Medicaid, ~~the Vermont health access plan, Vermont Rx,~~ and any other public health care assistance program.

* * *

Sec. 22. 33 V.S.A. § 1807(b) is amended to read:

(b) Navigators shall have the following duties:

* * *

(3) ~~Facilitate~~ facilitate enrollment in qualified health benefit plans, Medicaid, Dr. Dynasaur, VPharm, ~~VermontRx,~~ and other public health benefit programs;

* * *

(5) ~~Provide~~ provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Vermont health benefit exchange; ~~and~~

(6) ~~Distribute~~ distribute information to health care professionals, community organizations, and others to facilitate the enrollment of individuals who are

eligible for Medicaid, Dr. Dynasaur, VPharm, ~~VermontRx,~~ other public health benefit programs, or the Vermont health benefit exchange in order to ensure that all eligible individuals are enrolled~~.~~; and

(7) ~~Provide~~ provide information about and facilitate employers' establishment of cafeteria or premium-only plans under Section 125 of the Internal Revenue Code that allow employees to pay for health insurance premiums with pretax dollars.

Sec. 23. 33 V.S.A. § 1901(b) is amended to read:

(b) ~~The secretary may charge a monthly premium, in amounts set by the general assembly, to each individual 18 years or older who is eligible for enrollment in the health access program, as authorized by section 1973 of this title and as implemented by rules. All premiums collected by the agency of human services or designee for enrollment in the health access program shall be deposited in the state health care resources fund established in section 1901d of this title. Any co-payments, coinsurance, or other cost sharing to be charged shall also be authorized and set by the general assembly.~~ [Deleted.]

Sec. 24. 33 V.S.A. § 1903a is amended to read:

§ 1903a. CARE MANAGEMENT PROGRAM

(a) The ~~commissioner~~ Commissioner of Vermont ~~health access~~ Health Access shall coordinate with the ~~director~~ Director of the Blueprint for Health to provide chronic care management through the Blueprint and, as appropriate, create an additional level of care coordination for individuals with one or more chronic conditions who are enrolled in Medicaid~~, the Vermont health access plan (VHAP),~~ or Dr. Dynasaur. The program shall not include individuals who are in an institute for mental disease as defined in 42 C.F.R. § 435.1009.

* * *

Sec. 25. 33 V.S.A. § 1997 is amended to read:

§ 1997. DEFINITIONS

As used in this subchapter:

* * *

(7) "State public assistance program"~~,~~ includes~~, but is not limited to,~~ the Medicaid program, ~~the Vermont health access plan,~~ VPharm, ~~VermontRx,~~ the ~~state children's health insurance program~~ State Children's Health Insurance Program, the ~~state~~ State of Vermont AIDS ~~medication assistance program~~ Medication Assistance Program, the General Assistance program, the ~~pharmacy discount plan program~~ Pharmacy Discount Plan Program, and the out-of-state counterparts to such programs.

Sec. 26. 33 V.S.A. § 1998(c)(1) is amended to read:

(c)(1) The ~~commissioner~~ Commissioner may implement the ~~pharmacy best practices and cost control program~~ Pharmacy Best Practices and Cost Control Program for any other health benefit plan within or outside this ~~state~~ State that agrees to participate in the program. For entities in Vermont, the ~~commissioner~~ Commissioner shall directly or by contract implement the program through a joint pharmaceuticals purchasing consortium. The joint pharmaceuticals purchasing consortium shall be offered on a voluntary basis no later than January 1, 2008, with mandatory participation by state or publicly funded, administered, or subsidized purchasers to the extent practicable and consistent with the purposes of this chapter, by January 1, 2010. If necessary, the ~~department of Vermont health access~~ Department of Vermont Health Access shall seek authorization from the Centers for Medicare and Medicaid to include purchases funded by Medicaid. "State or publicly funded purchasers" shall include the ~~department of corrections~~ Department of Corrections, the ~~department of mental health~~ Department of Mental Health, Medicaid, ~~the Vermont Health Access Program (VHAP),~~ Dr. Dynasaur, ~~VermontRx,~~ VPharm, Healthy Vermonters, workers' compensation, and any other state or publicly funded purchaser of prescription drugs.

Sec. 27. 33 V.S.A. § 2004(a) is amended to read:

(a) Annually, each pharmaceutical manufacturer or labeler of prescription drugs that are paid for by the ~~department of Vermont health access~~ Department of Vermont Health Access for individuals participating in Medicaid, ~~the Vermont Health Access Program,~~ Dr. Dynasaur, or VPharm~~, or VermontRx~~ shall pay a fee to the ~~agency of human services~~ Agency of Human Services. The fee shall be 0.5 percent of the previous calendar year's prescription drug spending by the ~~department~~ Department and shall be assessed based on manufacturer labeler codes as used in the Medicaid rebate program.

* * * Vermont Health Benefit Exchange * * *

Sec. 28. 33 V.S.A. § 1804 is amended to read:

§ 1804. QUALIFIED EMPLOYERS

(a)(1) Until January 1, 2016, a qualified employer shall be an ~~employer~~ entity which~~, on at least 50 percent of its~~ employed an average of not more than 50 employees on working days during the preceding calendar year, ~~employed at least one and no more than 50 employees,~~ and the term "qualified employer" includes self-employed persons to the extent permitted under the Affordable Care Act. Calculation of the number of employees of a qualified employer shall not include a part-time employee who works fewer than 30 hours per week.

* * *

(b)(1) From January 1, 2016 until January 1, 2017, a qualified employer shall be an ~~employer~~ entity which~~, on at least 50 percent of its~~ employed an average of not more than 100 employees on working days during the preceding calendar year~~, employed at least one and no more than 100 employees,~~ and the term "qualified employer" includes self-employed persons to the extent permitted under the Affordable Care Act. ~~Calculation of the number of employees of a qualified employer shall not include a part-time employee who works fewer than 30 hours per week~~ The number of employees shall be calculated using the method set forth in 26 U.S.C. § 4980H(c)(2)(E).

* * *

Sec. 29. 33 V.S.A. § 1805 is amended to read:

§ 1805. DUTIES AND RESPONSIBILITIES

The Vermont ~~health benefit exchange~~ Health Benefit Exchange shall have the following duties and responsibilities consistent with the Affordable Care Act:

* * *

(2) Determining eligibility for and enrolling individuals in Medicaid, Dr. Dynasaur, and VPharm~~, and VermontRx~~ pursuant to chapter 19 of this title, as well as any other public health benefit program.

* * *

(12) ~~Consistent with federal law, crediting the amount of any free choice voucher provided pursuant to Section 10108 of the Affordable Care Act to the monthly premium of the plan in which a qualified employee is enrolled and collecting the amount credited from the offering employer.~~ [Deleted.]

* * *

Sec. 30. 33 V.S.A. § 1811(a) is amended to read:

(a) As used in this section:

* * *

(3)(A) Until January 1, 2016, "small employer" means an ~~employer~~ entity which~~, on at least 50 percent of its~~ employed an average of not more than 50 employees on working days during the preceding calendar year, ~~employs at least one and no more than 50 employees~~. The term includes self-employed persons to the extent permitted under the Affordable Care Act. Calculation of the number of employees of a small employer shall not include a part-time employee who works fewer than 30 hours per week. An employer may continue to participate in the ~~exchange~~ Exchange even if the employer's size

grows beyond 50 employees as long as the employer continuously makes qualified health benefit plans in the Vermont ~~health benefit exchange~~ Health Benefit Exchange available to its employees.

(B) Beginning on January 1, 2016, "small employer" means an ~~employer~~ entity which~~, on at least 50 percent of its~~ employed an average of not more than 100 employees on working days during the preceding calendar year, ~~employs at least one and no more than 100 employees~~. The term includes self-employed persons to the extent permitted under the Affordable Care Act. ~~Calculation of the number of employees of a small employer shall not include a part-time employee who works fewer than 30 hours per week~~ The number of employees shall be calculated using the method set forth in 26 U.S.C. § 4980H(c)(2)(E). An employer may continue to participate in the ~~exchange~~ Exchange even if the employer's size grows beyond 100 employees as long as the employer continuously makes qualified health benefit plans in the Vermont ~~health benefit exchange~~ Health Benefit Exchange available to its employees.

* * * Medicaid and CHIP * * *

Sec. 31. 33 V.S.A. § 2003(c) is amended to read:

(c) As used in this section:

(1) "Beneficiary" means any individual enrolled in the Healthy Vermonters program.

(2) "Healthy Vermonters beneficiary" means any individual Vermont resident without adequate coverage:

(A) who is at least 65 years of age, or is disabled and is eligible for Medicare or Social Security disability benefits, with household income equal to or less than 400 percent of the federal poverty level, as calculated ~~under the rules of the Vermont health access plan, as amended~~ using modified adjusted gross income as defined in 26 U.S.C. § 36B(d)(2)(B); or

(B) whose household income is equal to or less than 350 percent of the federal poverty level, as calculated ~~under the rules of the Vermont Health access plan, as amended~~ using modified adjusted gross income as defined in 26 U.S.C. § 36B(d)(2)(B).

* * *

Sec. 32. 33 V.S.A. § 2072(a) is amended to read:

(a) An individual shall be eligible for assistance under this subchapter if the individual:

(1) is a resident of Vermont at the time of application for benefits;

(2) is at least 65 years of age or is an individual with disabilities as defined in subdivision 2071(1) of this title; and

(3) has a household income, when calculated ~~in accordance with the rules adopted for the Vermont health access plan under No. 14 of the Acts of 1995, as amended~~ using modified adjusted gross income as defined in 26 U.S.C. § 36B(d)(2)(B), no greater than 225 percent of the federal poverty level.

* * * Health Information Exchange * * *

Sec. 33. 18 V.S.A. § 707(a) is amended to read:

(a) No later than July 1, 2011, hospitals shall participate in the Blueprint for Health by creating or maintaining connectivity to the ~~state's~~ State's health information exchange network as provided ~~for~~ in this section and in section 9456 of this title. ~~The director of health care reform or designee and the director of the Blueprint shall establish criteria by rule for this requirement consistent with the state health information technology plan required under section 9351 of this title. The criteria shall not require a hospital to create a level of connectivity that the state's exchange is not able to support.~~

Sec. 34. 18 V.S.A. § 9456 is amended to read:

§ 9456. BUDGET REVIEW

(a) The ~~board~~ Board shall conduct reviews of each hospital's proposed budget based on the information provided pursuant to this subchapter~~,~~ and in accordance with a schedule established by the ~~board~~ Board. ~~The board shall require the submission of documentation certifying that the hospital is participating in the Blueprint for Health if required by section 708 of this title.~~

(b) In conjunction with budget reviews, the ~~board~~ Board shall:

* * *

(10) require each hospital to provide information on administrative costs, as defined by the ~~board~~ Board, including specific information on the amounts spent on marketing and advertising costs; and

(11) require each hospital to create or maintain connectivity to the State's health information exchange network in accordance with the criteria established by the Vermont Information Technology Leaders, Inc., pursuant to subsection 9352(i) of this title, provided that the Board shall not require a hospital to create a level of connectivity that the State's exchange is unable to support.

* * *

Sec. 34a. 18 V.S.A. § 9352(i) is amended to read:

(i) Certification of meaningful use and connectivity.

(1) To the extent necessary to support Vermont's health care reform goals or as required by federal law, VITL shall be authorized to certify the meaningful use of health information technology and electronic health records by health care providers licensed in Vermont.

(2) VITL shall establish criteria for creating or maintaining connectivity to the State's health information exchange network. VITL shall provide the criteria annually by March 1 to the Green Mountain Care Board established pursuant to chapter 220 of this title.

* * * Special Funds * * *

Sec. 35. 18 V.S.A. § 9382 is added to read:

§ 9382. REGULATORY AND SUPERVISION FUND

(a) There is hereby created a fund to be known as the Green Mountain Care Board Regulatory and Supervision Fund for the purpose of providing the financial means for the Green Mountain Care Board to administer this chapter and chapter 221 of this title. The Fund shall be managed pursuant to 32 V.S.A. chapter 7, subchapter 5.

(1) All fees and assessments received by the Board in the course of administering its duties shall be credited to the Green Mountain Care Board Regulatory and Supervision Fund.

(2) All fines and administrative penalties received by the Board in the course of administering its duties shall be deposited directly into the General Fund.

(b) All payments from the Green Mountain Care Board Regulatory and Supervision Fund for the maintenance of staff and associated expenses, including contractual services as necessary, shall be disbursed from the State Treasury only upon warrants issued by the Commissioner of Finance and Management after receipt of proper documentation regarding services rendered and expenses incurred.

(c) The Commissioner of Finance and Management may anticipate receipts to the Green Mountain Care Board Regulatory and Supervision Fund and issue warrants based thereon.

Sec. 36. 18 V.S.A. § 9404 is amended to read:

§ 9404. ADMINISTRATION ~~OF THE DIVISION~~

(a) The ~~commissioner~~ Commissioner shall supervise and direct the execution of all laws vested in the ~~division~~ Department by ~~virtue of~~ this chapter, and shall formulate and carry out all policies relating to this chapter.

(b) ~~The commissioner may delegate the powers and assign the duties required by this chapter as the commissioner may deem appropriate and necessary for the proper execution of the provisions of this chapter, including the review and analysis of certificate of need applications and hospital budgets; however, the commissioner shall not delegate the commissioner's quasi-judicial and rulemaking powers or authority, unless the commissioner has a personal or financial interest in the subject matter of the proceeding.~~

~~(c) The commissioner may employ professional and support staff necessary to carry out the functions of the commissioner, and may employ consultants and contract with individuals and entities for the provision of services.~~

~~(d)~~ The ~~commissioner~~ Commissioner may:

(1) ~~Apply~~ apply for and accept gifts, grants, or contributions from any person for purposes consistent with this chapter~~.~~;

(2) ~~Adopt~~ adopt rules necessary to implement the provisions of this chapter~~.~~; and

(3) ~~Enter~~ enter into contracts and perform such acts as are necessary to accomplish the purposes of this chapter.

~~(e)~~(c) There is hereby created a fund to be known as the ~~division of health care administration regulatory and supervision fund~~ Health Care Administration Regulatory and Supervision Fund for the purpose of providing the financial means for the ~~commissioner of financial regulation~~ Commissioner of Financial Regulation to administer this chapter and 33 V.S.A. § 6706. All fees and assessments received by the ~~department~~ Department pursuant to such administration shall be credited to this ~~fund~~ Fund. All fines and administrative penalties, however, shall be deposited directly into the ~~general fund~~ General Fund.

(1) All payments from the ~~division of health care administration regulatory and supervision fund~~ Health Care Administration Regulatory and Supervision Fund for the maintenance of staff and associated expenses, including contractual services as necessary, shall be disbursed from the ~~state treasury~~ State Treasury only upon warrants issued by the ~~commissioner of finance and management~~ Commissioner of Finance and Management, after receipt of proper documentation regarding services rendered and expenses incurred.

(2) The ~~commissioner of finance and management~~ Commissioner of Finance and Management may anticipate receipts to the ~~division of health care administration regulatory and supervision fund~~ Health Care Administration Regulatory and Supervision Fund and issue warrants based thereon.

Sec. 37. 18 V.S.A. § 9405 is amended to read:

§ 9405. STATE HEALTH PLAN; HEALTH RESOURCE ALLOCATION PLAN

(a) No later than January 1, 2005, the ~~secretary of human services~~ Secretary of Human Services or designee, in consultation with the ~~commissioner~~ Chair of the Green Mountain Care Board and health care professionals and after receipt of public comment, shall adopt a ~~state health plan~~ State Health Plan that sets forth the health goals and values for the ~~state~~ State. The ~~secretary~~ Secretary may amend the ~~plan~~ Plan as the ~~secretary~~ Secretary deems necessary and appropriate. The ~~plan~~ Plan shall include health promotion, health protection, nutrition, and disease prevention priorities for the ~~state~~ State, identify available human resources as well as human resources needed for achieving the ~~state's~~ State's health goals and the planning required to meet those needs, and identify geographic parts of the ~~state~~ State needing investments of additional resources in order to improve the health of the population. The ~~plan~~ Plan shall contain sufficient detail to guide development of the ~~state health resource allocation plan~~ State Health Resource Allocation Plan. Copies of the ~~plan~~ Plan shall be submitted to members of the ~~senate and house committees on health and welfare~~ Senate and House Committees on Health and Welfare no later than January 15, 2005.

(b) On or before July 1, 2005, the ~~commissioner~~ Green Mountain Care Board, in consultation with the ~~secretary of human services~~ Secretary of Human Services, shall submit to the ~~governor~~ Governor a four-year ~~health resource allocation plan~~ Health Resource Allocation Plan. The ~~plan~~ Plan shall identify Vermont needs in health care services, programs, and facilities; the resources available to meet those needs; and the priorities for addressing those needs on a statewide basis.

(1) The ~~plan~~ Plan shall include:

(A) A statement of principles reflecting the policies enumerated in sections 9401 and 9431 of this chapter to be used in allocating resources and in establishing priorities for health services.

(B) Identification of the current supply and distribution of hospital, nursing home, and other inpatient services; home health and mental health services; treatment and prevention services for alcohol and other drug abuse; emergency care; ambulatory care services, including primary care resources, federally qualified health centers, and free clinics; major medical equipment; and health screening and early intervention services.

(C) Consistent with the principles set forth in subdivision (A) of this subdivision (1), recommendations for the appropriate supply and distribution

of resources, programs, and services identified in subdivision (B) of this subdivision (1), options for implementing such recommendations and mechanisms which will encourage the appropriate integration of these services on a local or regional basis. To arrive at such recommendations, the ~~commissioner~~ Green Mountain Care Board shall consider at least the following factors:

(i) the values and goals reflected in the ~~state health plan~~ State Health Plan;

(ii) the needs of the population on a statewide basis;

(iii) the needs of particular geographic areas of the ~~state~~ State, as identified in the ~~state health plan~~ State Health Plan;

(iv) the needs of uninsured and underinsured populations;

(v) the use of Vermont facilities by out-of-state residents;

(vi) the use of out-of-state facilities by Vermont residents;

(vii) the needs of populations with special health care needs;

(viii) the desirability of providing high quality services in an economical and efficient manner, including the appropriate use of midlevel practitioners;

(ix) the cost impact of these resource requirements on health care expenditures; ~~the services appropriate for the four categories of hospitals described in subdivision 9402(12) of this title;~~

(x) the overall quality and use of health care services as reported by the Vermont ~~program for quality in health care~~ Program for Quality in Health Care and the Vermont ~~ethics network~~ Ethics Network;

(xi) the overall quality and cost of services as reported in the annual hospital community reports;

(xii) individual hospital four-year capital budget projections; and

(xiii) the four-year projection of health care expenditures prepared by the ~~division~~ Board.

(2) In the preparation of the ~~plan~~ Plan, the ~~commissioner~~ ~~shall assemble an advisory committee of no fewer than nine nor more than 13 members who shall reflect a broad distribution of diverse perspectives on the health care system, including health care professionals, payers, third-party payers, and consumer representatives~~ Green Mountain Care Board shall convene the Green Mountain Care Board General Advisory Committee established pursuant to subdivision 9374(e)(1) of this title. The ~~advisory committee~~ Green Mountain Care Board General Advisory Committee shall review drafts and provide recommendations to the ~~commissioner~~ Board during the development of the

~~plan~~ Plan. ~~Upon adoption of the plan, the advisory committee shall be dissolved.~~

(3) The ~~commissioner~~ Board, with the ~~advisory committee~~ Green Mountain Care Board General Advisory Committee, shall conduct at least five public hearings, in different regions of the state, on the ~~plan~~ Plan as proposed and shall give interested persons an opportunity to submit their views orally and in writing. To the extent possible, the ~~commissioner~~ Board shall arrange for hearings to be broadcast on interactive television. Not less than 30 days prior to any such hearing, the ~~commissioner~~ Board shall publish in the manner prescribed in 1 V.S.A. § 174 the time and place of the hearing and the place and period during which to direct written comments to the ~~commissioner~~ Board. In addition, the ~~commissioner~~ Board may create and maintain a website to allow members of the public to submit comments electronically and review comments submitted by others.

(4) The ~~commissioner~~ Board shall develop a mechanism for receiving ongoing public comment regarding the ~~plan~~ Plan and for revising it every four years or as needed.

(5) The ~~commissioner~~ Board in consultation with appropriate health care organizations and state entities shall inventory and assess existing state health care data and expertise, and shall seek grants to assist with the preparation of any revisions to the ~~health resource allocation plan~~ Health Resource Allocation Plan.

(6) The ~~plan~~ Plan or any revised ~~plan~~ Plan proposed by the ~~commissioner~~ Board shall be the ~~health resource allocation plan~~ Health Resource Allocation Plan for the ~~state~~ State after it is approved by the ~~governor~~ Governor or upon passage of three months from the date the ~~governor~~ Governor receives the ~~plan~~ proposed Plan, whichever occurs first, unless the ~~governor~~ Governor disapproves the ~~plan~~ proposed Plan, in whole or in part. If the ~~governor~~ Governor disapproves, he or she shall specify the sections of the ~~plan~~ proposed Plan which are objectionable and the changes necessary to meet the objections. The sections of the ~~plan~~ proposed Plan not disapproved shall become part of the ~~health resource allocation plan~~ Health Resource Allocation Plan.

* * * Hospital Community Reports * * *

Sec. 38. 18 V.S.A. § 9405b is amended to read:

§ 9405b. HOSPITAL COMMUNITY REPORTS

(a) The ~~commissioner~~ Commissioner of Health, in consultation with representatives from hospitals, other groups of health care professionals, and members of the public representing patient interests, shall adopt rules

establishing a standard format for community reports, as well as the contents, which shall include:

* * *

(b) On or before January 1, 2005, and annually thereafter beginning on June 1, 2006, the board of directors or other governing body of each hospital licensed under chapter 43 of this title shall publish on its website, making paper copies available upon request, its community report in a uniform format approved by the ~~commissioner,~~ Commissioner of Health and in accordance with the standards and procedures adopted by rule under this section~~, and shall hold one or more public hearings to permit community members to comment on the report. Notice of meetings shall be by publication, consistent with 1 V.S.A. § 174~~. Hospitals located outside this ~~state~~ State which serve a significant number of Vermont residents, as determined by the ~~commissioner~~ Commissioner of Health, shall be invited to participate in the community report process established by this subsection.

(c) The community reports shall be provided to the ~~commissioner~~ Commissioner of Health. The ~~commissioner~~ Commissioner of Health shall publish the reports on a public website and shall develop and include a format for comparisons of hospitals within the same categories of quality and financial indicators.

Sec. 39. TEMPORARY SUSPENSION

Notwithstanding the requirements of 18 V.S.A. § 9405b, the Commissioner of Financial Regulation may suspend publication of the hospital community reports in calendar year 2013 in order to effectuate the transfer of responsibility from the Department of Financial Regulation to the Department of Health.

* * * VHCURES * * *

Sec. 40. 18 V.S.A. § 9410 is amended to read:

§ 9410. HEALTH CARE DATABASE

(a)(1) The ~~commissioner~~ Board shall establish and maintain a unified health care database to enable the ~~commissioner and the Green Mountain Care board~~ Commissioner and the Board to carry out their duties under this chapter, chapter 220 of this title, and Title 8, including:

(A) ~~Determining~~ determining the capacity and distribution of existing resources~~.~~;

(B) ~~Identifying~~ identifying health care needs and informing health care policy~~.~~;

(C) ~~Evaluating~~ evaluating the effectiveness of intervention programs on improving patient outcomes~~.~~;

(D) ~~Comparing~~ comparing costs between various treatment settings and approaches~~.~~;

(E) ~~Providing~~ providing information to consumers and purchasers of health care~~.~~; and

(F) ~~Improving~~ improving the quality and affordability of patient health care and health care coverage.

(2)(A) The program authorized by this section shall include a consumer health care price and quality information system designed to make available to consumers transparent health care price information, quality information, and such other information as the ~~commissioner~~ Board determines is necessary to empower individuals, including uninsured individuals, to make economically sound and medically appropriate decisions.

(B) ~~The commissioner shall convene a working group composed of the commissioner of mental health, the commissioner of Vermont health access, health care consumers, the office of the health care ombudsman, employers and other payers, health care providers and facilities, the Vermont program for quality in health care, health insurers, and any other individual or group appointed by the commissioner to advise the commissioner on the development and implementation of the consumer health care price and quality information system.~~

~~(C)~~ The ~~commissioner~~ Commissioner may require a health insurer covering at least five percent of the lives covered in the insured market in this state to file with the ~~commissioner~~ Commissioner a consumer health care price and quality information plan in accordance with rules adopted by the ~~commissioner~~ Commissioner.

~~(D)~~(C) The ~~commissioner~~ Board shall adopt such rules as are necessary to carry out the purposes of this subdivision. The ~~commissioner's~~ Board's rules may permit the gradual implementation of the consumer health care price and quality information system over time, beginning with health care price and quality information that the ~~commissioner~~ Board determines is most needed by consumers or that can be most practically provided to the consumer in an understandable manner. The rules shall permit health insurers to use security measures designed to allow subscribers access to price and other information without disclosing trade secrets to individuals and entities who are not subscribers. The ~~regulations~~ rules shall avoid unnecessary duplication of efforts relating to price and quality reporting by health insurers, health care providers, health care facilities, and others, including activities undertaken by

hospitals pursuant to their community report obligations under section 9405b of this title.

(b) The database shall contain unique patient and provider identifiers and a uniform coding system, and shall reflect all health care utilization, costs, and resources in this ~~state~~ State, and health care utilization and costs for services provided to Vermont residents in another ~~state~~ State.

(c) Health insurers, health care providers, health care facilities, and governmental agencies shall file reports, data, schedules, statistics, or other information determined by the ~~commissioner~~ Board to be necessary to carry out the purposes of this section. Such information may include:

(1) health insurance claims and enrollment information used by health insurers;

(2) information relating to hospitals filed under subchapter 7 of this chapter (hospital budget reviews); and

(3) any other information relating to health care costs, prices, quality, utilization, or resources required by the Board to be filed ~~by the commissioner~~.

(d) The ~~commissioner~~ Board may by rule establish the types of information to be filed under this section, and the time and place and the manner in which such information shall be filed.

(e) Records or information protected by the provisions of the physician-patient privilege under 12 V.S.A. § 1612(a), or otherwise required by law to be held confidential, shall be filed in a manner that does not disclose the identity of the protected person.

(f) The ~~commissioner~~ Board shall adopt a confidentiality code to ensure that information obtained under this section is handled in an ethical manner.

(g) Any person who knowingly fails to comply with the requirements of this section or rules adopted pursuant to this section shall be subject to an administrative penalty of not more than $1,000.00 per violation. The ~~commissioner~~ Board may impose an administrative penalty of not more than $10,000.00 each for those violations the ~~commissioner~~ Board finds were willful. In addition, any person who knowingly fails to comply with the confidentiality requirements of this section or confidentiality rules adopted pursuant to this section and uses, sells, or transfers the data or information for commercial advantage, pecuniary gain, personal gain, or malicious harm shall be subject to an administrative penalty of not more than $50,000.00 per violation. The powers vested in the ~~commissioner~~ Board by this subsection shall be in addition to any other powers to enforce any penalties, fines, or forfeitures authorized by law.

(h)(1) All health insurers shall electronically provide to the ~~commissioner~~ Board in accordance with standards and procedures adopted by the ~~commissioner~~ Board by rule:

(A) their health insurance claims data, provided that the ~~commissioner~~ Board may exempt from all or a portion of the filing requirements of this subsection data reflecting utilization and costs for services provided in this ~~state~~ State to residents of other states;

(B) cross-matched claims data on requested members, subscribers, or policyholders; and

(C) member, subscriber, or policyholder information necessary to determine third party liability for benefits provided.

(2) The collection, storage, and release of health care data and statistical information that is subject to the federal requirements of the Health Insurance Portability and Accountability Act ("HIPAA") shall be governed exclusively by the ~~rules~~ regulations adopted thereunder in 45 ~~CFR~~ C.F.R. Parts 160 and 164.

(A) All health insurers that collect the Health Employer Data and Information Set (HEDIS) shall annually submit the HEDIS information to the ~~commissioner~~ Board in a form and in a manner prescribed by the ~~commissioner~~ Board.

(B) All health insurers shall accept electronic claims submitted in Centers for Medicare and Medicaid Services format for UB-92 or HCFA-1500 records, or as amended by the Centers for Medicare and Medicaid Services.

(3)(A) The ~~commissioner~~ Board shall collaborate with the ~~agency of human services~~ Agency of Human Services and participants in ~~agency of human services~~ the Agency's initiatives in the development of a comprehensive health care information system. The collaboration is intended to address the formulation of a description of the data sets that will be included in the comprehensive health care information system, the criteria and procedures for the development of ~~limited use~~ limited-use data sets, the criteria and procedures to ensure that HIPAA compliant ~~limited use~~ limited-use data sets are accessible, and a proposed time frame for the creation of a comprehensive health care information system.

(B) To the extent allowed by HIPAA, the data shall be available as a resource for insurers, employers, providers, purchasers of health care, and state agencies to continuously review health care utilization, expenditures, and performance in Vermont. In presenting data for public access, comparative considerations shall be made regarding geography, demographics, general economic factors,

and institutional size.

(C) Consistent with the dictates of HIPAA, and subject to such terms and conditions as the ~~commissioner~~ Board may prescribe by ~~regulation~~ rule, the Vermont ~~program for quality in health care~~ Program for Quality in Health Care shall have access to the unified health care database for use in improving the quality of health care services in Vermont. In using the database, the Vermont ~~rogram for quality in health care~~ Program for Quality in Health Care shall agree to abide by the rules and procedures established by the ~~commissioner~~ Board for access to the data. The ~~commissioner's~~ Board's rules may limit access to the database to limited-use sets of data as necessary to carry out the purposes of this section.

(D) Notwithstanding HIPAA or any other provision of law, the comprehensive health care information system shall not publicly disclose any data that contains direct personal identifiers. For the purposes of this section, "direct personal identifiers" include information relating to an individual that contains primary or obvious identifiers, such as the individual's name, street address, e-mail address, telephone number, and Social Security number.

(i) On or before January 15, 2008 and every three years thereafter, the ~~commissioner~~ Commissioner shall submit a recommendation to the ~~general assembly~~ General Assembly for conducting a survey of the health insurance status of Vermont residents.

(j)(1) As used in this section, and without limiting the meaning of subdivision 9402(8) of this title, the term "health insurer" includes:

(A) any entity defined in subdivision 9402(8) of this title;

(B) any third party administrator, any pharmacy benefit manager, any entity conducting administrative services for business, and any other similar entity with claims data, eligibility data, provider files, and other information relating to health care provided to a Vermont resident, and health care provided by Vermont health care providers and facilities required to be filed by a health insurer under this section;

(C) any health benefit plan offered or administered by or on behalf of the ~~state~~ State of Vermont or an agency or instrumentality of the ~~state~~ State; and

(D) any health benefit plan offered or administered by or on behalf of the federal government with the agreement of the federal government.

(2) The ~~commissioner~~ Board may adopt rules to carry out the provisions of this subsection, including ~~standards and procedures requiring the registration of persons or entities not otherwise licensed or registered by the commissioner and~~ criteria for the required filing of such claims data, eligibility data, provider

files, and other information as the ~~commissioner~~ Board determines to be necessary to carry out the purposes of this section and this chapter.

* * * Cost-Shift Reporting * * *

Sec. 41. 18 V.S.A. § 9375(d) is amended to read:

(d) Annually on or before January 15, the ~~board~~ Board shall submit a report of its activities for the preceding ~~state fiscal~~ calendar year to the ~~house committee on health care and the senate committee on health and welfare~~ House Committee on Health Care and the Senate Committee on Health and Welfare.

(1) The report shall include:

(A) any changes to the payment rates for health care professionals pursuant to section 9376 of this title~~,~~;

(B) any new developments with respect to health information technology~~,~~;

(C) the evaluation criteria adopted pursuant to subdivision (b)(8) of this section and any related modifications~~,~~;

(D) the results of the systemwide performance and quality evaluations required by subdivision (b)(8) of this section and any resulting recommendations~~,~~;

(E) the process and outcome measures used in the evaluation~~,~~;

(F) any recommendations on mechanisms to ensure that appropriations intended to address the Medicaid cost shift will have the intended result of reducing the premiums imposed on commercial insurance premium payers below the amount they otherwise would have been charged;

(G) any recommendations for modifications to Vermont statutes~~,~~; and

(H) any actual or anticipated impacts on the work of the ~~board~~ Board as a result of modifications to federal laws, regulations, or programs.

(2) The report shall identify how the work of the ~~board~~ Board comports with the principles expressed in section 9371 of this title.

Sec. 42. 2000 Acts and Resolves No. 152, Sec. 117b is amended to read:

Sec. 117b. MEDICAID COST SHIFT REPORTING

(a) It is the intent of this section to measure the elimination of the Medicaid cost shift. For hospitals, this measurement shall be based on a comparison of the difference between Medicaid and Medicare reimbursement rates. For other health care providers, an appropriate measurement shall be developed that includes an examination of the Medicare rates for providers. In order to achieve the intent of this section, it is necessary to establish a reporting and

tracking mechanism to obtain the facts and information necessary to quantify the Medicaid cost shift, to evaluate solutions for reducing the effect of the Medicaid cost shift in the commercial insurance market, to ensure that any reduction in the cost shift is passed on to the commercial insurance market, to assess the impact of such reductions on the financial health of the health care delivery system, and to do so within a sustainable utilization growth rate in the Medicaid program.

(b) ~~By~~ Notwithstanding 2 V.S.A. § 20(d), annually on or before December 15, ~~2000, and annually thereafter, the commissioner of banking, insurance, securities, and health care administration, the secretary of human services~~ the chair of the Green Mountain Care Board, the Commissioner of Vermont Health Access, and each acute care hospital shall file with the ~~joint fiscal committee~~ Joint Fiscal Committee, in the manner required by the ~~committee~~ Committee, such information as is necessary to carry out the purposes of this section. Such information shall pertain to the provider delivery system to the extent it is available.

(c) ~~By December 15, 2000, and annually thereafter, the~~ The report of hospitals to the ~~joint fiscal committee~~ Joint Fiscal Committee under subsection (b) of this section shall include information on how they will manage utilization in order to assist the ~~agency of human services~~ Department of Vermont Health Access in developing sustainable utilization growth in the Medicaid program.

~~(d) By December 15, 2000, the commissioner of banking, insurance, securities, and health care administration shall report to the joint fiscal committee with recommendations on mechanisms to assure that appropriations intended to address the Medicaid cost shift will result in benefits to commercial insurance premium payers in the form of lower premiums than they otherwise would be charged.~~

~~(e) The first $250,000.00 resulting from declines in caseload and utilization related to hospital costs, as determined by the commissioner of social welfare, from the funds allocated within the Medicaid program appropriation for hospital costs in fiscal year 2001 shall be reserved for cost shift reduction for hospitals.~~

* * * Workforce Planning Data * * *

Sec. 43. 26 V.S.A. § 1353 is amended to read:

§ 1353. POWERS AND DUTIES OF THE BOARD

The ~~board~~ Board shall have the following powers and duties to:

* * *

(10) As part of the license application or renewal process, collect data

necessary to allow for workforce strategic planning required under 18 V.S.A. chapter 222.

Sec. 44. WORKFORCE PLANNING; DATA COLLECTION

(a) The Board of Medical Practice shall collaborate with the Director of Health Care Reform in the Agency of Administration, the Vermont Medical Society, and other interested stakeholders to develop data elements for the Board to collect pursuant to 26 V.S.A. § 1353(10) to allow for the workforce strategic planning required under 18 V.S.A. chapter 222. The data elements shall be consistent with any nationally developed or required data in order to simplify collection and minimize the burden on applicants.

(b) The Office of Professional Regulation, the Board of Nursing, and other relevant professional boards shall collaborate with the Director of Health Care Reform in the Agency of Administration in the collection of data necessary to allow for workforce strategic planning required under 18 V.S.A. chapter 222. The boards shall develop the data elements in consultation with the Director and with interested stakeholders. The data elements shall be consistent with any nationally developed or required data elements in order to simplify collection and minimize the burden on applicants. Data shall be collected as part of the licensure process to minimize administrative burden on applicants and the State.

* * * Administration * * *

Sec. 45. 8 V.S.A. § 11(a) is amended to read:

(a) General. The ~~department of financial regulation~~ Department of Financial Regulation created by 3 V.S.A. ~~section 212,~~ § 212 shall have jurisdiction over and shall supervise:

(1) Financial institutions, credit unions, licensed lenders, mortgage brokers, insurance companies, insurance agents, broker-dealers, investment advisors, and other similar persons subject to the provisions of this title and 9 V.S.A. chapters 59, 61, and 150.

(2) The administration of health care~~, including oversight of the quality and cost containment of health care provided in this state, by conducting and supervising the process of health facility certificates of need, hospital budget reviews, health care data system development and maintenance, and funding and cost containment of health care~~ as provided in 18 V.S.A. chapter 221.

* * * Miscellaneous Provisions * * *

Sec. 46. 33 V.S.A. § 1901(h) is added to read:

(h) To the extent required to avoid federal antitrust violations, the Department

of Vermont Health Access shall facilitate and supervise the participation of health care professionals and health care facilities in the planning and implementation of payment reform in the Medicaid and SCHIP programs. The Department shall ensure that the process and implementation include sufficient state supervision over these entities to comply with federal antitrust provisions and shall refer to the Attorney General for appropriate action the activities of any individual or entity that the Department determines, after notice and an opportunity to be heard, violate state or federal antitrust laws without a countervailing benefit of improving patient care, improving access to health care, increasing efficiency, or reducing costs by modifying payment methods.

Sec. 47. 33 V.S.A. § 1901b is amended to read:

§ 1901b. PHARMACY PROGRAM ENROLLMENT

(a) The ~~department of Vermont health access~~ Department of Vermont Health Access and the ~~department for children and families~~ Department for Children and Families shall monitor actual caseloads, revenue, and expenditures~~,~~; anticipated caseloads, revenue, and expenditures~~,~~; and actual and anticipated savings from implementation of the preferred drug list, supplemental rebates, and other cost containment activities in each state pharmaceutical assistance program, including VPharm ~~and VermontRx~~. ~~The departments~~ When applicable, the Departments shall allocate supplemental rebate savings to each program proportionate to expenditures in each program. ~~During the second week of each month, the department of Vermont health access shall report such actual and anticipated caseload, revenue, expenditure, and savings information to the joint fiscal committee and to the health care oversight committee.~~

(b)~~(1) If at any time expenditures for VPharm and VermontRx are anticipated to exceed the aggregate amount of state funds expressly appropriated for such state pharmaceutical assistance programs during any fiscal year, the department of Vermont health access shall recommend to the joint fiscal committee and notify the health care oversight committee of a plan to cease new enrollments in VermontRx for individuals with incomes over 225 percent of the federal poverty level.~~

~~(2) If at any time expenditures for VPharm and VermontRx are anticipated to exceed the aggregate amount of state funds expressly appropriated for such state pharmaceutical assistance programs during any fiscal year, even with the cessation of new enrollments as provided for in subdivision (1) of this subsection, the department of Vermont health access shall recommend to the joint fiscal committee and notify the health health care oversight committee of a plan to cease new enrollments in the VermontRx for individuals with incomes more than 175 percent and less than 225 percent of the federal poverty level.~~

~~(3) The determinations of the department of Vermont health access under subdivisions (1) and (2) of this subsection shall be based on the information and projections reported monthly under subsection (a) of this section, and on the official revenue estimates under 32 V.S.A. § 305a. An enrollment cessation plan shall be deemed approved unless the joint fiscal committee disapproves the plan after 21 days notice of the recommendation and financial analysis of the department of Vermont health access.~~

~~(4) Upon the approval of or failure to disapprove an enrollment cessation plan by the joint fiscal committee, the department of Vermont health access shall cease new enrollment in VermontRx for the individuals with incomes at the appropriate level in accordance with the plan.~~

~~(c)(1) If at any time after enrollment ceases under subsection (b) of this section expenditures for VermontRx, including expenditures attributable to renewed enrollment, are anticipated, by reason of increased federal financial participation or any other reason, to be equal to or less than the aggregate amount of state funds expressly appropriated for such state pharmaceutical assistance programs during any fiscal year, the department of Vermont health access shall recommend to the joint fiscal committee and notify the health care oversight committee of a plan to renew enrollment in VermontRx, with priority given to individuals with incomes more than 175 percent and less than 225 percent, if adequate funds are anticipated to be available for each program for the remainder of the fiscal year.~~

~~(2) The determination of the department of Vermont health access under subdivision (1) of this subsection shall be based on the information and projections reported monthly under subsection (a) of this section, and on the official revenue estimates under 32 V.S.A. § 305a. An enrollment renewal plan shall be deemed approved unless the joint fiscal committee disapproves the plan after 21 days notice of the recommendation and financial analysis of the department of Vermont health access.~~

~~(3) Upon the approval of, or failure to disapprove an enrollment renewal plan by the joint fiscal committee, the department of Vermont health access shall renew enrollment in VermontRx in accordance with the plan.~~

~~(d)~~ As used in this section~~:~~,

~~(1) "State~~ "state pharmaceutical assistance program" means any health assistance programs administered by the ~~agency of human services~~ Agency of Human Services providing prescription drug coverage, including the Medicaid program, ~~the Vermont health access plan,~~ VPharm, ~~VermontRx,~~ the ~~state children's health insurance program~~ State Children's Health Insurance Program, the ~~state~~ State of Vermont AIDS ~~medication assistance program~~

Medication Assistance Program, the General Assistance program, the ~~pharmacy discount plan program~~ Pharmacy Discount Plan Program, and any other health assistance programs administered by the ~~agency~~ Agency providing prescription drug coverage.

~~(2) "VHAP" or "Vermont health access plan" means the programs of health care assistance authorized by federal waivers under Section 1115 of the Social Security Act, by No. 14 of the Acts of 1995, and by further acts of the General Assembly.~~

~~(3) "VHAP-Pharmacy" or "VHAP-Rx" means the VHAP program of state pharmaceutical assistance for elderly and disabled Vermonters with income up to and including 150 percent of the federal poverty level (hereinafter "FPL").~~

~~(4) "VScript" means the Section 1115 waiver program of state pharmaceutical assistance for elderly and disabled Vermonters with income over 150 and less than or equal to 175 percent of FPL, and administered under subchapter 4 of chapter 19 of this title.~~

~~(5) "VScript-Expanded" means the state-funded program of pharmaceutical assistance for elderly and disabled Vermonters with income over 175 and less than or equal to 225 percent of FPL, and administered under subchapter 4 of chapter 19 of this title.~~

Sec. 48. 2012 Acts and Resolves No. 171, Sec. 2c, is amended to read:

Sec. 2c. EXCHANGE OPTIONS

In approving benefit packages for the Vermont health benefit exchange pursuant to 18 V.S.A. ~~§ 9375(b)(7)~~ § 9375(b)(9), the Green Mountain Care ~~board~~ Board shall approve a full range of cost-sharing structures for each level of actuarial value. To the extent permitted under federal law, the ~~board~~ Board shall also allow health insurers to establish rewards, premium discounts, split benefit designs, rebates, or otherwise waive or modify applicable co-payments, deductibles, or other cost-sharing amounts in return for adherence by an insured to programs of health promotion and disease prevention pursuant to 33 V.S.A. § 1811(f)(2)(B).

Sec. 49. 2012 Acts and Resolves No. 171, Sec. 41(e), is amended to read:

(e) ~~33~~ 18 V.S.A. chapter 13, subchapter 2 (payment reform pilots) is repealed on passage.

* * * Transfer of Positions * * *

Sec. 50. TRANSFER OF POSITIONS

(a) On or before July 1, 2013, the Department of Financial Regulation shall transfer positions numbered 290071, 290106, and 290074 and associated

funding to the Green Mountain Care Board for the administration of the health care database.

(b) On or before July 1, 2013, the Department of Financial Regulation shall transfer position number 297013 and associated funding to the Agency of Administration.

(c) On or after July 1, 2013, the Department of Financial Regulation shall transfer one position and associated funding to the Department of Health for the purpose of administering the hospital community reports in 18 V.S.A. § 9405b. The Department of Financial Regulation shall continue to collect funds for the publication of the reports pursuant to 18 V.S.A. § 9415 and shall transfer the necessary funds annually to the Department of Health.

* * * Emergency Rulemaking * * *

Sec. 51. EMERGENCY RULEMAKING

The Agency of Human Services may adopt emergency rules pursuant to 3 V.S.A. § 844 prior to the operation of the Vermont Health Benefit Exchange in order to conform Vermont's rules regarding operation of the Exchange to emerging federal guidance and regulations implementing the provisions of the Patient Protection and Affordable Care Act (Pub. L. No. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152). The need for timely compliance with federal laws and guidance prior to operation of the Vermont Health Benefit Exchange shall be deemed to meet the standard for the adoption of emergency rules required pursuant to 3 V.S.A. § 844(a).

* * * Repeals * * *

Sec. 52. REPEALS

(a) 8 V.S.A. § 4080f (Catamount Health) is repealed on January 1, 2014, except that current enrollees may continue to receive transitional coverage from the Department of Vermont Health Access as authorized by the Centers on Medicare and Medicaid Services.

(b) 18 V.S.A. § 708 (health information technology certification process) is repealed on passage.

(c) 33 V.S.A. § chapter 19, subchapter 3a (Catamount Health Assistance) is repealed January 1, 2014, except that current enrollees may continue to receive transitional coverage from the Department of Vermont Health Access as authorized by the Centers for Medicare and Medicaid Services.

(d) 33 V.S.A. § 2074 (VermontRx) is repealed on January 1, 2014.

(e) 18 V.S.A. § 9403 (Division of Health Care Administration) is repealed on July 1, 2013.

* * * Effective Dates * * *

Sec. 53. EFFECTIVE DATES

(a) Secs. 2 (mental health care services review), 3 (prescription drug deductibles), 33–34a (health information exchange), 39 (temporary suspension of hospital reports), 40 (VHCURES), 43 and 44 (workforce planning), 46 (DVHA antitrust provision), 48 (Exchange options), 49 (correction to payment reform pilot repeal), 50 (transfer of positions), 51 (emergency rules), and 52 (repeals) of this act and this section shall take effect on passage.

(b) Sec. 1 (interstate employers) and Secs. 28–30 (employer definitions) shall take effect on October 1, 2013 for the purchase of insurance plans effective for coverage beginning January 1, 2014.

(c) Secs. 4 (newborn coverage), 5 (grace period for premium payment), 6–27 (Catamount and VHAP), 31 (Healthy Vermonters), 32 (VPharm), and 47 (pharmacy program enrollment) shall take effect on January 1, 2014.

(d) All remaining sections of this act shall take effect on July 1, 2013.

and that after passage the title of the bill be amended to read: "An act relating to health insurance, Medicaid, the Vermont Health Benefit Exchange, and the Green Mountain Care Board".

(Committee Vote: 8-3-0)

Amendment to be offered by Rep. Browning of Arlington to H. 107

Rep. Browning of Arlington moves that the bill be amended as follows:

First: By adding Secs. 42a–42d to read:

* * * Health Care Professionals' Rates and Practice Locations * * *

Sec. 42a. INTENT

It is the intent of the General Assembly to recruit and retain a highly qualified health care workforce to provide high-quality health care services in this State. Every Vermont resident should have the ability to enter into voluntary financial arrangements with the health care professionals of his or her choice. In addition, every Vermont health care professional should have the ability to establish his or her practice where and when he or she chooses.

Sec. 42b. 18 V.S.A. § 9382 is added to read:

§ 9382. LIMITATIONS ON AUTHORITY

The Green Mountain Care Board shall not:

(1) adopt, by rule or any other mechanism, maximum rates that health care professionals may accept that would interfere with the ability of any Vermont resident to enter into a voluntary financial arrangement with the Vermont-licensed health care professional of his or her choice; or

(2) place any restrictions on the location in which a health care professional practices, unless the restriction is directly related to an agreement with the professional to practice in a specific region in return for full or partial repayment of his or her educational loans.

Sec. 42c. 18 V.S.A. § 9375 is amended to read:

§ 9375. DUTIES

(a) The ~~board~~ Board shall execute its duties consistent with the principles expressed in ~~18 V.S.A. §~~ section 9371 of this title.

(b) The ~~board~~ Board shall have the following duties:

* * *

(5) Set rates for health care professionals pursuant to section 9376 of this title, to be implemented over time, and make adjustments to the rules on reimbursement methodologies as needed.

* * *

Sec. 42d. 18 V.S.A. § 9376 is amended to read:

§ 9376. PAYMENT AMOUNTS; METHODS

(a) It is the intent of the ~~general assembly~~ General Assembly to:

(1) ensure payments to health care professionals that are consistent with efficiency, economy, and quality of care and will permit them to provide, on a solvent basis, effective and efficient health services that are in the public interest~~. It is also the intent of the general assembly to~~;

(2) eliminate the shift of costs between the payers of health services to ensure that the amount paid to health care professionals is sufficient to enlist enough providers to ensure that health services are available to all Vermonters and are distributed equitably; and

(3) protect the ability of each Vermont resident to enter into voluntary financial arrangements with the Vermont-licensed health care professionals of his or her choice.

(b)(1) The ~~board~~ Board shall set reasonable rates for health care professionals, health care provider bargaining groups created pursuant to section 9409 of this title, manufacturers of prescribed products, medical supply companies, and other companies providing health services or health supplies based on methodologies pursuant to section 9375 of this title, in order to have a consistent reimbursement amount accepted by these persons. In its discretion, the ~~board~~ Board may implement rate-setting for different groups of health care professionals over time and need not set rates for all types of health care professionals. In establishing rates, the ~~board~~ Board may consider legitimate differences in costs among health care professionals, such as the cost of providing a specific necessary service or services that may not be available elsewhere in the ~~state~~ State, and the need for health care professionals in particular areas of the ~~state~~ State, particularly in underserved geographic or practice shortage areas.

(2)(A) Nothing in this subsection shall be construed to limit the ability of a health care professional to accept less than the rate established in subdivision (1) of this subsection from a patient without health insurance or other coverage for the service or services received.

(B) Nothing in this subsection shall be construed to limit the ability of a Vermont resident to enter into a voluntary financial arrangement with the Vermont-licensed health care professionals of his or her choice; provided, however, that no such voluntary financial agreement shall be binding on a health insurer, Medicaid, or any other entity paying health care claims on the resident's behalf.

* * *

Second: In Sec. 53, Effective Dates, in subsection (a), following "40 (VHCURES)," by inserting "42a–42d (rates and practice locations),"

NOTICE CALENDAR

Committee Bill for Second Reading

H. 515

An act relating to miscellaneous agricultural subjects.

(Rep. Connor of Fairfield will speak for the Committee on **Agriculture and Forest Products.)**

Favorable with Amendment

H. 65

An act relating to limited immunity from liability for reporting a drug or alcohol overdose

Rep. Lippert of Hinesburg, for the Committee on **Judiciary,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. INTENT

It is the intent of the General Assembly to encourage a witness or victim of a drug overdose to seek medical assistance in order to save the life of an overdose victim by establishing a state policy of protecting the witness or victim from prosecution and conviction for certain crimes.

Sec. 2. 18 V.S.A. chapter 84, subchapter 3, which shall include §§ 4249–4254, is added to read:

Subchapter 3. Miscellaneous

* * *

§ 4254. IMMUNITY FROM LIABILITY

(a) As used in this section:

(1) "Drug overdose" means an acute condition resulting from or believed to be resulting from the use of a regulated drug which a layperson would reasonably believe requires medical assistance. For purposes of this section, "regulated drug" shall include alcohol.

(2) "Medical assistance" means professional services provided to a person experiencing a drug overdose by a health care professional licensed, registered, or certified under state law who, acting within his or her lawful scope of practice, may provide diagnosis, treatment, or emergency services for a person experiencing a drug overdose.

(3) "Seeks medical assistance" shall include providing care to someone who is experiencing a drug overdose while awaiting the arrival of medical assistance to aid the overdose victim.

(b) A person who, in good faith, seeks medical assistance for someone who is experiencing a drug overdose shall not be cited, arrested, or prosecuted for a violation of this chapter or cited, arrested, or prosecuted for procuring, possessing, or consuming alcohol by someone under age 21 pursuant to 7 V.S.A §§ 656 and 657 or for providing to or enabling consumption of alcohol by someone under age 21 pursuant to 7 V.S.A. § 658(a)–(c).

(c) A person who is experiencing a drug overdose and, in good faith, seeks medical assistance for himself or herself or is the subject of a good faith request for medical assistance shall not be cited, arrested, or prosecuted for a violation of this chapter or cited, arrested, or prosecuted for procuring, possessing, or consuming alcohol by someone under age 21 pursuant to 7 V.S.A. §§ 656 and 657 or for providing to or enabling consumption of alcohol by someone under age 21 pursuant to 7 V.S.A. § 658(a)–(c).

(d) A person who seeks medical assistance for a drug overdose pursuant to subsection (b) or (c) of this section shall not be subject to any of the penalties for violation of 13 V.S.A. § 1030 (violation of a protection order) for a violation of chapter 84 of this title or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose.

(e) A person who seeks medical assistance for a drug overdose pursuant to subsection (b) or (c) of this section shall not be subject to any sanction for a violation of a condition of pretrial release, probation, furlough, or parole for a violation of chapter 84 of this title or 7 V.S.A §§ 656 and 657, for being at the scene of the drug overdose, or for being within close proximity to any person at the scene of the drug overdose.

(f) The act of seeking medical assistance for or by someone who is experiencing a drug overdose shall be considered a mitigating circumstance at sentencing for a violation of any other offense.

(g) The immunity provisions of this section apply only to the use and derivative use of evidence gained as a proximate result of the person's seeking medical assistance for a drug overdose, and do not preclude prosecution of the person on the basis of evidence obtained from an independent source.

(h) A person who seeks medical assistance for a drug overdose pursuant to subsection (b) or (c) of this section shall not be subject to the provisions of subchapter 2 of this chapter concerning property subject to forfeiture, except that prima facie contraband shall be subject to forfeiture.

(i) Except in cases of reckless or intentional misconduct, law enforcement shall be immune from liability for citing or arresting a person who is later determined to qualify for immunity under this section.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage and shall apply only to a person who seeks medical assistance for a drug overdose in accordance with 18 V.S.A. § 4254 on or after the date of passage.

and that, after passage, the title of the bill be amended to read: "An act relating to limited immunity from liability for reporting a drug overdose"

(Committee Vote: 9-1-1)

H. 95

An act relating to unclaimed life insurance benefits

Rep. Kitzmiller of Montpelier, for the Committee on **Commerce and Economic Development,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 27 V.S.A. § 1244a is added to read:

§ 1244a. UNCLAIMED LIFE INSURANCE BENEFITS

(a) As used in this section:

(1) "Contract" means an annuity contract. It shall not include an annuity used to fund an employment-based retirement plan or program in which the insurance company is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants.

(2) "Death Master File" means the U.S. Social Security Administration's Death Master File or any other database or service that is at least as comprehensive as the Death Master File for determining that a person has reportedly died.

(3) "Death Master File Match" or "match" means a search of the Death Master File that results in a match between a person on the Death Master File and the Social Security Number or name and date of birth of an insured, annuity owner, or retained asset account holder.

(4) "Insurance" shall have the same meaning as in 8 V.S.A. § 3301a.

(5) "Life insurance" shall have the same meaning as in 8 V.S.A. § 3301.

(6) "Policy" means any policy or certificate of life insurance that provides a death benefit. It shall not include any policy or certificate of life insurance that provides a death benefit under:

(A) an employee benefit plan:

(i) subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, as may be amended; or

(ii) under any federal employee benefit program;

(B) any policy or certificate of life insurance used to fund a preneed funeral contract or prearrangement; or

(C) any policy or certificate of credit life or accidental death insurance.

(b) An insurance company shall perform a comparison of its insureds' in-force life insurance policies, contracts, and retained asset accounts against a Death Master File, on at least a semiannual basis, to identify potential matches. For those potential matches, the insurance company shall:

(1) within 90 days of identifying the match:

(A) complete a good faith effort, which shall be documented by the insurance company, to confirm the death of the insured or retained asset account holder against other available records and information; and

(B) determine whether benefits are due in accordance with the applicable policy or contract; and, if benefits are due in accordance with the applicable policy or contract:

(i) use good faith efforts, which shall be documented by the insurance company, to locate the beneficiary or beneficiaries; and

(ii) provide the appropriate claims forms or instructions to the beneficiary or beneficiaries to make a claim, including the need to provide an official death certificate, if applicable under the policy or contract; and

(2) with respect to group life insurance, confirm the possible death of an insured as required in subdivision (1) of this subsection when the insurance company maintains at least the following information of those covered under a policy or certificate:

(A) Social Security Number or name and date of birth;

(B) beneficiary designation information;

(C) coverage eligibility;

(D) benefit amount; and

(E) premium payment status.

(c) To the extent permitted by law, the insurance company may disclose minimum necessary personal information about the insured or beneficiary to a person who the insurance company reasonably believes may be able to assist the insurance company locate the beneficiary or a person otherwise entitled to payment of claims proceeds.

(d) An insurance company or its service provider shall not charge insureds, account holders, or beneficiaries for any fees or costs associated with a search or verification conducted under this section.

(e) The benefits from a life insurance policy or a retained asset account, plus any applicable interest accrued in accordance with 8 V.S.A. § 3665 shall first be payable to the designated beneficiaries or owners and, in the event the beneficiaries or owners cannot be found, shall escheat to the State as unclaimed property under section 1247 of this chapter.

(f) Upon the expiration of the statutory time period for escheat, an insurance company shall notify the Vermont State Treasurer that:

(1) a life insurance policy beneficiary or retained asset account holder has not submitted a claim with the insurance company; and

(2) the insurance company has complied with subsection (b) of this section and has been unable, after good faith efforts documented by the insurance company, to contact the retained asset account holder, beneficiary, or beneficiaries.

(g) Upon such notice, an insurance company shall immediately submit the unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interest, to the Vermont State Treasurer.

(h) The Vermont State Treasurer shall notify the Commissioner of Financial Regulation if he or she has reason to believe an insurance company has failed to meet any requirement of this act. The Commissioner shall determine whether such failure constitutes an unfair claim settlement practice under 8 V.S.A. § 4724(9).

Sec. 2. EFFECTIVE DATE; RETROACTIVE APPLICATION

This act shall take effect on passage and, notwithstanding 1 V.S.A. § 214(b), shall apply to all life insurance policies, annuity contracts, and retained asset accounts in force on or after the effective date.

(Committee Vote: 8-3-0)

H. 99

An act relating to equal pay

Rep. Stevens of Waterbury, for the Committee on **General, Housing and Military Affairs,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds:

(1) Pay inequity has been illegal since President Kennedy signed the Equal Pay Act in 1963 and Vermont outlawed pay discrimination in the Fair Employment Act the same year. In 1965, President Johnson signed Executive

Order 11246, which requires federal contractors to certify their compliance with federal nondiscrimination laws, including the Equal Pay Act.

(2) Notwithstanding these laws and notwithstanding the fact that women today make up nearly half of the workforce, pay inequity remains a persistent problem. Nationally, women earn roughly 78 percent of what their male counterparts earn. In Vermont, women fare only slightly better, earning roughly 84 cents per dollar earned by men, according to the National Partnership for Women and Families.

(3) Pay inequity affects all households. Nationally nearly 40 percent of mothers bring home the majority of their family's earnings, and nearly 63 percent of mothers bring home at least a quarter of their family's income.

(4) Research has shown that pay inequity may arise even if an employer does not specifically intend to discriminate against workers based on sex. For example, some employees may not have a fair opportunity to negotiate pay because they lack the opportunity to know what similarly situated employees earn. Other employees may avoid or be channeled into lower-paying assignments or career paths that are viewed as more compatible with family needs. Other employees may temporarily drop out of the workforce because there is insufficient workplace flexibility; when such employees do return to the workforce, they may be unable to catch up to employees performing the same work.

(5) A number of European countries, such as Great Britain, France, and Germany, have successfully implemented laws that grant employees the right to ask for flexible workplace arrangements without fear of retaliation and that require employers to consider such requests in good faith. Employers with flexible, family-friendly policies tend to have lower rates of absenteeism, lower rates of employee turnover, and higher worker productivity.

(6) Research has also shown that short paid parental leaves tend to keep women in the labor force longer and that women who take such leaves tend not to earn less than their male counterparts.

Sec. 2. 21 V.S.A. § 495 is amended to read:

§ 495. UNLAWFUL EMPLOYMENT PRACTICE

(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition:

* * *

(5) ~~For any employer, employment agency, or labor organization to~~

~~discharge or in any other manner discriminate against any employee because such employee has lodged a complaint of discriminatory acts or practices or has cooperated with the attorney general or a state's attorney in an investigation of such practices, or is about to lodge a complaint or cooperate in an investigation, or because such employer believes that such employee may lodge a complaint or cooperate with the attorney general or state's attorney in an investigation of discriminatory acts or practices;~~

~~(6)~~ For any employer, employment agency, labor organization, or person seeking employees to discriminate against, indicate a preference or limitation, refuse properly to classify or refer, or to limit or segregate membership~~,~~ on the basis of a person's having a positive test result from an HIV-related blood test;

~~(7)~~(6) For any employer, employment agency, labor organization, or person seeking employees to request or require an applicant, prospective employee, employee, prospective member, or member to have an HIV-related blood test as a condition of employment or membership, classification, placement, or referral;

~~(8)~~(7) For any employer, employment agency, labor organization, or person seeking employees to discriminate between employees on the basis of sex by paying wages to employees of one sex at a rate less than the rate paid to employees of the other sex for equal work that requires equal skill, effort, and responsibility~~,~~ and is performed under similar working conditions. An employer who is paying wages in violation of this section shall not reduce the wage rate of any other employee in order to comply with this subsection.

(A) An employer may pay different wage rates under this subsection when the differential wages are made pursuant to:

(i) A seniority system.

(ii) A merit system.

(iii) A system in which earnings are based on quantity or quality of production.

(iv) ~~Any factor other than sex~~ A bona fide factor other than sex. An employer asserting that differential wages are paid pursuant to this subdivision shall demonstrate that the factor does not perpetuate a sex-based differential in compensation, is job-related with respect to the position in question, and is based upon a legitimate business consideration.

(B) No employer may do any of the following:

(i) Require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages or from inquiring about

or discussing the wages of other employees.

(ii) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages or to inquire about or discuss the wages of other employees.

~~(iii) Discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages.~~

(8) Retaliation prohibited. An employer, employment agency, or labor organization shall not discharge or in any other manner discriminate against any employee because the employee:

(A) has opposed any act or practice that is prohibited under this chapter;

(B) has lodged a complaint or has testified, assisted, or participated in any manner with the Attorney General, a state's attorney, the Department of Labor, or the Human Rights Commission in an investigation of prohibited acts or practices;

(C) is known by the employer to be about to lodge a complaint, testify, assist, or participate in any manner in an investigation of prohibited acts or practices;

(D) has disclosed his or her wages or has inquired about or discussed the wages of other employees; or

(E) is believed by the employer to have acted as described in subdivisions (A) through (D) of this subdivision.

* * *

Sec. 3. 3 V.S.A. § 345 is added to read:

§ 345. EQUAL PAY IN GOVERNMENT CONTRACTS; CERTIFICATION

(a) Notwithstanding any other provision of law, an agency may not enter into a contract for goods with a contractor who does not provide written certification of compliance with the equal pay provisions of 21 V.S.A. § 495(a)(7).

(b) A contractor subject to this section shall maintain and make available its books and records to the contracting agency and the Attorney General so that either may determine whether the contractor is in compliance with this section.

Sec. 4. 21 V.S.A. § 305 is amended to read:

§ 305. NURSING MOTHERS IN THE WORKPLACE

* * *

(c) An employer shall not retaliate or discriminate against an employee who exercises ~~the right~~ or attempts to exercise the rights provided under this section. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this section.

* * *

Sec. 5. 21 V.S.A. § 472b is amended to read:

§ 472b. TOWN MEETING LEAVE; EMPLOYEES; STUDENTS

(a) Subject to the essential operation of a business or entity of state or local government, which shall prevail in any instance of conflict, an employee shall have the right to take unpaid leave from employment under this section or subsection 472(b) of this title for the purpose of attending his or her annual town meeting, provided the employee notifies the employer at least seven days prior to the date of the town meeting. ~~An employer shall not discharge or in any other manner retaliate against an employee for exercising the right provided by this section.~~

* * *

Sec. 6. 21 V.S.A. § 309 is added to read:

§ 309. FLEXIBLE WORKING ARRANGEMENTS

(a) An employee may request a flexible working arrangement that meets the needs of the employer and employee. The employer shall consider a request using the procedures in subsections (c)-(e) of this section at least twice per calendar year.

(b) As used in this section, "flexible working arrangement" means intermediate or long-term changes in the employee's regular working arrangements including changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing. "Flexible working arrangement" does not include vacation or another form of employee leave.

(c) Within 30 days of receiving a request for a flexible working arrangement, the employer shall discuss the request with the employee in good faith. The employer and employee may propose alternative arrangements during the discussion.

(d) Within 14 days of the discussion described in subsection (c) of this section, the employer shall notify the employee of the decision regarding the request. If the request was submitted in writing, the employer shall state any complete or partial denial of the request in writing.

(e) The employer shall grant the employee's request for a flexible working arrangement unless doing so is inconsistent with its business operations or its legal or contractual obligations.

(f) As used in this section, "inconsistent with business operations" includes:

(1) the burden on an employer of additional costs;

(2) a detrimental effect on the ability of an employer to meet consumer demand;

(3) an inability to reorganize work among existing staff;

(4) an inability to recruit additional staff;

(5) a detrimental impact on business quality or business performance;

(6) an insufficiency of work during the periods the employee proposes to work; and

(7) planned structural changes to the business.

(g) This section shall not diminish any rights under this chapter or pursuant to a collective bargaining agreement. An employer may institute a flexible working arrangement policy that is more generous than is provided by this section.

(h) The Attorney General, a state's attorney, or the Human Rights Commission in the case of state employees may enforce subsections (c) through (f) of this section by restraining prohibited acts, conducting civil investigations, and obtaining assurances of discontinuance in accordance with the procedures established in subsection 495b(a) of this title. An employer subject to a complaint shall have the rights and remedies specified in section 495b(a) of this title. An investigation against an employer shall not be a prerequisite for bringing an action. The Civil Division of the Superior Court may award injunctive relief and court costs in any action.

(i) An employer shall not retaliate against an employee exercising his or her rights under this section. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this section.

Sec. 7. 21 V.S.A. § 473 is amended to read:

§ 473. RETALIATION PROHIBITED

An employer shall not discharge or in any other manner retaliate against an employee ~~because:~~

~~(1) the employee lodged a complaint of a violation of a provision of this subchapter; or~~

~~(2) the employee has cooperated with the attorney general or a state's attorney in an investigation of a violation of a provision of this subchapter; or~~

~~(3) the employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of a provision of~~ who exercises or attempts to exercise his or her rights under this subchapter. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter.

Sec. 8. 21 V.S.A. § 474 is amended to read:

§ 474. PENALTIES AND ENFORCEMENT

(a) ~~The attorney general or a state's attorney may enforce the provisions of this subchapter by bringing a civil action for temporary or permanent injunctive relief, economic damages, including prospective lost wages for a period not to exceed one year, and court costs. The attorney general or a state's attorney may conduct an investigation to obtain voluntary conciliation of an alleged violation. Such investigation shall not be a prerequisite to the bringing of a court action.~~

~~(b) As an alternative to subsection (a) of this section, an employee entitled to leave under this subchapter who is aggrieved by a violation of a provision of this subchapter may bring a civil action for temporary or permanent injunctive relief, economic damages, including prospective lost wages for a period not to exceed one year, attorney fees and court costs~~ The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter.

~~(c)~~(b) An employer may bring a civil action to recover compensation paid to the employee during leave, except payments made for accrued sick leave or vacation leave~~,~~ and court costs to enforce the provisions of subsection 472(h) of this title.

Sec. 9. 21 V.S.A. § 710 is amended to read:

§ 710. UNLAWFUL DISCRIMINATION

* * *

(b) No person shall discharge or discriminate against an employee from employment because such employee asserted or attempted to assert a claim for

benefits under this chapter or under the law of any state or under the United States.

* * *

(f) The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter.

Sec. 10. 9 V.S.A. § 4502 is amended to read:

§ 4502. PUBLIC ACCOMMODATIONS

* * *

(c) No individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits, or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability as follows:

* * *

(4) ~~No public accommodation shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this section or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. No public accommodation shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of or on account of his or her having exercised or enjoyed or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by this section.~~ [Repealed.]

* * *

Sec. 11. 9 V.S.A. § 4503 is amended to read:

§ 4503. UNFAIR HOUSING PRACTICES

(a) It shall be unlawful for any person:

* * *

(5) ~~To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter or for having filed a charge, testified, or cooperated in any investigation or enforcement action pursuant to chapter 139 or 141 of this title.~~ [Repealed.]

* * *

Sec. 12. 9 V.S.A. § 4506 is amended to read:

§ 4506. ENFORCEMENT; CIVIL ACTION; RETALIATION PROHIBITED

* * *

(e) Retaliation prohibited. A person shall not discriminate against any individual because that individual:

(1) has opposed any act or practice that is prohibited under sections 4502 or 4503 of this title;

(2) has lodged a complaint or has testified, assisted, or participated in any manner with the Human Rights Commission in an investigation of acts or practices prohibited by chapter 139 of this title;

(3) is known by the person to be about to lodge a complaint, testify, assist, or participate in any manner in an investigation of acts or practices prohibited by chapter 139 of this title; or

(4) is believed by the person to have acted as described in subdivisions (1) through (3) of this subsection.

Sec. 13. PAID FAMILY LEAVE STUDY COMMITTEE

(a) A Committee is established to study the issue of paid family leave in Vermont and to make recommendations regarding whether and how paid family leave may benefit Vermont citizens.

(b) The Committee shall examine:

(1) existing paid leave laws and proposed paid leave legislation in other states;

(2) which employees should be eligible for paid leave benefits;

(3) the appropriate level of wage replacement for eligible employees;

(4) the appropriate duration of paid leave benefits;

(5) mechanisms for funding paid leave through employee contributions;

(6) administration of paid leave benefits;

(7) transitioning to a funded paid leave program; and

(8) any other issues relevant to paid leave.

(c) The Committee shall make recommendations including proposed legislation to address paid family leave in Vermont.

(d) The Committee shall consist of the following members:

(1) two members of the House of Representatives chosen by the Speaker;

(2) two members of the Senate chosen by the Committee on Committees;

(3) four representatives from the business community, two appointed by the Speaker and two by the Committee on Committees;

(4) two representatives from labor organizations, one appointed by the Speaker and one by the Committee on Committees;

(5) two representatives appointed by the Governor;

(6) the Attorney General or designee;

(7) the Commissioner of Labor or designee;

(8) the Executive Director of the Vermont Commission on Women or designee;

(9) the Executive Director of the Human Rights Commission or designee; and

(10) one representative of the advocacy community appointed by the Vermont Commission on Women.

(e) The Committee shall convene its first meeting on or before September 1, 2013. The Commissioner of Labor or designee shall be designated Chair of the Committee and shall convene the first and subsequent meetings.

(f) The Committee shall report its findings and recommendations on or before January 15, 2014 to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs.

(g) The Committee shall cease to function upon transmitting its report.

Sec. 14. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee Vote: 6-1-1)

Rep. Waite-Simpson of Essex, for the Committee on **Judiciary,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds:

(1) Pay inequity has been illegal since President Kennedy signed the Equal Pay Act in 1963 and Vermont outlawed pay discrimination in the Fair

Employment Act the same year. In 1965, President Johnson signed Executive Order 11246, which requires federal contractors to certify their compliance with federal nondiscrimination laws, including the Equal Pay Act.

(2) Notwithstanding these laws and notwithstanding the fact that women today make up nearly half of the workforce, pay inequity remains a persistent problem. Nationally, women earn roughly 78 percent of what their male counterparts earn. In Vermont, women fare only slightly better, earning roughly 84 cents per dollar earned by men, according to the National Partnership for Women and Families.

(3) Pay inequity affects all households. Nationally nearly 40 percent of mothers bring home the majority of their family's earnings, and nearly 63 percent of mothers bring home at least a quarter of their family's income.

(4) Research has shown that pay inequity may arise even if an employer does not specifically intend to discriminate against workers based on sex. For example, some employees may not have a fair opportunity to negotiate pay because they lack the opportunity to know what similarly situated employees earn. Other employees may avoid or be channeled into lower-paying assignments or career paths that are viewed as more compatible with family needs. Other employees may temporarily drop out of the workforce because there is insufficient workplace flexibility; when such employees do return to the workforce, they may be unable to catch up to employees performing the same work.

(5) A number of European countries, such as Great Britain, France, and Germany, have successfully implemented laws that grant employees the right to ask for flexible workplace arrangements without fear of retaliation and that require employers to consider such requests in good faith. Employers with flexible, family-friendly policies tend to have lower rates of absenteeism, lower rates of employee turnover, and higher worker productivity.

(6) Research has also shown that short paid parental leaves tend to keep women in the labor force longer and that women who take such leaves tend not to earn less than their male counterparts.

Sec. 2. 21 V.S.A. § 495 is amended to read:

§ 495. UNLAWFUL EMPLOYMENT PRACTICE

(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition:

* * *

(5) ~~For any employer, employment agency, or labor organization to discharge or in any other manner discriminate against any employee because such employee has lodged a complaint of discriminatory acts or practices or has cooperated with the attorney general or a state's attorney in an investigation of such practices, or is about to lodge a complaint or cooperate in an investigation, or because such employer believes that such employee may lodge a complaint or cooperate with the attorney general or state's attorney in an investigation of discriminatory acts or practices;~~

~~(6)~~ For any employer, employment agency, labor organization, or person seeking employees to discriminate against, indicate a preference or limitation, refuse properly to classify or refer, or to limit or segregate membership~~,~~ on the basis of a person's having a positive test result from an HIV-related blood test;

~~(7)~~(6) For any employer, employment agency, labor organization, or person seeking employees to request or require an applicant, prospective employee, employee, prospective member, or member to have an HIV-related blood test as a condition of employment or membership, classification, placement, or referral;

~~(8)~~(7) For any employer, employment agency, labor organization, or person seeking employees to discriminate between employees on the basis of sex by paying wages to employees of one sex at a rate less than the rate paid to employees of the other sex for equal work that requires equal skill, effort, and responsibility~~,~~ and is performed under similar working conditions. An employer who is paying wages in violation of this section shall not reduce the wage rate of any other employee in order to comply with this subsection.

(A) An employer may pay different wage rates under this subsection when the differential wages are made pursuant to:

(i) A seniority system.

(ii) A merit system.

(iii) A system in which earnings are based on quantity or quality of production.

(iv) ~~Any factor other than sex~~ A bona fide factor other than sex. An employer asserting that differential wages are paid pursuant to this subdivision shall demonstrate that the factor does not perpetuate a sex-based differential in compensation, is job-related with respect to the position in question, and is based upon a legitimate business consideration.

(B) No employer may do any of the following:

(i) Require, as a condition of employment, that an employee

refrain from disclosing the amount of his or her wages or from inquiring about or discussing the wages of other employees.

(ii) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages or to inquire about or discuss the wages of other employees.

~~(iii) Discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages.~~

(8) Retaliation prohibited. An employer, employment agency, or labor organization shall not discharge or in any other manner discriminate against any employee because the employee:

(A) has opposed any act or practice that is prohibited under this chapter;

(B) has lodged a complaint or has testified, assisted, or participated in any manner with the Attorney General, a state's attorney, the Department of Labor, or the Human Rights Commission in an investigation of prohibited acts or practices;

(C) is known by the employer to be about to lodge a complaint, testify, assist, or participate in any manner in an investigation of prohibited acts or practices;

(D) has disclosed his or her wages or has inquired about or discussed the wages of other employees; or

(E) is believed by the employer to have acted as described in subdivisions (A) through (D) of this subdivision.

* * *

Sec. 3. 3 V.S.A. § 345 is added to read:

§ 345. EQUAL PAY IN GOVERNMENT CONTRACTS; CERTIFICATION

(a) Notwithstanding any other provision of law, an agency may not enter into a contract for goods with a contractor who does not provide written certification of compliance with the equal pay provisions of 21 V.S.A. § 495(a)(7).

(b) A contractor subject to this section shall maintain and make available its books and records to the contracting agency and the Attorney General so that either may determine whether the contractor is in compliance with this section.

Sec. 4. 21 V.S.A. § 305 is amended to read:

§ 305. NURSING MOTHERS IN THE WORKPLACE

* * *

(c) An employer shall not retaliate or discriminate against an employee who exercises ~~the right~~ or attempts to exercise the rights provided under this section. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this section.

* * *

Sec. 5. 21 V.S.A. § 472b is amended to read:

§ 472b. TOWN MEETING LEAVE; EMPLOYEES; STUDENTS

(a) Subject to the essential operation of a business or entity of state or local government, which shall prevail in any instance of conflict, an employee shall have the right to take unpaid leave from employment under this section or subsection 472(b) of this title for the purpose of attending his or her annual town meeting, provided the employee notifies the employer at least seven days prior to the date of the town meeting. ~~An employer shall not discharge or in any other manner retaliate against an employee for exercising the right provided by this section.~~

* * *

Sec. 6. 21 V.S.A. § 309 is added to read:

§ 309. FLEXIBLE WORKING ARRANGEMENTS

(a)(1) An employee may request a flexible working arrangement that meets the needs of the employer and employee. The employer shall consider a request using the procedures in subsections (b) and (c) of this section at least twice per calendar year.

(2) As used in this section, "flexible working arrangement" means intermediate or long-term changes in the employee's regular working arrangements including changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing. "Flexible working arrangement" does not include vacation or another form of employee leave.

(b)(1) Within 30 days of receiving a request for a flexible working arrangement, the employer shall discuss the request with the employee in good faith. The employer shall consider the employee's request for a flexible working arrangement and whether the request could be granted in a manner that is not inconsistent with its business operations or its legal or contractual obligations. The employer and employee may propose alternative arrangements during the discussion.

(2) As used in this section, "inconsistent with business operations" includes:

(A) the burden on an employer of additional costs;

(B) a detrimental effect on the ability of an employer to meet consumer demand;

(C) an inability to reorganize work among existing staff;

(D) an inability to recruit additional staff;

(E) a detrimental impact on business quality or business performance;

(F) an insufficiency of work during the periods the employee proposes to work; and

(G) planned structural changes to the business.

(c) Within 14 days of the discussion described in subsection (b) of this section, the employer shall notify the employee of the decision regarding the request. If the request was submitted in writing, the employer shall state any complete or partial denial of the request in writing.

(d) This section shall not diminish any rights under this chapter or pursuant to a collective bargaining agreement. An employer may institute a flexible working arrangement policy that is more generous than is provided by this section.

(e) The Attorney General, a state's attorney, or the Human Rights Commission in the case of state employees may enforce subsections (b) and (c) of this section by restraining prohibited acts, conducting civil investigations, and obtaining assurances of discontinuance in accordance with the procedures established in subsection 495b(a) of this title. An employer subject to a complaint shall have the rights and remedies specified in section 495b(a) of this title. An investigation against an employer shall not be a prerequisite for bringing an action. The Civil Division of the Superior Court may award injunctive relief and court costs in any action. There shall be no private right of action to enforce this section.

(f) An employer shall not retaliate against an employee exercising his or her rights under this section. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this section.

Sec. 7. 21 V.S.A. § 473 is amended to read:

§ 473. RETALIATION PROHIBITED

An employer shall not discharge or in any other manner retaliate against an

employee ~~because:~~

~~(1) the employee lodged a complaint of a violation of a provision of this subchapter; or~~

~~(2) the employee has cooperated with the attorney general or a state's attorney in an investigation of a violation of a provision of this subchapter; or~~

~~(3) the employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of a provision of~~ who exercises or attempts to exercise his or her rights under this subchapter. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter.

Sec. 8. 21 V.S.A. § 474 is amended to read:

§ 474. PENALTIES AND ENFORCEMENT

(a) ~~The attorney general or a state's attorney may enforce the provisions of this subchapter by bringing a civil action for temporary or permanent injunctive relief, economic damages, including prospective lost wages for a period not to exceed one year, and court costs. The attorney general or a state's attorney may conduct an investigation to obtain voluntary conciliation of an alleged violation. Such investigation shall not be a prerequisite to the bringing of a court action.~~

~~(b) As an alternative to subsection (a) of this section, an employee entitled to leave under this subchapter who is aggrieved by a violation of a provision of this subchapter may bring a civil action for temporary or permanent injunctive relief, economic damages, including prospective lost wages for a period not to exceed one year, attorney fees and court costs~~ The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter.

~~(c)~~(b) An employer may bring a civil action to recover compensation paid to the employee during leave, except payments made for accrued sick leave or vacation leave~~,~~ and court costs to enforce the provisions of subsection 472(h) of this title.

Sec. 9. 21 V.S.A. § 710 is amended to read:

§ 710. UNLAWFUL DISCRIMINATION

* * *

(b) No person shall discharge or discriminate against an employee from employment because such employee asserted or attempted to assert a claim for

benefits under this chapter or under the law of any state or under the United States.

* * *

(f) The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter.

Sec. 10. 9 V.S.A. § 4502 is amended to read:

§ 4502. PUBLIC ACCOMMODATIONS

* * *

(c) No individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits, or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability as follows:

* * *

(4) ~~No public accommodation shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this section or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. No public accommodation shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of or on account of his or her having exercised or enjoyed or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by this section.~~ [Repealed.]

* * *

Sec. 11. 9 V.S.A. § 4503 is amended to read:

§ 4503. UNFAIR HOUSING PRACTICES

(a) It shall be unlawful for any person:

* * *

(5) ~~To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter or for having filed a charge, testified, or cooperated in any investigation or enforcement action pursuant to chapter 139 or 141 of this title.~~ [Repealed.]

* * *

Sec. 12. 9 V.S.A. § 4506 is amended to read:

§ 4506. ENFORCEMENT; CIVIL ACTION; RETALIATION PROHIBITED

* * *

(e) Retaliation prohibited. A person shall not discriminate against any individual because that individual:

(1) has opposed any act or practice that is prohibited under sections 4502 or 4503 of this title;

(2) has lodged a complaint or has testified, assisted, or participated in any manner with the Human Rights Commission in an investigation of acts or practices prohibited by chapter 139 of this title;

(3) is known by the person to be about to lodge a complaint, testify, assist, or participate in any manner in an investigation of acts or practices prohibited by chapter 139 of this title; or

(4) is believed by the person to have acted as described in subdivisions (1) through (3) of this subsection.

Sec. 13. PAID FAMILY LEAVE STUDY COMMITTEE

(a) A Committee is established to study the issue of paid family leave in Vermont and to make recommendations regarding whether and how paid family leave may benefit Vermont citizens.

(b) The Committee shall examine:

(1) existing paid leave laws and proposed paid leave legislation in other states;

(2) which employees should be eligible for paid leave benefits;

(3) the appropriate level of wage replacement for eligible employees;

(4) the appropriate duration of paid leave benefits;

(5) mechanisms for funding paid leave through employee contributions;

(6) administration of paid leave benefits;

(7) transitioning to a funded paid leave program; and

(8) any other issues relevant to paid leave.

(c) The Committee shall make recommendations including proposed legislation to address paid family leave in Vermont.

(d) The Committee shall consist of the following members:

(1) two members of the House of Representatives chosen by the Speaker;

(2) two members of the Senate chosen by the Committee on Committees;

(3) four representatives from the business community, two appointed by the Speaker and two by the Committee on Committees;

(4) two representatives from labor organizations, one appointed by the Speaker and one by the Committee on Committees;

(5) two representatives appointed by the Governor;

(6) the Attorney General or designee;

(7) the Commissioner of Labor or designee;

(8) the Executive Director of the Vermont Commission on Women or designee;

(9) the Executive Director of the Human Rights Commission or designee; and

(10) one representative of the advocacy community appointed by the Vermont Commission on Women.

(e) The Committee shall convene its first meeting on or before September 1, 2013. The Commissioner of Labor or designee shall be designated Chair of the Committee and shall convene the first and subsequent meetings.

(f) The Committee shall report its findings and recommendations on or before January 15, 2014 to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs.

(g) The Committee shall cease to function upon transmitting its report.

Sec. 14. EFFECTIVE DATE

(a) Sec. 6 of this act shall take effect on January 1, 2014.

(b) The remaining sections of this act shall take effect on July 1, 2013.

(Committee Vote: 9-1-1)

H. 105

An act relating to adult protective services reporting requirements

Rep. Haas of Rochester, for the Committee on **Human Services,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) According to the 2012 Annual Report on Adult Protective Services, the Adult Protective Services program received 1,829 reports of abuse, neglect, and exploitation in 2012 and opened 872 investigations.

(2) Currently there are no data that explain why 957 reports received in 2012 were not investigated.

(3) Consistent data are not available that explain what referrals were made to assist or protect the alleged victims.

(4) According to an August 2012 report prepared by the Self-Neglect Task Force convened by the Department of Disabilities, Aging, and Independent Living, in 2010 the Department's Adult Protective Services program received 263 reports of self-neglect and investigated 42 of those reports.

(5) The Task Force report explains that although Adult Protective Services makes numerous referrals to law enforcement and other agencies, the available data do not identify the number of referrals that were made in response to allegations of self-neglect or to whom reporters or persons who were self-neglecting were referred.

(6) The Department of Disabilities, Aging, and Independent Living recently awarded grants to Vermont's five Area Agencies on Aging to support and enhance coordinated community responses to persons who are self-neglecting. The request for proposals for the grants acknowledges a lack of data at both the state and community levels to determine the scope of the problem of self-neglect.

Sec. 2. ADULT PROTECTIVE SERVICES DATA

(a) On or before July 15, 2013, and by each July 15, October 15, January 15, and April 15 through July 2015, the Commissioner of Disabilities, Aging, and Independent Living shall provide the information described in subsection (b) of this section to the General Assembly. When the General Assembly is in session, the Commissioner shall provide the information to the House Committee on Human Services, the Senate Committee on Health and Welfare, and the House and Senate Committees on Judiciary. When the General Assembly is not in session, the Commissioner shall provide the information to the Health Care Oversight Committee. The Commissioner shall also post the information to the Department's website in order to make the information available to the public.

(b) The Commissioner shall provide the following information relating to the Department's adult protective services activities during the preceding

calendar quarter:

(1) the number of unduplicated reports and the number of such reports assigned for investigation;

(2) the total number of cases currently open and under investigation;

(3) the number of reports assigned for investigation that were not substantiated;

(4) the number of cases that were not investigated pursuant to 33 V.S.A. § 6906 because:

(A) the report was based on self-neglect;

(B) the alleged victim did not meet the statutory definition of a vulnerable adult;

(C) the allegation did not meet the statutory definition of abuse, neglect, or exploitation;

(D) the report was based on "resident on resident" abuse;

(E) the alleged victim died; or

(F) for any other reason.

(5) for reports not investigated because the alleged victim did not meet the definition of a vulnerable adult, the relationship of the reporter to the alleged victim; and

(6) for reports not investigated pursuant to 33 V.S.A. § 6906, the services or agencies to which the reporter, alleged victim, or both were referred.

Sec. 3. 2005 Acts and Resolves No. 79, Sec. 12 is amended to read:

Sec. 12. REPORT

(a) ~~On~~ Notwithstanding the provisions of 2 V.S.A. § 20(d), on or before January 15, 2006 and on or before January 15 of each year thereafter, the ~~secretary of the agency of human services~~ Secretary of Human Services shall submit a report to the following committees: the ~~house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare~~ House and Senate Committees on Judiciary, the House Committee on Human Services, and the Senate Committee on Health and Welfare. The report shall include:

(1)(A) ~~The~~ For the preceding year, the number of reports of abuse, exploitation, and neglect:

(i) received by ~~adult protective services~~ Adult Protective Services (APS) within the ~~department of aging and independent living during the preceding year~~ Department of Disabilities, Aging, and Independent Living, and the total number of persons who filed reports.

(ii) investigated by APS ~~during the preceding year~~.

(iii) substantiated by APS ~~during the preceding year~~.

(iv) referred to other agencies for investigation by APS ~~during the preceding year~~, including identification of each agency and the number of referrals it received.

(v) referred for protective services by APS ~~during the preceding year~~, including a summary of the services provided.

(vi) resulting in a written coordinated treatment plan pursuant to 33 V.S.A. § 6907(a) or a plan of care as defined in 33 V.S.A. § 6902(8).

(vii) for which an individual was placed on the abuse and neglect registry as the result of a substantiation.

(viii) referred to law enforcement agencies.

(ix) for which a penalty was imposed pursuant to 33 V.S.A. § 6913.

(x) for which actions for intermediate sanctions were brought pursuant to 33 V.S.A. § 7111.

(B) For each type of report required from APS by subdivision (1)(A) of this section, a statistical breakdown of the number of reports according to the type of abuse and to the victim's:

(i) relationship to the reporter;

(ii) relationship to the alleged perpetrator;

(iii) age;

(iv) disability or impairment; and

(v) place of residency.

* * *

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 8-0-3)

H. 140

An act relating to Choices for Care

Rep. French of Randolph, for the Committee on **Human Services,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. chapter 74 is added to read:

CHAPTER 74. CHOICES FOR CARE

§ 7401. DEFINITIONS

As used in this chapter:

(1) "Agency" means the Agency of Human Services.

(2) "Choices for Care" means a program implemented by the Department through a long-term care Medicaid Section 1115 waiver that offers participants a choice of settings for long-term services and supports.

(3) "Department" means the Department of Disabilities, Aging, and Independent Living.

(4) "Home- and community-based services" means long-term services and supports received in a home or community setting, other than a nursing facility, and may include:

(A) services provided to individuals with traumatic brain injury through a Medicaid waiver;

(B) services provided in residential care homes and assisted living residences;

(C) assisted community care services;

(D) attendant services;

(E) homemaker services;

(F) services funded through the Older Americans Act;

(G) adult day services;

(H) home health services;

(I) respite services for families including an individual with Alzheimer's disease and other forms of dementia;

(J) services provided by the Home Access Project of the Vermont Center for Independent Living;

(K) programs providing meals for young people with disabilities;

(L) services provided by the Sue Williams Freedom Fund of the Vermont Center for Independent Living;

(M) living skills services from the Vermont Association for the Blind and Visually Impaired;

(N) services provided by Support and Services at Home (SASH);

(O) enhanced residential care;

(P) services under the Home Share Vermont program; and

(Q) transportation services.

(5) "Long-term care" means care or services received by an individual in a nursing home or through home- and community-based services.

(6) "Long-term services and supports" means those services covered by the Choices for Care Medicaid waiver.

(7) "Savings" means the number that results from the calculation set forth in 7402(h) of this title.

§ 7402. IMPLEMENTATION

(a) The Department shall implement a long-term care Medicaid Section 1115 waiver, to be known as the "Choices for Care" program, by rule with approval from the Centers for Medicare and Medicaid Services. The rules for operation of the Section 1115 waiver shall include criteria and standards for eligibility, levels of assistance, assessments, reviews, and the appeal and fair hearing process. If the long-term care Medicaid Section 1115 waiver is included in a broader Medicaid waiver, such as the Global Commitment to Health, the provisions of this chapter shall apply to the relevant portions of that waiver.

(b)(1) The Department shall prepare and submit quarterly reports that address the utilization of services and expenses under Choices for Care. The reports shall include:

(A) a monthly comparison of actual expenditures to estimated expenditures and projected expenditures for the remainder of the fiscal year;

(B) the average cost per beneficiary by need group;

(C) the number of individuals on the wait list for each need group maintained at the state and regional level; and

(D) the monthly and actual expenses by category of service and by need.

(2) During the legislative session, the Department shall submit the

reports to the House Committee on Human Services, the Senate Committee on Health and Welfare, and the House and Senate Committees on Appropriations. Outside of the legislative session, the Department shall submit the reports to the Health Care Oversight Committee.

(c) Outside of the legislative session, the Health Care Oversight Committee shall have oversight for the development, implementation, and ongoing operation of Choices for Care, as well as any other long-term care Medicaid waiver applied for and received by the Agency.

(d)(1) The process for reassessing entitlement for services for individuals under this subdivision is as follows:

(A) The individual shall first be assessed under the new level of care criteria established under the waiver to determine entitlement to services.

(B) If the individual is no longer entitled to services under the new criteria, the individual shall be assessed under the Guidelines for Nursing Home Eligibility adopted in April 1997, which was the level of care criteria in effect prior to the waiver. If the individual is entitled to services under the Guidelines, the individual shall continue to receive services.

(C) If the individual is not entitled to services under subdivision (A) or (B) of this subdivision (1), the individual shall no longer receive services, but shall be treated appropriately under the new rules.

(2) The Department shall have rules providing a process by which an individual who is eligible for but not entitled to services and who is in the high needs group as defined by the waiver may apply for an exception to the entitlement rule if the individual has a critical need for long-term services and supports due to special circumstances.

(3) The Department shall develop and maintain waiting lists both of applicants categorized by high needs and moderate needs for whom there is insufficient funding to provide services under the long-term care Medicaid Section 1115 waiver and of individuals applying for long-term services and supports under state-funded programs and shall indicate the reasons why applicants are waiting for services. Providers of moderate needs group services shall also maintain waiting lists of moderate needs group applicants for whom there is insufficient Choices for Care funding to provide moderate needs services.

(e) The Department shall have rules providing a process by which individuals entering the long-term care system are assessed to determine need level and are informed of their options prior to entering a nursing home. The rules shall ensure that the assessment and information are provided in a timely

manner so as not to delay discharges from hospitals and shall include provisions for emergency admissions to nursing homes.

(f)(1) If an amendment to the rules is necessary during the legislative session, the Department shall solicit input from the committees of jurisdiction prior to filing the proposed rules pursuant to 3 V.S.A. chapter 25.

(2) If an amendment to the rules is necessary outside of the legislative session, the Department shall solicit input from the Health Care Oversight Committee prior to filing the proposed rules pursuant to 3 V.S.A. chapter 25.

(g) Any funds appropriated for long-term care under the long-term care waiver authorized under this act shall be used for long-term services and supports to recipients. In using these funds, the Department shall give priority to services to individuals assessed as high and highest needs and meeting the terms and conditions of the waiver as approved by the Centers for Medicare and Medicaid Services. Any remaining funds from the long-term care appropriation may be used for other home- and community-based services and supports. The remaining funds shall be allocated and spent in ways that are sustainable into the future and do not create an unsustainable base budget or as one-time reinvestments that do not require sustainability into the future. Any funds that are not spent in the year for which they were appropriated shall be carried over to the next fiscal year, except acute expenditures.

(h) Notwithstanding any provision of this chapter to the contrary, the Commissioner shall calculate any savings to be reinvested under the waiver as follows:

(1)(A) the average caseload of high needs and highest needs individuals in home- and community-based settings shall be reduced by the number of individuals already in these settings at the commencement of the waiver;

(B) the number arrived at under subdivision (1)(A) of this subsection shall be multiplied by the average savings per case in the fiscal year most recently concluded, meaning the average per-person cost for nursing home care minus the average per-person cost for home- and community-based services;

(2) the number arrived at under subdivision (1)(B) of this subsection shall be further reduced by the net new expense for services provided to the moderate needs group since commencement of the waiver; and

(3) the number arrived at under subdivision (2) of this subsection shall be further reduced by one-fourth to account for those in such settings who would not have otherwise enrolled in the waiver had a home- and community-based setting not been available under the waiver.

(i)(1) At the end of each fiscal year, the Department and Joint Fiscal Office

shall each independently calculate the amount of savings accrued under the Choices for Care waiver in accordance with subsection (h) of this section for the preceding fiscal year.

(2) Annually on or before August 1, the Department and the Joint Fiscal Office shall review the calculations of the other entity and jointly determine a number that accurately reflects the calculation for savings set forth in subsection (h) of this section.

(j)(1) The savings realized due to the implementation of the long-term care Medicaid Section 1115 waiver shall be retained by the Department. The Department may share up to half of the savings with the base waiver funding. The Department, in consultation with its Advisory Board, shall develop a proposal for reinvesting the remaining savings into home- and community-based services.

(2) Annually on or before September 1, the Department shall present to and solicit input from the Health Care Oversight Committee regarding its proposed reinvestment of savings as calculated pursuant to this chapter prior to reinvesting the funds.

(k)(1) The Department shall convene a working group from its Advisory Board for the purpose of providing input on the advisability of seeking renewal of the waiver and input on how with any new waiver there can be timely reporting to providers and consumers on reinvested savings.

(2) If at any time the Agency of Human Services reapplies for a Medicaid waiver to provide home- and community-based services, it shall include a provision in the waiver that any savings shall be reinvested in accordance with this chapter.

(l) Nothing in this chapter shall be interpreted to reduce the amount of reinvestment required pursuant to Assurance 24 of the Special Terms and Conditions of Approval of the waiver by the Centers for Medicare and Medicaid Services.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee Vote: 9-2-0)

H. 178

An act relating to anatomical gifts

Rep. Donahue of Northfield, for the Committee on **Human Services,** recommends the bill be amended as follows:

By renumbering Sec. 2 to be Sec. 6 and inserting new Secs. 2 through 5 to read as follows:

Sec. 2. 18 V.S.A. § 5227 is amended to read:

§ 5227. RIGHT TO DISPOSITION

(a) If there is no written directive of the decedent, in the following order of priority, one or more competent adults shall have the right to determine the disposition of the remains of a decedent, including the location, manner, and conditions of disposition and arrangements for funeral goods and services:

* * *

(8) any other individual willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the representative of the decedent's estate, after attesting in writing that a good faith but unsuccessful effort has been made to contact the individuals described in subdivisions (1) through (7) of this subsection or that those individuals have waived any interest in exercising their rights under this subchapter; ~~or~~

(9) the funeral director or crematory operator with custody of the body, after attesting in writing that a good faith effort has been made to contact the individuals described in subdivisions (1) through (8) of this subsection~~.~~; or

(10) the Office of the Chief Medical Examiner when it has jurisdiction and custody of the body, after attesting in writing that a good faith effort has been made to contact the individuals described in subdivisions (1) through (8) of this subsection.

* * *

(c)(1) If the disposition of the remains of a decedent is determined under subdivision (a)(10) of this section, the Office of the Chief Medical Examiner may contract with a funeral director or crematory operator to cremate the remains of the decedent.

(2)(A) If the cremation of the decedent is arranged and paid for under 33 V.S.A. § 2301, the Department for Children and Families shall pay the cremation expenses to the funeral home, up to the maximum payment permitted by rule by the Department for Children and Families.

(B) If the cremation of the decedent is not arranged and paid for

under 33 V.S.A. § 2301, the Department of Health shall pay the cremation expenses to the funeral home, up to the maximum payment permitted by rule by the Department for Children and Families.

(3) The cremated remains shall be returned to the Office of the Chief Medical Examiner. The Office shall retain the remains for three years, and if no interested party, as described in subdivisions (a)(1) through (8) of this section, claims the decedent's remains after three years, the Office shall arrange for the final disposition of the cremated remains consistent with any applicable law and standard funeral practices.

Sec. 3. 2012 Acts and Resolves No. 132, Sec. 4 is amended to read:

Sec. 4. ORGAN AND TISSUE DONATION

(a) Subject to available resources, the ~~commissioner of health~~ Commissioner of Health shall undertake such actions as are necessary and appropriate, in his or her discretion, to coordinate the efforts of public and private entities involved with the donation and transplantation of human organs and tissues in Vermont and to increase organ and tissue donation rates.

(b)(1) No later than ~~January 15, 2013~~ January 15, 2014, the ~~commissioner~~ Commissioner shall report to the ~~house committee on human services~~ House Committee on Human Services and the ~~senate committee on health and welfare~~ Senate Committee on Health and Welfare regarding the actions taken pursuant to subsection (a) of this section and any additional efforts that the ~~commissioner~~ Commissioner recommends but believes would require legislation.

(2) The report shall include a status report on behalf of the organ and tissue donation working group regarding the group's activities, findings, data on organ donations, and recommendations on how to increase live organ donations in Vermont.

Sec. 4. ORGAN AND TISSUE DONATION WORKING GROUP

(a) There is created an organ and tissue donation working group to make recommendations to the General Assembly and the Governor relating to organ and tissue donations.

(b) The members of the organ and tissue donation working group shall include:

(1) the Commissioner of Health or designee, who shall chair the working group;

(2) the Commissioner of Motor Vehicles or designee;

(3) a representative of the Vermont Medical Society;

(4) representatives from the federally designated organ procurement organizations serving Vermont; and

(5) other interested stakeholders.

(c) The working group shall develop recommendations regarding:

(1) coordination of the efforts of all public and private entities within the State that are involved with the donation and transplantation of human organs and tissues;

(2) the creation of a comprehensive statewide program for organ and tissue donations and transplants;

(3) the establishment of goals and strategies for increasing donation rates in Vermont of deceased and, when appropriate, live organs and tissues;

(4) issues related to health insurance and other relevant insurance types;

(5) issues related to employment, including sick time, for those persons willing to be live donors of organs and tissue; and

(6) other issues related to organ and tissue donation and transplantation.

(d) The working group shall receive administrative support from the Department of Health.

(e) The Commissioner of Health, on behalf of the working group, shall submit a status report on the group's activities, findings, data on organ donations, and recommendations on how to increase live organ donations in Vermont to the House Committee on Human Services and the Senate Committee on Health and Welfare as part of the Commissioner's report under 2012 Acts and Resolves No. 132, Sec. 4(b).

(f) The working group shall submit a final report on its findings and recommendations to the House Committees on Human Services, on Health Care, and on Transportation, the Senate Committees on Health and Welfare and on Transportation, and to the Governor by January 15, 2015, after which time the working group shall cease to exist. The report shall include a recommendation about whether the Department of Health should establish an ongoing advisory council on organ and tissue donation.

Sec. 5. 18 V.S.A. § 5234 is added to read:

§ 5234. ORGAN DONATION SPECIAL FUND

There is created an Organ Donation Special Fund which shall be a special fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5. The Organ Donation Special Fund shall consist of any federal funds, grants, and private donations solicited by the Commissioner of Health for use within

the Fund. The Organ Donation Special Fund shall be used for activities related to increasing organ donations in Vermont.

(Committee Vote: 10-0-1)

H. 242

An act relating to creating the Vermont Strong Scholars Program

Rep. Campion of Bennington, for the Committee on **Education,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 16 V.S.A. chapter 90 is redesignated to read:

CHAPTER 90. FUNDING OF POSTSECONDARY ~~INSTITUTIONS~~ EDUCATION

Sec. 2. 16 V.S.A. § 2888 is added to read:

§ 2888. VERMONT STRONG SCHOLARS PROGRAM

(a) Program creation. There is created a Vermont Strong Scholars Program to repay a portion of a Vermont resident's postsecondary debt in order to encourage Vermonters majoring in fields that prepare them for employment in Vermont in targeted workforce areas upon earning a bachelor's or associate's degree from a Vermont public or independent postsecondary institution. The Secretary of Commerce and Community Development, in consultation with the Secretary of Education and the Commissioner of Labor, shall determine eligibility for the Program and develop all organizational details consistent with the purposes and requirements of this section.

(b) Fund creation.

(1) There is created a special fund to be known as the Vermont Strong Scholars Fund pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund shall be established and held separate and apart from any other funds or monies of the State and shall be used and administered solely for the purposes of this section. The Secretary of Commerce and Community Development may draw warrants for disbursements from the Fund in anticipation of receipts. Any remaining balance at the end of the fiscal year shall be carried forward in the Fund.

(2) The Fund shall consist of:

(A) sums appropriated or transferred from the General Fund from time to time by the General Assembly;

(B) interest earned from the investment of Fund balances; and

(C) any other money from any other source accepted for the benefit of the Fund.

(3) The Secretary of Commerce and Community Development shall administer the Fund or may contract for its administration. The administrator may require certification of compliance with this section prior to making an award, including certification that the amount of the eligible individual's outstanding debt arising solely from postsecondary tuition exceeds the total amount to be paid under this section.

(c) Criteria.

(1) Tuition repayment awards shall be provided in exchange for a commitment from an eligible individual to work in Vermont following postsecondary graduation for the three- or five-year period of tuition repayment under this section.

(2) An individual shall be eligible for an award under this section if he or she:

(A) is a graduate of a Vermont public secondary school, a public school in another state that is designated as the public school for the student's district of residence, or an approved or recognized independent secondary school located in Vermont or was a home study student classified as a Vermont resident by the postsecondary institution from which he or she was graduated;

(B) is a graduate of a public or independent postsecondary institution in Vermont;

(C) was a first-time, full-time, degree-seeking student while enrolled in the postsecondary institution;

(D) was awarded an associate's or bachelor's degree in a field identified by the Secretary of Commerce and Community Development, the Secretary of Education, and the Commissioner of Labor in a collaborative process that determines current and projected industry trends and identifies current and future workforce needs;

(E) completed the associate's degree within two years or the bachelor's degree within four years;

(F) was enrolled in the postsecondary institution from which the degree was awarded or was enrolled in both that institution and another Vermont postsecondary institution for the entire two- or four-year period; provided however, that an award shall be available on a prorated basis to an otherwise eligible individual who is enrolled in a postsecondary institution located outside of Vermont and who transfers to and is graduated from a Vermont postsecondary institution; and

(G) following graduation, is employed in a field or specific position identified by the collaborative process referenced in this subdivision (2).

(3) The Secretary of Commerce and Community Development shall make an award under this section to an eligible individual:

(A) in an amount equal to one semester of tuition at the Vermont State Colleges' in-state tuition rate for the second year of enrollment for an individual awarded an associate's degree, to be paid in installments during the three years following graduation; and

(B) in an amount equal to one year of tuition at the Vermont State Colleges' in-state tuition rate for the fourth year of enrollment for an individual awarded a bachelor's degree, to be paid in installments during the five years following graduation.

(4) Notwithstanding subdivision (3) of this subsection, an award to an eligible individual shall be adjusted so that it does not exceed the amount of the individual's debt arising solely from postsecondary tuition that is outstanding at the time of graduation.

(d) Reports.

(1) Participating postsecondary schools shall report annually in November to the Secretary of Commerce and Community Development regarding the number of enrolled first-time, full-time Vermont students with an eligible major who are expected to graduate within the required two- or four-year period.

(2) Notwithstanding 2 V.S.A. § 20(d), the Secretary of Commerce and Community Development shall report annually in January to the General Assembly regarding implementation of the Program, including the projected cost of making awards under this section during the then-current fiscal year and each of the four years following.

(e) Rules. The Secretary of Commerce and Community Development shall adopt rules pursuant to 3 V.S.A. chapter 25 to implement the Program created by this section.

Sec. 3. REPORTS

On or before January 15, 2014, the Secretary of Commerce and Community Development shall report to the General Assembly regarding implementation of the Program created in Sec. 2 of this act, including the projected cost of making awards under that section in fiscal year 2016 and after.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2013 and, pursuant to the terms of

16 V.S.A. § 2888, tuition repayment awards shall be available to Vermont students graduating from high school in 2013 and after.

(Committee Vote: 9-0-2)

H. 270

An act relating to providing access to publicly funded prekindergarten education

Rep. Buxton of Tunbridge, for the Committee on **Education,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 16 V.S.A. § 829 is amended to read:

§ 829. PREKINDERGARTEN EDUCATION~~; RULES~~

(a) Definitions. As used in this section:

(1) "Prekindergarten child" means a child who, as of the date established by the district of residence for kindergarten eligibility, is three or four years of age or is five years of age but is not yet enrolled in kindergarten.

(2) "Prekindergarten education" means services designed to provide to prekindergarten children developmentally appropriate early development and learning experiences based on Vermont's early learning standards.

(3) "Prequalified private provider" means a private provider of prekindergarten education that is qualified pursuant to subsection (c) of this section.

(b) Access to publicly funded prekindergarten education.

(1) No fewer than ten hours per week of publicly funded prekindergarten education shall be available for 35 weeks annually to each prekindergarten child whom a parent or guardian wishes to enroll in an available, prequalified program operated by a public school or a private provider.

(2) If a parent or guardian chooses to enroll a prekindergarten child in an available, prequalified program, then, pursuant to the parent or guardian's choice, the school district of residence shall:

(A) pay tuition pursuant to subsection (d) of this section upon the request of the parent or guardian to:

(i) a prequalified private provider; or

(ii) a public school located outside the district that operates a prekindergarten program that has been prequalified pursuant to subsection (c)

of this section; or

(B) enroll the child in the prekindergarten education program that it operates.

(3) If requested by the parent or guardian of a prekindergarten child, the school district of residence shall pay tuition to a prequalified program operated by a private provider or a public school in another district even if the district of residence operates a prekindergarten education program.

(4) If the supply of prequalified private and public providers is insufficient to meet the demand for publicly funded prekindergarten education in any region of the State, nothing in this section shall be construed to require a district to begin or expand a program to satisfy that demand; but rather, in collaboration with the Agencies of Education and of Human Services, the local Building Bright Futures Council shall meet with school districts and private providers in the region to develop a regional plan to expand capacity.

(c) Prequalification. Pursuant to rules jointly developed and overseen by the Secretaries of Education and of Human Services and adopted by the State Board pursuant to 3 V.S.A. chapter 25, the Agencies jointly may determine that a private or public provider of prekindergarten education is qualified for purposes of this section and include the provider in a publicly accessible database of prequalified providers. At a minimum, the rules shall define the process by which a provider applies for and maintains prequalification status, shall identify the minimum quality standards for prequalification, and shall include the following requirements:

(1) A program of prekindergarten education, whether provided by a school district or a private provider, shall have received:

(A) National Association for the Education of Young Children (NAEYC) accreditation; or

(B) at least four stars in the Department for Children and Families STARS system with at least two points in each of the five arenas; or

(C) three stars in the STARS system if the provider has developed a plan, approved by the Commissioner for Children and Families and the Secretary of Education, to achieve four or more stars in no more than two years with at least two points in each of the five arenas, and the provider has met intermediate milestones.

(2) A licensed provider shall employ or contract for the services of at least one teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title.

(3) A registered home provider that is not licensed and endorsed in early

childhood education or early childhood special education shall receive regular, active supervision and training from a teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title.

(d) Tuition, budgets, and average daily membership.

(1) On behalf of a resident prekindergarten child, a district shall pay tuition for prekindergarten education for ten hours per week for 35 weeks annually to a prequalified private provider or to a public school outside the district that is prequalified pursuant to subsection (c) of this section; provided, however, that the district shall pay tuition for weeks that are within the district's academic year. Tuition paid under this section shall be at a statewide rate, which may be adjusted regionally, that is established annually through a process jointly developed and implemented by the Agencies of Education and of Human Services. A district shall pay tuition upon:

(A) receiving notice from the child's parent or guardian that the child is or will be admitted to the prekindergarten education program operated by the prequalified private provider or the other district; and

(B) concurrent enrollment of the prekindergarten child in the district of residence for purposes of budgeting and determining average daily membership.

(2) In addition to any direct costs of operating a prekindergarten education program, a district of residence shall include anticipated tuition payments and any administrative, quality assurance, quality improvement, transition planning, or other prekindergarten-related costs in its annual budget presented to the voters.

(3) The district of residence may include within its average daily membership any prekindergarten child for whom it has provided prekindergarten education or on whose behalf it has paid tuition pursuant to this section.

(4) A prequalified private provider may receive additional payment directly from the parent or guardian only for prekindergarten education in excess of the hours paid for by the district pursuant to this section or for child care services, or both. The provider is not bound by the statewide rate established in this subsection when determining the rates it will charge the parent or guardian.

(e) Rules. The ~~commissioner of education and the commissioner for children and families~~ Secretary of Education and the Commissioner for Children and Families shall jointly develop and agree to rules and present them

to the ~~state board of education~~ State Board for adoption under 3 V.S.A. chapter 25 as follows:

(1) ~~To ensure that, before a school district begins or expands a prekindergarten education program that intends to enroll students who are included in its average daily membership, the district engage the community in a collaborative process that includes an assessment of the need for the program in the community and an inventory of the existing service providers; provided, however, if a district needs to expand a prekindergarten education program in order to satisfy federal law relating to the ratio of special needs children to children without special needs and if the law cannot be satisfied by any one or more qualified service providers with which the district may already contract, then the district may expand an existing school-based program without engaging in a community needs assessment.~~ To permit private providers that are not prequalified pursuant to subsection (c) of this section to create new or continue existing partnerships with school districts through which the school district provides supports that enable the provider to fulfill the requirements of subsection (c), and through which the district may or may not make in-kind payments as a component of the statewide tuition established under this section.

(2) ~~To ensure that, if a school district begins or expands a prekindergarten education program that intends to include any of the students in its average daily membership, the district shall use existing qualified service providers to the extent that existing qualified service providers have the capacity to meet the district's needs effectively and efficiently.~~ To authorize a district to begin or expand a school-based prekindergarten education program only upon prior approval obtained through a process jointly overseen by the Secretaries of Education and of Human Services, which shall be based upon analysis of the number of prekindergarten children residing in the district and the availability of enrollment opportunities with prequalified private providers in the region. Where the data are not clear or there are other complex considerations, the Secretaries may choose to conduct a community needs assessment.

(3) To require that the school district provides opportunities for effective parental participation in the prekindergarten education program.

(4) To establish a process by which:

(A) a parent or guardian ~~residing in the district or a provider, or both, may request a school district to enter into a contract with a provider located in or outside the district~~ notifies the district that the prekindergarten child is or will be admitted to a prekindergarten education program not operated by the

district and concurrently enrolls the child in the district pursuant to subdivision (d)(1) of this section;

(B) a district:

(i) pays tuition pursuant to a schedule that does not inhibit the ability of a parent or guardian to enroll a prekindergarten child in a prekindergarten education program or the ability of a prequalified private provider to maintain financial stability; and

(ii) enters into an agreement with any provider to which it will pay tuition regarding quality assurance, transition, and any other matters; and

(C) a provider that has received tuition payments under this section on behalf of a prekindergarten child notifies a district that the child is no longer enrolled.

(5) ~~To identify the services and other items for which state funds may be expended when prekindergarten children are counted for purposes of average daily membership, such as tuition reduction, quality improvements, or professional development for school staff or private providers.~~ To establish a process to calculate an annual statewide tuition rate that is based upon the actual cost of delivering ten hours per week of prekindergarten education that meets all established quality standards and to allow for regional adjustments to the rate.

(6) ~~To ensure transparency and accountability by requiring private providers under contract with a school districts to report costs for prekindergarten programs to the school district and by requiring school districts to report these costs to the commissioner of education.~~ [Repealed.]

(7) To require ~~school districts~~ a district to include identifiable costs for prekindergarten programs and essential early education services in ~~their~~ its annual budgets and reports to the community.

(8) To require ~~school districts~~ a district to report to the ~~departments their~~ Agency of Education annual expenditures made in support of prekindergarten ~~care and~~ education, with distinct figures provided for expenditures made from the ~~general fund~~ General Fund, from the ~~education fund~~ Education Fund, and from all other sources, which shall be specified.

(9) To provide an ~~appeal~~ administrative process for:

(A) a parent, guardian, or provider to challenge an action of ~~the~~ a school district or the State when the ~~appellant~~ complainant believes that the district or State is in violation of state statute or rules regarding prekindergarten education; and

(B) a school district to challenge an action of a provider or the State when the district believes that the provider or the State is in violation of state statute or rules regarding prekindergarten education.

(10) ~~To establish the minimum quality standards necessary for a district to include prekindergarten children within its average daily membership. At a minimum, the standards shall include the following requirements:~~

~~(A) The prekindergarten education program, whether offered by or through the district, shall have received:~~

~~(i) National Association for the Education of Young Children (NAEYC) accreditation; or~~

~~(ii) At least four stars in the department for children and families STARS system with at least two points in each of the five arenas; or~~

~~(iii) Three stars in the STARS system if the provider has developed a plan, approved by the commissioner for children and families and the commissioner of education, to achieve four or more stars within three years with at least two points in each of the five arenas, and the provider has met intermediate milestones; and~~

~~(B) A licensed center shall employ or contract for the services of at least one teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title; and~~

~~(C) A registered home shall receive regular, active supervision and training from a teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title.~~ To establish a system by which the Agency of Education and Department for Children and Families shall jointly monitor prekindergarten education programs to promote optimal outcomes for children and to collect data that will inform future decisions. At a minimum, the system shall monitor and assess:

(A) programmatic details, including the number of children served, the number of private and public programs operated, and the public financial investment made to ensure access to quality prekindergarten education;

(B) the quality of public and private prekindergarten education programs and efforts to ensure continuous quality improvements through mentoring, training, technical assistance, and otherwise; and

(C) the outcomes for children, including school readiness and proficiency in numeracy and literacy.

(11) To establish a process for documenting the progress of children

enrolled in prekindergarten education programs and to require public and private providers to use the process to:

(A) help individualize instruction and improve program practice; and

(B) collect and report child progress data to the ~~commissioner of education~~ Secretary of Education on an annual basis.

(12) If the Secretaries find it advisable, to establish guidelines designed to help coordinate prekindergarten education programs under this section with essential early education as defined in section 2942 of this title and with Head Start programs.

(f) Other provisions of law. Section 836 of this title shall not apply to this section.

(g) Limitations. Nothing in this section shall be construed to permit or require payment of public funds to a private provider of prekindergarten education in violation of Chapter I, Article 3 of the Vermont Constitution.

Sec. 2. 16 V.S.A. § 4010(c) is amended to read:

(c) The ~~commissioner~~ Secretary shall determine the weighted long-term membership for each school district using the long-term membership from subsection (b) of this section and the following weights for each class:

Prekindergarten ~~0.46~~ 0.5

Elementary or kindergarten 1.0

Secondary 1.13

Sec. 3. PREKINDERGARTEN EDUCATION; CALCULATION OF EQUALIZED PUPILS; EXCLUSION FROM EDUCATION SPENDING

(a) If a school district did not provide or pay for prekindergarten education pursuant to 16 V.S.A. § 829 in fiscal year 2015, then:

(1) for purposes of determining the equalized pupil count for the fiscal year 2016 budget, the long-term membership of prekindergarten children shall be the number of prekindergarten children for whom the district anticipates it will provide prekindergarten education or pay tuition, or both, in fiscal year 2016; and

(2) for purposes of determining the equalized pupil count for the fiscal year 2017 budget, the long-term membership of prekindergarten children shall be the total number of prekindergarten children for whom the district provided prekindergarten education or paid tuition, or both, in fiscal year 2016, adjusted

to reflect the difference between the estimated and actual count for that fiscal year.

(b) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12) in fiscal years, 2016, 2017, and 2018 "education spending" shall not include the portion of a district's proposed budget directly attributable to providing a prekindergarten education program or paying tuition on behalf of a resident prekindergarten child pursuant to 16 V.S.A. § 829 as amended by this act.

Sec. 4. QUALITY STANDARDS

(a) The Agencies of Education and of Human Services shall review existing quality standards for prekindergarten education programs and may initiate rulemaking under 3 V.S.A. chapter 25 to require higher standards of quality; provided, however, that no new standards shall take effect earlier than July 1, 2015. Changes to the quality standards shall be designed to ensure that programs are based on intentional, evidence-based practices that create a developmentally appropriate environment and support the delivery of an engaging program that supports the social, emotional, intellectual, language, literacy, and physical development of prekindergarten children.

(b) In January of the 2015, 2016, and 2017 legislative sessions, the Agencies shall report to the House and Senate Committees on Education, the House Committee on Human Services, and the Senate Committee on Health and Welfare regarding the quality of prekindergarten education in the State.

Sec. 5. CONSTITUTIONALITY

On or before July 1, 2014, the Secretary of Education shall identify the private prekindergarten education programs to which school districts are paying tuition on behalf of resident prekindergarten children, determine the extent to which any program provides religious prekindergarten education, and establish the steps the Agency will take to ensure that public funds are not expended in violation of Chapter I, Article 3 of the Vermont Constitution and the Vermont Supreme Court's decision in *Chittenden Town School District v. Vermont Department of Education*, 169 Vt. 310 (1999).

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2013 and shall apply to enrollments on July 1, 2015 and after.

(Committee Vote: 9-0-2)

H. 280

An act relating to payment of wages

Rep. O'Sullivan of Burlington, for the Committee on **General, Housing and Military Affairs,** recommends the bill be amended as follows:

First: In Sec. 1, 21 V.S.A. § 341, in subdivision (2), by striking out "or agents of an employer"

Second: In Sec. 4, 21 V.S.A. § 345, by striking out "$ 500.00" and inserting in lieu thereof "$5,000.00"

Third: In Sec. 5, 21 V.S.A. § 345a, in subdivision (2), by striking out "$500.00" and inserting in lieu thereof "$5,000.00

(Committee Vote: 8-0-0)

H. 299

An act relating to enhancing consumer protection provisions for propane refunds, unsolicited demands for payment, and failure to comply with civil investigations

Rep. Marcotte of Coventry, for the Committee on **Commerce and Economic Development,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 2461b is amended to read:

§ 2461b. REGULATION OF PROPANE

* * *

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

* * *

(2) Subject to subdivision (h)(5) of this section:

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

(B) If the quantity of propane remaining in the storage tank cannot be determined with certainty, the seller shall, within the 20 days described in subdivision (2)(A) of this subsection, refund to the consumer the amount paid by the consumer for 80 percent of the seller's best reasonable estimate of the

quantity of propane remaining in the tank, less any payments due from the consumer. The seller shall refund the remainder of the amount due as soon as the quantity of propane left in the tank can be determined with certainty, but no later than 14 days after the removal of the tank or restocking of the tank at the time of reconnection.

* * *

(4) If the seller fails to mail or deliver a refund to the consumer in accordance with this subsection, the seller shall within one business day make a penalty payment to the consumer, in addition to the refund, of:

(A) $250.00 on the first day after the refund was due~~,~~; and

(B) $75.00 per day for each day thereafter until the refund and penalty payment have been mailed or delivered, provided that the total amount that accrues under this subdivision (B) shall not exceed 10 times the amount of the refund.

* * *

(h)(1) A seller who has a duty to remove a propane storage tank from a consumer's premises shall remove the tank within 20 days or, in the case of an underground storage tank, within 30 days of the earliest of the following dates:

(A) the date on which the consumer requests termination of service;

(B) the date the seller disconnects propane service; or

(C) the date on which the seller is notified by the consumer in writing that service has been disconnected.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, if a consumer requests that a tank be removed on a specific day, the seller shall remove the tank no more than 10 days after the date requested, or within the period required by subdivision (1) of this subsection, whichever is later.

(3) A seller who fails to remove a propane storage tank in accordance with this subsection shall make a penalty payment to the consumer of:

(A) $250.00 on the first day after the tank should have been removed; and

(B) $75.00 per day for each day thereafter until the tank has been removed and the penalty payments have been mailed or delivered, provided that the total amount that accrues under this subdivision (B) shall not exceed $2,000.00.

(4)(A) Notwithstanding subdivision (3) of this subsection, no penalty shall be due for the time a seller is unable to remove a tank due to weather or

other conditions not caused by the seller that bar access to the tank, if the seller provides within five days of the latest date the tank was otherwise required to be removed:

(i) a written explanation for the delay;

(ii) what reasonable steps the consumer must take to provide access to the tank; and

(iii) a telephone number, a mailing address, and an e-mail address the consumer can use to notify the seller that the steps have been taken.

(B) The seller shall have 20 days from the date he or she receives the notice from the consumer required in subdivision (4)(A)(iii) of this subsection to remove the tank.

(5) A consumer who prevents access to a propane storage tank, such that a seller is unable to timely remove the tank from the property or determine the amount of propane remaining in the tank in compliance with this section, shall not be entitled to a refund for propane remaining in the storage tank pursuant to subsection (e) of this section until the consumer takes the reasonable steps identified by the seller that are necessary to allow access to the tank and provides notice to the seller that he or she has taken those steps, in compliance with the process established in subdivision (4) of this subsection.

Sec. 2. IMPLEMENTATION

The penalties created in 9 V.S.A. § 2461b(h)(3) shall not accrue prior to July 20, 2013.

Sec. 3. 9 V.S.A. § 2461e is amended to read:

§ 2461e. REQUIREMENTS FOR GUARANTEED PRICE PLANS AND PREPAID CONTRACTS

(a)(1) Contract and solicitation requirements. A contract for the retail sale of home heating oil, kerosene, or liquefied petroleum gas that offers a guaranteed price plan, including a fixed price contract, a prepaid contract, a cost-plus contract, and any other similar terms, shall be in writing, and the terms and conditions of such price plans shall be disclosed. Such disclosure shall be in plain language and shall immediately follow the language concerning the price or service that could be affected and shall be printed in no less than 12-point boldface type of uniform font. A solicitation for the retail sale of home heating oil or liquefied petroleum gas that offers a guaranteed price plan that could become a contract upon a response from a consumer, including a fixed price contract, a prepaid contract, a cost-plus contract, and any other similar terms, shall be in writing, and the terms and conditions of such offer shall be disclosed in plain language.

* * *

Sec. 4. 9 V.S.A. chapter 135 is amended to read:

CHAPTER 135. UNSOLICITED MERCHANDISE; SOLICITATION IN THE GUISE OF A BILL, INVOICE, OR STATEMENT OF ACCOUNT

* * *

§ 4402. SOLICITATION IN THE GUISE OF A BILL, INVOICE, OR STATEMENT OF ACCOUNT

(a) In this section:

(1)(A) "Solicitation" means a document that reasonably could be considered a bill, invoice, or statement of account due, but is in fact an offer to sell goods or services to a consumer that were not requested by the consumer.

(B) "Solicitation" does not include an offer to renew an existing agreement for the purchase of goods or services.

(2) For purposes of subdivision (1)(A) of this subsection, factors to determine whether a document "reasonably could be considered to be a bill, invoice, or statement of account due" may include:

(A) The document is described as a "bill," "invoice," "statement," "final notice," or similar title.

(B) The document uses the term "remit" or "pay" with respect to a dollar amount, or similar wording.

(C) The document purports to impose a kind of late fee or similar penalty for nonpayment.

(D) The document refers to a dollar figure as an "amount due," "amount owing," or similar wording.

(b) It is an unfair and deceptive act and practice in commerce in violation of section 2453 of this title for a person to send to a consumer through any medium a solicitation in violation of the requirements of this section.

(c)(1) A solicitation shall bear on its face the following disclaimer in conspicuous boldface capital letters of a color prominently contrasting with the background against which it appears, including all other print on the face of the solicitation, and that are at least as large, bold, and conspicuous as any other print on the face of the solicitation but not smaller than 30-point type: "THIS IS NOT A BILL. THIS IS A SOLICITATION FOR THE SALE OF GOODS OR SERVICES. YOU ARE UNDER NO OBLIGATION TO PAY THE AMOUNT STATED UNLESS YOU ACCEPT THIS OFFER."

(2) For purposes of subdivision (1) of this subsection, "color prominently contrasting" excludes any color, or any intensity of an otherwise included color, that does not permit legible reproduction by ordinary office photocopying equipment used under normal operating conditions and which is not at least as vivid as any other color on the face of the solicitation.

(d)(1) The disclaimer required in subsection (c) of this section shall be displayed conspicuously apart from other print on the page immediately below each portion of the solicitation that reasonably could be construed to specify a monetary amount due and payable by the recipient.

(2) The disclaimer required in subsection (c) of this section shall not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or that introduces or modifies the required text, such as "Legal Notice Required By Law" or similar wording.

(3) The disclaimer required in subsection (c) of this section shall not, by folding or any other means, be made unintelligible or less prominent than any other information on the face of the solicitation.

(4) If a solicitation consists of more than one page, or if any page is designed to be separated into portions, the disclaimer required in subdivision (1) of this subsection shall be displayed in its entirety on the face of each page or portion of a page that be reasonably considered a bill, invoice, or statement of account due as required in this subsection.

Sec. 5. 9 V.S.A. § 2460 is amended to read:

§ 2460. CIVIL INVESTIGATION

(a)(1) The ~~attorney general~~ Attorney General or a state's attorney whenever he or she has reason to believe any person to be or to have been in violation of section 2453 of this title, or of any rule or regulation made pursuant to section 2453 of this title, may examine or cause to be examined by any agent or representative designated by him or her for that purpose, any books, records, papers, memoranda, and physical objects of whatever nature bearing upon each alleged violation, and may demand written responses under oath to questions bearing upon each alleged violation.

(2) The ~~attorney general~~ Attorney General or a state's attorney may require the attendance of such person or of any other person having knowledge in the premises in the county where ~~such~~ the person resides or has a place of business or in Washington County if ~~such~~ the person is a nonresident or has no place of business within the ~~state~~ State, and may take testimony and require proof material for his or her information, and may administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum.

(3) The ~~attorney general~~ Attorney General or a state's attorney shall serve notice of the time, place, and cause of ~~such~~ the examination or attendance, or notice of the cause of the demand for written responses, at least ten days prior to the date of ~~such~~ the examination, personally or by certified mail, upon ~~such~~ the person at his or her principal place of business, or, if ~~such~~ the place is not known, to his or her last known address.

(4) Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this ~~state~~ State for good cause shown, be disclosed to any person other than the authorized agent or representative of the ~~attorney general~~ Attorney General or a state's attorney or another law enforcement officer engaged in legitimate law enforcement activities, unless with the consent of the person producing the same.

(5) This subsection ~~(a)~~ shall not be applicable to any criminal investigation or prosecution brought under the laws of this or any state.

(b)(1) A person upon whom a notice is served pursuant to the provisions of this section shall comply with the terms thereof unless otherwise provided by the order of a court of this ~~state~~ State.

(2) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject of any such notice, or mistakes or conceals any information, shall be ~~fined~~ subject to a civil penalty of not more than ~~$5,000.00~~ $25,000.00 and to recovery by the Attorney General's or state's attorney's office the reasonable value of its services and expenses in enforcing compliance with this section.

(c)(1) Whenever any person fails to comply with any notice served upon him or her under this section or whenever satisfactory copying or reproduction of ~~any such~~ material pursuant to this section cannot be done and ~~such~~ the person refuses to surrender ~~such~~ the material, the ~~attorney general~~ Attorney General or a state's attorney may file, in the ~~superior court~~ Superior Court in which ~~such~~ the person resides or has his or her principal place of business, or in Washington ~~county~~ County if ~~such~~ the person is a nonresident or has no principal place of business in this ~~state~~ State, and serve upon ~~such~~ the person, a petition for an order of ~~such~~ the court for the enforcement of this section.

(2) Whenever ~~any~~ a petition is filed under this section, ~~such~~ the court shall have jurisdiction to hear and determine the matter ~~so~~ presented, and to

enter ~~such order or~~ one or more orders as may be required to carry into effect the provisions of this section.

(3) ~~Any disobedience of any~~ A person who violates an order entered under this section by ~~any~~ a court shall be punished ~~as a~~ for contempt ~~thereof~~ of court and shall be subject to a civil penalty of not more than $25,000.00 and to recovery by the Attorney General's or state's attorney's office of the reasonable value of its services and expenses in enforcing compliance with this section.

Sec. 6. REORGANIZATION OF CONSUMER PROTECTION PROVISIONS

Pursuant to its statutory revision authority under 2 V.S.A. § 424, the Legislative Council, in consultation with the Office of the Attorney General, shall renumber and rearrange sections in Title 9 of the Vermont Statutes Annotated in order to improve accessibility and functionality of the body of Vermont statutory law governing consumer protection.

Sec. 7. 9 V.S.A. § 2466b is added to read:

§ 2466b. NOTICE OF TOWING SERVICE AND STORAGE FEES

(a) A towing service operator whose assistance is requested by law enforcement or by the owner of the vehicle to be towed shall provide the vehicle owner, unless he or she is absent or incapacitated, at the tow site and before the vehicle is towed a written notice which states:

(1) the name, address, telephone number, and, if available, website address of the towing service operator and, if known, the cost of the towing service; and

(2) the daily fee to store the vehicle; when the storage fee will begin accruing; the name, address, telephone number and, if available, website address of the storage facility operator; and the hours during which the vehicle can be retrieved.

(b)(1) If a vehicle owner is absent from the tow site or deemed incapacitated by law enforcement and the vehicle owner has not contacted the towing service within 72 hours of the vehicle being towed, then the towing service operator shall send to the most recent address reflected in vehicle registration records a notice stating:

(A) that the vehicle has been towed or stored, or both;

(B) the names, addresses, telephone numbers, and, if available, website addresses of the towing service operator and storage facility operator;

(C) the daily fee for storage and when the storage fee began accruing;

(D) the fee for towing the vehicle; and

(E) payment instructions.

(2) Upon request by a towing service operator, the Department of Motor Vehicles shall provide the operator with the vehicle owner's most recent address reflected in vehicle registration records.

Sec. 8. 9 V.S.A. § 2466c is added to read:

§ 2466c. USED CAR SALES; REQUIRED DISCLOSURES

(a) As used in this section, the terms "dealer" and "used vehicle" shall have the same meanings as defined at 16 C.F.R. § 455.1.

(b) Before offering a used vehicle for sale to a consumer, a dealer shall prepare and display a Buyers Guide that conforms to the requirements of 16 C.F.R. part 455, and that additionally includes a signature line for the consumer's signature in immediate proximity to the statement: "I hereby acknowledge receipt of the Buyers Guide at the closing of this sale." The signature line and statement shall be on page two of the Buyers Guide below the space provided for the name of the individual to be contacted in the event of complaints after sale.

(c) A dealer selling a used vehicle to a consumer shall, on the Buyers Guide as specified in subsection (b) of this section, obtain the consumer's signature acknowledging receipt of the Buyers Guide, and shall furnish the consumer with a copy of the Buyers Guide that is signed by the consumer.

(d) A dealer's failure to comply with subsection (c) of this section is an unfair and deceptive act and practice in commerce that is enforceable solely by the Attorney General under this chapter.

Sec. 9. ADDITION TO THE DEALER REPORT OF SALE FORM

The Department of Motor Vehicles shall amend the dealer report of sale form required under 23 V.S.A. § 467 to require a dealer to report, with respect to the sale of a used motor vehicle, whether the vehicle was sold "as is."

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2013, except that Secs. 8 (used car sales; required disclosures) and 9 (addition to the dealer report of sale form) of this act shall take effect on January 1, 2014.

(Committee Vote: 11-0-0)

H. 377

An act relating to neighborhood planning and development for municipalities with designated centers

Rep. Dickinson of St. Albans Town, for the Committee on **Commerce and Economic Development,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 24 V.S.A. § 2790 is amended to read:

§ 2790. LEGISLATIVE POLICY AND PURPOSE

(a) The ~~general assembly~~ General Assembly finds that:

(1) ~~economically~~ Economically strong downtowns are critical to the health and well-being of Vermont's communities~~;~~ and that downtowns are the natural location for both small businesses~~, which represent the largest growth sector in Vermont's economy,~~ and other uses that together constitute the diverse fabric of communities that define Vermont's quality of life~~; that downtowns enable residents and visitors to access services and business with minimal transportation needs, and thus benefit the environment. The general assembly further finds that downtowns represent a long-term investment of public and private infrastructure, and that our scenic and historic downtowns are a natural attraction for tourists and contribute greatly to Vermont's overall quality of life. The general assembly further finds that a major factor inhibiting the vitality of downtown areas is lack of reasonable access to them by workers, residents and visitors, and that by this act it is the specific intent of the general assembly to improve access to downtown areas by providing assistance to municipalities for downtown transportation infrastructure, particularly parking facilities~~.

(2) Vermont's distinctive character of historic downtowns and villages surrounded by working landscapes is recognized worldwide. This character defines Vermont's image, economy, and sense of place as well as its community spirit and identity, which are enjoyed by residents and visitors alike. This distinctive character is among our most valuable assets, and investing in its health is a critical component of the State's overall economic well-being. The General Assembly recognizes the particular importance of Vermont's downtowns as historic regional centers providing services and amenities to nonresidents and further recognizes their need for targeted support in avoiding continued loss of commercial and residential land use to the surrounding area.

(3) Investments made to revitalize the State's historic downtowns and village centers, to encourage pedestrian-oriented development within and

around the commercial core, and to build upon the State's traditional settlement patterns support statewide goals concerning energy conservation, the efficient use of transportation and other public infrastructure and services, the protection of the working landscape, and the promotion of healthy lifestyles.

(4) Strategies, programs, and investments that advance smart growth principles today will result in the long-term fiscal, economic, cultural, and environmental viability of the State.

(b) It is therefore the intent of the ~~general assembly, by this act, to preserve and encourage the development of downtown areas of municipalities of the state; to encourage public and private investment in infrastructure, housing, historic preservation, transportation including parking facilities, and human services in downtown areas;~~ General Assembly to:

(1) support historic downtowns and villages by providing funding, training, and resources to communities designated under this chapter, to revitalize such communities, to increase and diversify economic development activities, to improve the efficient use of public investments, including water and sewer systems, and to safeguard working landscapes;

(2) improve the ability of Vermont's historic downtowns and villages to attract residents and businesses by enhancing their livability and unique sense of place; by expanding access to employment, housing, education and schools, services, public facilities, and other basic needs; and by expanding businesses' access to markets;

(3) coordinate policies and leverage funding to support historic downtowns and villages by removing barriers to collaboration among local downtown organizations, municipal departments, local businesses, and local nonprofit organizations and increasing accountability and effectiveness at all levels of government to revitalize communities and plan for future growth;

(4) promote healthy, safe, and walkable downtown and village neighborhoods for people of all ages and incomes by increasing investments in those locations; providing energy efficient housing that is closer to jobs, services, health care, stores, entertainment, and schools; and reducing the combined cost of housing and transportation;

(5) encourage investment in mixed use development and provide for diverse housing options within walking distance of historic downtowns and villages that reinforce Vermont's traditional settlement patterns and meet the needs of community members of all social and economic groups;

(6) develop safe, reliable, and economical transportation options in

historic downtowns and villages to decrease household transportation costs, promote energy independence, improve air quality, reduce greenhouse gas emissions, and promote public health; and

(7) reflect Vermont's traditional settlement patterns, and to minimize or avoid strip development or other unplanned development throughout the countryside on quality farmland or important natural and cultural landscapes.

(c) ~~While it is the intent of the general assembly by this act to rehabilitate and preserve the vitality of historic downtown areas of the state, the general assembly also recognizes the equal importance of providing incentives to communities with no historic downtown areas in order to assist those communities to plan and develop their emerging downtowns. Accordingly, the commissioner of housing and community affairs is directed to consult with municipal officials in such communities and recommend to the general assembly on or before January 1, 1999 appropriate means and incentives to encourage the development and planning of emerging downtown centers which serve the purpose of a central district of the community and the center for socio-economic interaction, with a cohesive core of commercial and mixed use buildings, with appropriate density to minimize or avoid strip development.~~

~~(d)~~ The ~~general assembly~~ General Assembly finds that Vermont's communities face challenges as they seek to accommodate growth and development while supporting the economic vitality of the ~~state's~~ State's downtowns, village centers, and new town centers and maintaining the rural character and working landscape of the surrounding countryside. While it is the intention of the ~~general assembly~~ General Assembly to give the highest priority to facilitating development and growth in downtowns and village centers whenever feasible, when that is not feasible, the ~~general assembly~~ General Assembly further finds that:

(1) A large percentage of future growth should occur within duly designated growth centers that have been planned by municipalities in accordance with smart growth principles and Vermont's planning and development goals pursuant to section 4302 of this title.

* * *

Sec. 2. 24 V.S.A. § 2791 is amended to read:

§ 2791. DEFINITIONS

As used in this chapter:

* * *

(3) "Downtown" means the traditional central business district of a community~~,~~ that has served as ~~the center for~~ a regional focus of

socio-economic interaction in the community, characterized by a cohesive core of commercial and ~~mixed-use~~ mixed use buildings, some of which may contain mixed use spaces, often interspersed with civic, religious, ~~and~~ residential, and industrial buildings and public spaces, typically arranged along a main street and intersecting side streets that are within walking distance for residents who live within and surrounding the core and that are served by public infrastructure such as sidewalks and public transit. Downtowns are typically larger in scale than village centers and are characterized by a development pattern that is consistent with smart growth principles.

* * *

(10) "Village center" means the core of a traditional ~~center of the community~~ settlement, typically comprised of a cohesive ~~core~~ mix of residential, civic, religious, ~~and~~ commercial, and mixed use buildings~~,~~ arranged along a main street and intersecting streets that are within walking distance for residents who live within and surrounding the core. Industrial uses may be found within or immediately adjacent to these centers. Village centers are typically smaller in scale than downtowns and are characterized by a development pattern that is consistent with smart growth principles.

* * *

(16) "Neighborhood planning area" shall have the same meaning as under section 2793e of this title.

(17) "Neighborhood development area" shall have the same meaning as under section 2793e of this title.

(18) "Department" means the Vermont Department of Economic, Housing and Community Development.

(19) "District coordinator" means a district environmental coordinator attached to a district commission established under 10 V.S.A. chapter 151.

(20) "Infill" means the use of vacant land or property within a built-up area for further construction or development.

Sec. 3. 24 V.S.A. § 2792 is amended to read:

§ 2792. VERMONT DOWNTOWN DEVELOPMENT BOARD

(a) A "~~Vermont downtown development board~~ Vermont Downtown Development Board," also referred to as the "~~state board~~ State Board," is created to administer the provisions of this chapter. The ~~state board~~ State Board shall be composed of the following members or their designees:

(1) the ~~secretary of commerce and community development~~ Secretary of Commerce and Community Development;

(2) the ~~secretary of transportation~~ Secretary of Transportation;

(3) the ~~secretary of natural resources~~ Secretary of Natural Resources;

(4) the ~~commissioner of public safety~~ Commissioner of Public Safety;

(5) the ~~state historic preservation officer~~ State Historic Preservation Officer;

(6) a person appointed by the ~~governor~~ Governor from a list of three names submitted by the Vermont Natural Resources Council~~,~~ and the Preservation Trust of Vermont~~, and Smart Growth Vermont~~;

(7) a person appointed by the ~~governor~~ Governor from a list of three names submitted by the Association of Chamber Executives;

(8) three public members representative of local government, one of whom shall be designated by the Vermont League of Cities and Towns, and two shall be appointed by the ~~governor~~ Governor;

(9) a member of the ~~Vermont planners association~~ Vermont Planners Association (VPA) designated by the ~~association~~ Association;

(10) the ~~chair~~ Chair of the ~~natural resources board~~ Natural Resources Board or a representative of the ~~land use panel~~ Land Use Panel of the ~~natural resources board~~ Natural Resources Board designated by the ~~chair~~ Chair; and

(11) a representative of a regional planning commission designated by the ~~Vermont association of regional planning and development agencies~~ Vermont Association of Planning and Development Agencies (VAPDA) and an alternate representative designated by VAPDA to enable all applications to be considered by a representative from a regional planning commission other than the one of which the applicant municipality is a member. The alternate designated by VAPDA may vote only when the designated representative does not vote.

(b) ~~In addition to the permanent members appointed pursuant to subsection (a) of this section, there shall also be two regional members from each region of the state on the downtown development board; one shall be designated by the regional development corporation of the region and one shall be designated by the regional planning commission of the region. Regional members shall be nonvoting members and shall serve during consideration by the board of applications from their respective regions. Regional members designated to serve on the downtown development board under this section, may also serve as regional members of the Vermont economic progress council established under 32 V.S.A. § 5930a.~~ [Repealed.]

(c) The ~~state board~~ State Board shall elect ~~its~~ a chair and vice chair from among its membership.

(d) The ~~department of economic, housing, and community development~~ Department shall provide staff and administrative support to the ~~state board~~ State Board and shall produce guidelines to direct municipalities seeking to obtain designation under this chapter.

(e) ~~On or before January 1, 1999, the state board shall report to the general assembly on the progress of the downtown development program.~~ [Repealed.]

(f) [Deleted.]

Sec. 4. 24 V.S.A. § 2793 is amended to read:

§ 2793. DESIGNATION OF DOWNTOWN DEVELOPMENT DISTRICTS

(a) A municipality, by its legislative body, may apply to the ~~state board~~ State Board for designation of a downtown area within that municipality as a downtown development district.

(1) For applications filed on and after July 1, 2014, the intention to apply for designation under this section shall be included in the plan of the municipality, and the plan shall explain how the designation would further the plan's goals and the goals of section 4302 of this title.

(2) A preapplication meeting shall be held with Department staff to review the program requirements and to preliminarily identify possible designation boundaries. The meeting shall be held in the municipality unless another location is agreed to by the municipality.

(3) An application by a municipality shall contain a map that accurately delineates the district and is consistent with the guidelines produced by the Department under section 2792(d) of this title. The application shall also include evidence that the regional planning commission and the regional development corporation have been notified of the municipality's intent to apply, evidence that the municipality has published notice of its application in a local newspaper of general circulation within the municipality, and information showing that the district meets the standards for designation established in subsection (b) of this section. Upon receipt of an application, the ~~state board~~ State Board shall provide written notice of the application to the ~~natural resources board~~ Natural Resources Board. The ~~natural resources board~~ Natural Resources Board and interested persons shall have 15 days after notice to submit written comments regarding the application before the ~~state board~~ State Board issues a written decision that demonstrates the applicant's compliance with the requirements of this chapter.

(b) Within 45 days of receipt of a completed application, the ~~state board~~ State Board shall designate a downtown development district if the ~~state board~~ State Board finds~~,~~ in its written decision~~,~~ that the municipality has:

(1) demonstrated a ~~planning~~ commitment to protect and enhance the historic character of the downtown through the adoption of a design review district, through the adoption of an historic district, through the adoption of regulations that adequately regulate the physical form and scale of development that the State Board determines substantially meet the historic preservation requirements in sections 4414(1)(E) and (F) of this title, or through the creation of a development review board authorized to undertake local Act 250 reviews of municipal impacts pursuant to section 4420 of this title;

(2) provided a community reinvestment agreement that has been executed by the authorized representatives of the municipal government, business and property owners within the district, and community groups with an articulated purpose of supporting downtown interests, and that contains the following provisions:

(A) a delineation of the area that meets the requirements set forth in subdivision 2791(3) of this title and that is part of or contains a district that is listed or eligible for listing on the National Register of Historic Places pursuant to 16 U.S.C. § 470a;

(B) a capital ~~improvement plan~~ budget and program pursuant to section 4430 of this title to improve or preserve public infrastructure within the district, including facilities for public transit, parking, pedestrian amenities, lighting, and public space;

(C) a source of funding and resources necessary to fulfill the community reinvestment agreement, demonstrated by a commitment by the legislative body of the municipality to implement at least one of the following:

(i) a special assessment district created to provide funding to the downtown district;

(ii) authority to enter into a tax stabilization agreement for the purposes of economic development in a downtown district;

(iii) a commitment to implement a tax incremental financing district pursuant to subchapter 5 of chapter 53 of this title; or

(iv) other multiple-year financial commitments among the parties subject to the approval of the ~~state board~~ State Board;

(D) an organizational structure necessary to sustain a comprehensive long-term downtown revitalization effort, including a local downtown

organization as defined under subdivision 2791(5) of this title that will collaborate with municipal departments, local businesses, and local nonprofit organizations:

(i) to enhance the physical appearance and livability of the downtown district by implementing local policies that promote the use and rehabilitation of historic and existing buildings, by developing pedestrian-oriented design requirements, by encouraging new development and infill that satisfy such design requirements, and by supporting long-term planning that is consistent with the goals set forth in section 4302 of this title;

(ii) to build consensus and cooperation among the many groups and individuals who have a role in the planning, development, and revitalization process;

(iii) to market the assets of the downtown district to customers, potential investors, new businesses, local citizens, and visitors;

(iv) to strengthen, diversify, and increase the economic activity within the downtown district;

(v) to recognize and incorporate the map of the designated downtown district into the next update of the municipal plan; and

(vi) to measure annually progress and achievements of the revitalization efforts as required by Department guidelines developed pursuant to subsection 2792(d) of this title;

(E) evidence that any private or municipal sewage system and private or public water supply serving the proposed downtown district is in compliance with the requirements of 10 V.S.A. chapters 47 and 56~~,~~ and ~~that the municipality~~ has ~~dedicated a portion of any unallocated reserve capacity of the sewage and public water supply for growth within the proposed downtown district~~ adequately demonstrated an intent to reserve sufficient wastewater and water allocations to serve the future needs of the designated areas. Any municipality proposing a municipal sewage system and public water supply to serve the proposed downtown district shall provide evidence to the ~~state board~~ State Board of a commitment to construct or maintain such a system and supply in compliance with requirements of 10 V.S.A. chapters 47 and 56, or a commitment to construct, as applicable, a permittable potable water supply, wastewater system, indirect discharge, or public water supply within no more than ten years. A commitment to construct does not relieve the property owners in the district from meeting ~~the~~ any applicable ~~regulations of the agency of natural resources~~ statute, rule, or bylaw regarding wastewater systems, potable water supplies, public water supplies, indirect discharges, and the subdivision of land~~. In the event that a municipality fails in its commitment~~

~~to construct a municipal sewage system and public water supply, the state board shall revoke designation, unless the municipality demonstrates to the state board that all good faith efforts were made and continue to be made to obtain the required approvals and permits from the agency of natural resources, and failure to construct was due to unavailability of state or federal matching loan funds~~;

(3) a planning process confirmed under section 4350 of this title.

(c) The ~~state board~~ State Board shall review a community's designation every five years and may review compliance with the designation requirements at more frequent intervals. On and after July 1, 2014, any community applying for renewal shall explain how the designation under this section has furthered the goals of the town plan and shall submit an approved town plan map that depicts the boundary of the designated district. If at any time the ~~state board~~ State Board determines that the downtown development district no longer meets the standards for designation established in subsection (b) of this section, it may take any of the following actions:

(1) ~~Require~~ require corrective action~~.~~;

(2) ~~Provide~~ provide technical assistance through the ~~Vermont downtown program~~ Vermont Downtown Program~~.~~;

(3) ~~Limit~~ limit eligibility for the benefits established in section 2794 of this chapter without affecting any of the district's previously awarded benefits~~.~~; or

(4) ~~Remove~~ remove the district's designation without affecting any of the district's previously awarded benefits.

Sec. 5. 24 V.S.A. § 2793a is amended to read:

§ 2793a. DESIGNATION OF VILLAGE CENTERS BY STATE BOARD

(a) A town that has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title may apply to the ~~state board~~ State Board for designation of one or more of its village centers. If an incorporated village of a town has an approved municipal plan and a planning process independently confirmed in accordance with section 4350 of this title, the incorporated village shall be the applicant for designation of its village center.

(1) For applications filed on and after July 1, 2014, the intention to apply for designation under this section shall be included in the plan of the municipality, and the plan shall explain how the designation would further the plan's goals and the goals of section 4302 of this title.

(2) A preapplication meeting shall be held with Department staff to review the program requirements and to preliminarily identify possible designation boundaries. The meeting shall be held in the municipality unless another location is agreed to by the municipality.

(3) An application for designation under this section must include a map that delineates the boundaries of the village center consistent with the definition of "village center" provided in subdivision 2791(10) of this title and evidence that notice has been given to the regional planning commission and the regional development corporation of the intent to apply for this designation. The map shall be consistent with the guidelines produced by the Department under subsection 2792(d) of this title.

* * *

(d) The ~~state board~~ State Board shall review a village center designation every five years and may review compliance with the designation requirements at more frequent intervals. On and after July 1, 2014, any community applying for renewal shall explain how the designation under this section has furthered the goals of the town plan and shall submit an approved town plan map that depicts the boundary of the designated district. If at any time the ~~state board~~ State Board determines that the village center no longer meets the standards for designation established in subsection (a) of this section, it may take any of the following actions:

(1) ~~Require~~ require corrective action~~.~~;

(2) ~~Provide~~ provide technical assistance through the ~~Vermont downtown program~~ Vermont Downtown Program~~.~~;

(3) ~~Limit~~ limit eligibility for the benefits pursuant to subsection (c) of this section without affecting any of the village center's previously awarded benefits~~.~~; or

(4) ~~Remove~~ remove the village center's designation without affecting any of the village center's previously awarded benefits.

Sec. 6. 24 V.S.A. § 2793d is amended to read:

§ 2793d. DESIGNATION OF VERMONT NEIGHBORHOODS

* * *

(g) Termination of program; transition. Notwithstanding subsections (a)–(f) of this section:

(1) On and after July 1, 2013, the State Board shall not grant a municipality a designation under this section unless the municipality filed a complete application for such a designation prior to July 1, 2013. Any such

complete application filed prior to July 1, 2013 shall be approved or denied based on the requirements of this section.

(2) On and after July 1, 2013, a Vermont neighborhood designated under this section shall be eligible for benefits pursuant to subsections 2793e(f) and (g) of this title.

(3) On and after July 1, 2013, when the State Board reviews a Vermont neighborhood designated under this section either for purposes of renewal or on its motion, the State Board shall apply the requirements of section 2793e of this title. If the Board finds that those requirements are met, the Vermont neighborhood shall be redesignated as a neighborhood development area under section 2793e of this title. If the Board does not find that those requirements are met, the area shall have no designation under this section or section 2793e of this title.

Sec. 7. PROSPECTIVE REPEAL

24 V.S.A. §§ 2791(15) (definitions; Vermont neighborhood) and 2793d (designation of Vermont neighborhoods) shall be repealed on July 1, 2018. On such repeal, the Office of Legislative Council, in its statutory revision capacity under 2 V.S.A. § 424, shall be authorized to remove references in the statutes to Vermont neighborhoods designated under 24 V.S.A. § 2793d and replace them, as appropriate, with references to neighborhood development areas designated under 24 V.S.A. § 2793e.

Sec. 8. 24 V.S.A. § 2793e is added to read:

§ 2793e. NEIGHBORHOOD PLANNING AREAS; DESIGNATION OF NEIGHBORHOOD DEVELOPMENT AREAS

(a) Purpose. This section is intended to encourage a municipality to plan for new and infill housing in the area including and immediately encircling its designated downtown, village center, new town center, or within its designated growth center in order to provide needed housing and to further support the commercial establishments in the designated center. To support this goal, this section sets out a two-component process.

(1) The first component is the automatic delineation of a study area, defined in this section as a neighborhood planning area, that includes and encircles a municipality's designated downtown, village center, or new town center or, in the case of a designated growth center, is within the designated center. The process established by this section allows a municipality with a designated center to identify those locations within a neighborhood planning area that are suitable primarily for residential development.

(2) The second component is the application by a municipality for the designation of locations within this study area as neighborhood development areas that are suitable for residential development and will receive the benefits provided by this section.

(3) The Department shall provide municipalities with designated downtowns, village centers, new town centers, and growth centers with grants, as they become available, and technical assistance to help such municipalities apply for and receive neighborhood development area designations.

(b) Definitions.

(1) "Neighborhood planning area" means an automatically delineated area including and encircling a downtown, village center, or new town center designated under this chapter or within a growth center designated under this chapter. A neighborhood planning area is used for the purpose of identifying locations suitable for new and infill housing that will support a development pattern that is compact, oriented to pedestrians, and consistent with smart growth principles. To ensure a compact settlement pattern, the outer boundary of a neighborhood planning area shall be located entirely within the boundaries of the applicant municipality and shall be determined:

(A) for a municipality with a designated downtown, by measuring out a half mile from each point around the entire perimeter of the designated downtown boundary;

(B) for a municipality with one or more designated village centers, by measuring out a quarter mile from each point around the entire perimeter of the designated village center boundary;

(C) for a municipality with a designated new town center, by measuring out a quarter mile from each point around the entire perimeter of the designated new town center boundary; and

(D) for a municipality with a designated growth center, as the same boundary as the designated growth center boundary.

(2) "Neighborhood development area" means a location within a neighborhood planning area that is suitable for new and infill housing and that has been approved by the State Board for designation under this section and associated benefits.

(c) Application for designation of a neighborhood development area. The State Board shall approve a neighborhood development area if the application demonstrates and includes all of the following elements:

(1) The municipality has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title

and has adopted bylaws and regulations in accordance with sections 4414, 4418, and 4442 of this title.

(2) A preapplication meeting with Department staff was held to review the program requirements and to preliminarily identify possible neighborhood development areas.

(3) The proposed neighborhood development area is within a neighborhood planning area or such extension of the planning area as may be approved under subsection (d) of this section.

(4) The proposed neighborhood development area consists of those portions of the neighborhood planning area that are generally within walking distance from the municipality's downtown, village center, or new town center designated under this chapter or from locations within the municipality's growth center designated under this chapter that are planned for higher density development.

(5) The proposed neighborhood development area consists of those portions of the neighborhood planning area that are appropriate for new and infill housing, excluding identified flood hazard and fluvial erosion areas. In the process of choosing the proposed neighborhood development area, the municipality gave consideration to:

(A) Avoiding "important natural resources" as defined in subdivision 2791(14) of this title. If an important natural resource is included within a proposed neighborhood development area, the applicant shall identify the resource, explain why the resource was included, and describe any anticipated disturbance to such resource.

(B) How the neighborhood development area is compatible with and will reinforce the character of adjacent National Register Historic Districts, national or state register historic sites, and other significant cultural and natural resources identified by local or state government.

(6) The neighborhood development area is served by:

(A) municipal sewer infrastructure; or

(B) a community or alternative wastewater system approved by the Agency of Natural Resources.

(7) The municipal bylaws allow minimum net residential densities within the neighborhood development area greater than or equal to four single-family detached dwelling units per acre, exclusive of accessory dwelling units, or no fewer than the average existing density of the surrounding neighborhood, whichever is greater. The methodology for calculating density

shall be established in the guidelines developed by the Department pursuant to subsection 2792(d) of this title.

(A) Regulations that adequately regulate the physical form and scale of development may be used to demonstrate compliance with this requirement.

(B) Development in the neighborhood development areas that is lower than the minimum net residential density required by this subdivision (7) shall not qualify for the benefits stated in subsections (f) and (g) of this section. The district coordinator shall determine whether development meets this minimum net residential density requirement in accordance with subsection (f) of this section.

(8) Local bylaws, regulations, and policies applicable to the neighborhood development area substantially conform with neighborhood design guidelines developed by the Department pursuant to section 2792 of this title. These policies shall:

(A) Ensure that all investments contribute to a built environment that enhances the existing neighborhood character and supports pedestrian use;

(B) ensure sufficient residential density and building heights;

(C) minimize the required lot sizes, setbacks, and parking and street widths; and

(D) require conformance with "complete streets" principles as described under 19 V.S.A. § 309d, street and pedestrian connectivity, and street trees.

(9) Residents hold a right to utilize household energy conserving devices.

(10) The application includes a map or maps that, at a minimum, identify:

(A) "important natural resources" as defined in 24 V.S.A. § 2791(14);

(B) existing slopes of 25 percent or steeper;

(C) public facilities, including public buildings, public spaces, sewer or water services, roads, sidewalks, paths, transit, parking areas, parks, and schools;

(D) planned public facilities, roads, or private development that is permitted but not built;

(E) National Register Historic Districts, national or state register historic sites, and other significant cultural and natural resources identified by

local or state government;

(F) designated downtown, village center, new town center, or growth center boundaries as approved under this chapter and their associated neighborhood planning area in accordance with this section; and

(G) delineated areas of land appropriate for residential development and redevelopment under the requirements of this section.

(11) The application includes the information and analysis required by the Department's guidelines under section 2792 of this title.

(d) Designation process. Within 45 days of receipt of a complete application for designation of a neighborhood development area, the State Board, after opportunity for public comment, shall approve a neighborhood development area if the Board determines that the applicant has met the requirements of this section.

(1) When approving a neighborhood development area, the State Board may change the boundaries of the proposed area.

(2) A neighborhood development area may include one or more areas of land extending beyond the delineated neighborhood planning area, provided that the members of the State Board unanimously find that:

(A) including the extended area beyond the neighborhood planning area is consistent with the goals of section 4302 of this title;

(B) residential development opportunities within the neighborhood planning area are limited due to natural constraints and existing development;

(C) the extended area represents a logical extension of an existing compact settlement pattern and is consistent with smart growth principles; and

(D) the extended area is adjacent to existing development.

(e) Length of designation. Initial designation of a neighborhood development area shall be reviewed concurrently with the next periodic review conducted of the underlying designated downtown, village center, new town center, or growth center.

(1) The State Board, on its motion, may review compliance with the designation requirements at more frequent intervals.

(2) If the underlying downtown, village center, new town center, or growth center designation terminates, the neighborhood development area designation also shall terminate.

(3) If at any time the State Board determines that the designated neighborhood development area no longer meets the standards for designation

established in this section, it may take any of the following actions:

(A) require corrective action within a reasonable time frame;

(B) remove the neighborhood development area designation; or

(C) prospectively limit benefits authorized in this chapter.

(4) Action taken by the State Board under subdivision (3) of this subsection shall not affect benefits already received by the municipality or a land owner in the designated neighborhood development area.

(f) Neighborhood development area incentives for developers. Once a municipality has a designated neighborhood development area or has a Vermont neighborhood designation pursuant to 24 V.S.A. § 2793d, any proposed development within that area shall be eligible for each of the benefits listed in this subsection. These benefits shall accrue upon approval by the district coordinator, who shall review the density requirements set forth in subsection (c)(7) of this section to determine benefit eligibility and issue a jurisdictional opinion under 10 V.S.A. chapter 151 on whether the density requirements are met. These benefits are:

(1) The application fee limit for wastewater applications stated in 3 V.S.A. § 2822(j)(4)(D).

(2) The application fee reduction for residential development stated in 10 V.S.A. § 6083a(d).

(3) The exclusion from the land gains tax provided by 32 V.S.A. § 10002(p).

(g) Neighborhood development area incentives for municipalities. Once a municipality has a designated neighborhood development area, it may receive:

(1) priority consideration for municipal planning grant funds; and

(2) training and technical assistance from the Department to support an application for benefits from the Department.

(h) Alternative designation. If a municipality has completed all of the planning and assessment steps of this section but has not requested designation of a neighborhood development area, an owner of land within a neighborhood planning area may apply to the State Board for neighborhood development area designation status for a portion of land within the neighborhood planning area. The applicant shall have the responsibility to demonstrate that all of the requirements for a neighborhood development area designation have been satisfied and to notify the municipality that the applicant is seeking the designation. On grant of neighborhood development area designation under this subsection, the applicant may proceed to obtain a jurisdictional opinion

from the district coordinator under subsection (f) of this section in order to obtain the benefits granted to neighborhood development areas.

Sec. 9. 24 V.S.A. § 2798 is added to read:

§ 2798. DESIGNATION DECISIONS; NONAPPEAL

The designation decisions of the State Board under this chapter are not subject to appeal.

Sec. 10. 3 V.S.A. § 2822(j)(4)(D) is amended to read:

(D) Notwithstanding the other provisions of this subdivision, when a project is located in a Vermont neighborhood or neighborhood development area, as designated under 24 V.S.A. chapter 76A, the fee shall be no more than $50.00 in situations in which the application has received an allocation for sewer capacity from an approved municipal system. This limitation shall not apply in the case of fees charged as part of a duly delegated municipal program.

Sec. 11. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

When used in this chapter:

* * *

(3)(A) "Development" means:

* * *

(B)(i) Smart Growth Jurisdictional Thresholds. Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of ~~any combination of~~ mixed income housing or mixed use, or any combination thereof, and is located entirely within a growth center designated pursuant to 24 V.S.A. 2793c or entirely within a downtown development district designated pursuant to 24 V.S.A. § 2793, "development" means:

(I) Construction of mixed income housing with 200 or more housing units or a mixed use project with 200 or more housing units, in a municipality with a population of 15,000 or more.

(II) Construction of mixed income housing with 100 or more housing units or a mixed use project with 100 or more housing units, in a municipality with a population of 10,000 or more but less than 15,000.

(III) Construction of mixed income housing with 50 or more housing units or a mixed use project with 50 or more housing units, in a municipality with a population of 6,000 or more and less than 10,000.

(IV) Construction of mixed income housing with 30 or more housing units or a mixed use project with 30 or more housing units, in a municipality with a population of 3,000 or more but less than 6,000.

(V) Construction of mixed income housing with 25 or more housing units or a mixed use project with 25 or more housing units, in a municipality with a population of less than 3,000.

(VI) Historic Buildings. Construction of 10 or more units of mixed income housing or a mixed use project with 10 or more housing units where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the ~~state or national register of historic places~~ State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the ~~division for historic preservation~~ Division for Historic Preservation has determined the proposed demolition will have: no adverse effect; no adverse effect provided that specified conditions are met; or, will have an adverse effect, but that adverse effect will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.

(ii) Mixed Income Housing Jurisdictional Thresholds. Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of mixed income housing and is located entirely within a Vermont neighborhood~~, but outside a growth center designated pursuant to 24 V.S.A. § 2793c and outside a downtown development district designated pursuant to 24 V.S.A. § 2793~~ designated pursuant to 24 V.S.A. § 2793d or a neighborhood development area as defined in 24 V.S.A. § 2791(16), "development" means:

(I) Construction of mixed income housing with 200 or more housing units, in a municipality with a population of 15,000 or more.

(II) Construction of mixed income housing with 100 or more housing units, in a municipality with a population of 10,000 or more but less than 15,000.

(III) Construction of mixed income housing with 50 or more housing units, in a municipality with a population of 6,000 or more and less than 10,000.

(IV) Construction of mixed income housing with 30 or more housing units, in a municipality with a population of 3,000 or more but less than 6,000.

(V) Construction of mixed income housing with 25 or more housing units, in a municipality with a population of less than 3,000.

(VI) Historic Buildings. Construction of 10 or more units of mixed income housing where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the ~~state or national register of historic places~~ State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the ~~division for historic preservation~~ Division for Historic Preservation has determined the proposed demolition will have: no adverse effect; no adverse effect provided that specified conditions are met; or will have an adverse effect, but that adverse effect will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.

(C) For the purposes of determining jurisdiction under subdivisions (3)(A) and (3)(B) of this section, the following shall apply:

(i) Incentive for Growth Inside Designated Areas. Notwithstanding subdivision (3)(A)(iv) of this section, housing units constructed by a person partially or completely outside a designated downtown development district, designated growth center, ~~or~~ designated Vermont neighborhood, or designated neighborhood development area shall not be counted to determine jurisdiction over housing units constructed by that person entirely within a designated downtown development district, designated growth center, ~~or~~ designated Vermont neighborhood, or designated neighborhood development area .

(ii) Five-Year, Five-Mile Radius Jurisdiction Analysis. Within any continuous period of five years, housing units constructed by a person entirely within a designated downtown district, designated growth center, ~~or~~ designated Vermont neighborhood, or designated neighborhood development area shall be counted together with housing units constructed by that person partially or completely outside a designated downtown development district, designated growth center, ~~or~~ designated Vermont neighborhood, or designated neighborhood development area to determine jurisdiction over the housing units constructed by a person partially or completely outside the designated downtown development district, designated growth center, ~~or~~ designated Vermont neighborhood, or designated neighborhood development area and within a five-mile radius in accordance with subdivision (3)(A)(iv) of this section.

(iii) Discrete Housing Projects in Designated Areas and Exclusive Counting for Housing Units. Notwithstanding subdivisions (3)(A)(iv) and (19) of this section, jurisdiction shall be determined exclusively by counting

housing units constructed by a person within a designated downtown development district, designated growth center, ~~or~~ designated Vermont neighborhood, or designated neighborhood development area, provided that the housing units are part of a discrete project located on a single tract or multiple contiguous tracts of land.

* * *

Sec. 12. 10 V.S.A. § 6083a is amended to read:

§ 6083a. ACT 250 FEES

* * *

(d) ~~Vermont Neighborhood Fees~~ Neighborhood development area fees. Fees for residential development in a Vermont neighborhood or neighborhood development area designated according to ~~24 V.S.A. § 2793d~~ 24 V.S.A. § 2793e shall be no more than 50 percent of the fee otherwise charged under this section~~, with 50 percent due with the application, and 50 percent due~~. The fee shall be paid within 30 days after the permit is issued or denied.

* * *

Sec. 13. 32 V.S.A. § 10002(p) is amend to read:

(p) Also excluded from the definition of "land" is a transfer of undeveloped land in a Vermont neighborhood or neighborhood development area designated under 24 V.S.A. chapter 76A which is the first transfer of that parcel following the original designation of the Vermont neighborhood or neighborhood development area.

Sec. 14. REVIEW OF THE GROWTH CENTER AND NEW TOWN CENTER PROGRAMS

On or before June 15, 2013, the Commissioner of the Department of Economic, Housing and Community Development shall begin examining ways to improve and strengthen the growth center and new town center designation process designed to promote compact development and the efficient use of resources. The Commissioner shall consider: reviewing and modifying the designation process; the unique circumstances of different municipalities; how best to include communities of all sizes and growth pressures; additional incentives for all the designation programs, including the downtown, village center, new town center, and growth center programs; the potential integration of industrial parks and rural development; and the protection of natural resources. The Department will form a working group and consult stakeholders including state agencies and independent departments, municipal officials, environmental organizations, developers, and representatives from the manufacturing, business, housing, historic preservation, agricultural,

silviculture, and planning communities in its process to develop legislative and policy recommendations and proposed statutory revisions to make the Program more efficient and effective. The Department will report its findings, legislative and policy recommendations, and proposed statutory revisions to the General Assembly on or before December 15, 2013.

Sec. 15. EFFECTIVE DATE

This section and Sec. 14 (review of the growth center program) shall take effect on passage. The remaining sections of this act shall take effect on July 1, 2013.

(Committee Vote: 11-0-0)

H. 403

An act relating to community supports for persons with serious functional impairments

Rep. Haas of Rochester, for the Committee on **Human Services,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. STUDY AND REPORT ON PROVIDING COMMUNITY SUPPORTS TO PERSONS WITH SERIOUS FUNCTIONAL IMPAIRMENTS

(a) As used in this act, "designated population" shall mean those Vermont residents, regardless of whether they are in the custody of the Commissioner of Corrections, with mental and functional impairments or developmental disorders so severe that they cannot live in the community without substantial supports and who have committed, been charged with, or have been identified as being at risk of committing a criminal offense that renders them a threat to public safety or who pose a risk to their own physical safety, or both.

(b) A legislative study committee is established to identify and examine the needs of the designated population in community-based settings. The Study Committee shall consist of a member from the House Committees on Appropriations, on Corrections and Institutions, on Human Services, and on Judiciary, not all from the same party, appointed by the Speaker of the House, and a member from the Senate Committees on Appropriations, on Health and Welfare, on Judiciary, and one Senator selected at large, not all from the same party, appointed by the Committee on Committees. The Study Committee shall discuss and make recommendations on legislative and nonlegislative solutions for improving the quality and cost-effectiveness of treatment to the designated population while maintaining public safety, in collaboration with the following organizations and individuals or their designee:

(1) the Secretary of Human Services;

(2) the Commissioner of Health;

(3) the Commissioner of Disabilities, Aging, and Independent Living;

(4) the Commissioner of Mental Health;

(5) the Commissioner of Corrections;

(6) the Commissioner of Vermont Health Access;

(7) the Commissioner for Children and Families;

(8) the Office of the Attorney General;

(9) the Mental Health Care Ombudsman;

(10) the Court Administrator;

(11) the Vermont Council of Developmental and Mental Health Services;

(12) Vermont Legal Aid's Mental Health Law Project;

(13) the Executive Director of the Vermont Developmental Disabilities Council;

(14) the Executive Director of the Vermont Human Rights Commission;

(15) Disability Rights Vermont;

(16) Vermont Psychiatric Survivors;

(17) Office of the Defender General's Prisoners' Rights Office; and

(18) other interested stakeholders.

(c)(1) The first meeting of the Study Committee shall be held on or before August 1, 2013. At its first meeting, the Study Committee shall elect two legislative members to serve as co-chairs. The Study Committee shall not meet more than four times.

(2)(A) The Office of Legislative Council shall provide administrative, staff, and legislative drafting support to the Study Committee. The Joint Fiscal Office shall provide staff support to the Study Committee.

(B) Prior to the first meeting of the Study Committee, the Office of Legislative Council shall collect from the Agency of Human Services existing data and background materials relevant to the responsibilities of the Study Committee.

(d) The Study Committee shall consider:

(1) the continuum of appropriate treatment and services and supports for members of the designated population living in the community;

(2) practices for lowering the incarceration rate among the designated population;

(3) how best to protect the legal rights of members of the designated population living in community settings;

(4) approaches for managing public safety risks of the designated population;

(5) cost-saving opportunities for treating members of the designated population outside a correctional facility;

(6) treatment approaches used in other states that cost-effectively manage the public safety risks posed by residents comparable to the designated population; and

(7) any other issues as the Study Committee deems necessary and appropriate.

(e) On or before December 15, 2013, the Study Committee shall provide a written report containing any proposed legislation and its findings and recommendations, including the need for future action, to the House Committees on Appropriations, on Corrections and Institutions, on Human Services, and on Judiciary and to the Senate Committees on Appropriations, on Health and Welfare, and on Judiciary. In addition to the Study Committee's findings and recommendations, the report shall:

(1) develop proposed guidelines specifying how an individual shall be assessed to determine if he or she is a member of the designated population and what benchmarks shall be achieved by the individual prior to declassification from the designated population; and

(2) address the extent to which one or more secure residential recovery facilities are within the appropriate continuum of treatment alternatives for the designated population.

(f) For physical participation at meetings, legislative members of the Study Committee shall be entitled to receive per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 11-0-0)

H. 405

An act relating to manure management and anaerobic digesters

Rep. Malcolm of Pawlet, for the Committee on **Natural Resources and Energy,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 30 V.S.A. § 248 is amended to read:

§ 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND FACILITIES; CERTIFICATE OF PUBLIC GOOD

* * *

(q)(1) A certificate under this section for a plant using methane derived from an agricultural operation shall be required only for the equipment used to generate electricity from biogas, the equipment used to refine biogas into natural gas, the structures housing such equipment used to generate electricity or refine biogas, and the interconnection to electric and natural gas distribution and transmission systems. The certificate shall not be required for the methane digester, the digester influents and effluents, the buildings and equipment used to handle such influents and effluents, or the on-farm utilization of heat and exhaust produced by the generation of electricity.

(2) Notwithstanding 1 V.S.A. § 214 and Board Rule 5.408, if the Board issued a certificate to a plant using methane derived from an agricultural operation prior to July 1, 2013, such certificate shall require an amendment only when there is a substantial change, pursuant to Board Rule 5.408, to the equipment used to generate electricity from biogas, the equipment used to refine biogas into natural gas, the structures housing such equipment used to generate electricity or refine biogas, or the interconnection to electric and natural gas distribution and transmission systems. The Board's jurisdiction in any future proceedings concerning such a certificate shall be limited pursuant to subdivision (1) of this subsection.

(3) This subsection shall not affect the determination, under section 8005a of this title, of the price for a standard offer to a plant using methane derived from an agricultural operation.

(4) As used in this section, "biogas" means a gas resulting from the action of microorganisms on organic material such as manure or food processing waste.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee Vote: 11-0-0)

H. 406

An act relating to listers and assessors

Rep. Higley of Lowell, for the Committee on **Government Operations,** recommends the bill be amended as follows:

In Sec. 4, 17 V.S.A. § 2651c, in subdivision (b)(1), in the second sentence, after "the selectboard shall contract with", by inserting "or employ"

(Committee Vote: 10-1-0)

Favorable

H. 510

An act relating to the State's transportation program and miscellaneous changes to the State's transportation laws.

(Rep. Brennan of Colchester will speak for the Committee on **Transportation.)**

Rep. Masland of Thetford, for the Committee on **Ways and Means,** recommends the bill ought to pass.

(Committee Vote: 10-1-0)

Rep. Heath of Westford, for the Committee on **Appropriations,** recommends the bill ought to pass.

(Committee Vote: 9-2-0)