

House Calendar

Wednesday, April 17, 2013

99th DAY OF THE BIENNIAL SESSION

House Convenes at 1:00 P.M.

TABLE OF CONTENTS

Page No.

ACTION CALENDAR

Third Reading

H. 512 Approval of amendments to the charter of the City of Barre 993

Favorable with Amendment

S. 73 An act relating to the moratorium on home health agency certificates of need..... 993

Rep. Dakin for Health Care

Favorable

H. 536 The Adjutant and Inspector General and the Vermont National Guard 993

Rep. Head for General, Housing and Military Affairs

Rep. Fagan for Appropriations 993

Rep. Cross et al amendment 993

Rep. Cross et al amendment 994

Rep. Cross et al amendment 995

Rep. Cross amendment 996

NOTICE CALENDAR

Favorable with Amendment

S. 150 An act relating to miscellaneous amendments to laws related to motor vehicles 996

Rep. Brennan for Transportation

S. 151 An act relating to miscellaneous changes to the laws governing commercial motor vehicle licensing and operation 1016

Rep. Kilmartin for Transportation

Senate Proposal of Amendment

H. 511 “zappers” and automated sales suppression devices 1017

ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 512

An act relating to approval of amendments to the charter of the City of Barre

Favorable with Amendment

S. 73

An act relating to the moratorium on home health agency certificates of need

Rep. Dakin of Chester, for the Committee on **Health Care**, recommends that the House propose to the Senate that the bill be amended as follows:

In Sec. 1, 2010 Acts and Resolves No. 83, Sec. 2, subsection (d), before the period, by inserting the words: "or to a licensed home for the terminally ill as defined in 33 V.S.A. § 7102"

(Committee vote: 8-0-3)

(For text see Senate Journal 3/20/2013)

Favorable

H. 536

An act relating to the Adjutant and Inspector General and the Vermont National Guard.

(Rep. Head of South Burlington will speak for the Committee on **General, Housing and Military Affairs.**)

Rep. Fagan of Rutland City, for the Committee on **Appropriations**, recommends the bill ought to pass.

(Committee Vote: 10-0-1)

Amendment to be offered by Reps. Cross of Winooski, Cole of Burlington, French of Randolph, Krowinski of Burlington, McCormack of Burlington and Townsend of South Burlington to H. 536

By adding Sec. 7a to read:

Sec. 7a. COLLABORATIVE PROCESS CONCERNING ASSIGNMENT OF
F-35 AIRCRAFT TO THE VERMONT NATIONAL GUARD

(a) In 2010, the General Assembly adopted J.R.H.51, Joint resolution supporting the assignment of the F-35 aircraft to the Vermont Air National Guard, requesting that the U.S. Air Force, the Vermont Air National Guard, the City of South Burlington, the City of Winooski, the Town of Williston, and the City of Burlington conduct collaborative hearings with concerned citizens on environmental, health, housing, and workforce issues related to the F-35 prior to the issuing of a final decision on basing F-35 fighter jets at Burlington International Airport. More recently, J.R.H.4, Joint resolution related to the conduct of collaborative hearings and the basing of the F-35A in Vermont, was introduced, respectfully requesting that the collaborative hearing process begin in order to provide detailed responses concerning these issues.

(b) The Secretary of Administration shall work with the U.S. Air Force and the Vermont National Guard to complete the collaborative hearing process and any expenses shall be absorbed by the Secretary's budget.

Amendment to be offered by Reps. Cross of Winooski, French of Randolph, Krowinski of Burlington, McCormack of Burlington and Townsend of South Burlington to H. 536

By adding Sec. 7a to read:

Sec. 7a. F-35 ADVERSE IMPACTS STUDY

(a) The Joint Fiscal Office is directed to study the potential adverse impacts caused by the deployment of the F-35A at Burlington International Airport by the U.S. Air Force and the Vermont Air National Guard. The study shall consider at least the following impacts:

(1) property values within the 65 decibel day-night average level contour zone;

(2) health issues related to noise and other environmental conditions for those who live in the 65 decibel day-night average level contour zone; and

(3) other potential adverse impacts as deemed appropriate.

(b) The Joint Fiscal Office shall be assisted as needed and appropriate by the Agency of Education, the Department of Health, and the Department of Taxes. Any and all added costs associated with this study shall be borne by each of the state entities listed in this subsection within their respective 2014 budgets.

(c) The Joint Fiscal Office shall report its findings to the General Assembly on or before January 15, 2014.

Amendment to be offered by Reps. Cross of Winooski, French of Randolph, Krowinski of Burlington, McCormack of Burlington, Pearson and Townsend of South Burlington to H. 536

By adding Secs. 7a and 7b to read:

Sec. 7a. FINDINGS

The General Assembly finds:

(1) Vermonters appreciate the dedication and sacrifice made by the many men and women who serve in or work for the Vermont Air National Guard (VTANG), both those who are full time and those who are part time.

(2) Although Vermonters greatly appreciate the many contributions the VTANG has made to Vermont, the proposed basing of the F-35A fighter jets at BTV as a replacement for the currently based F-16 fighter jets raises significant noise issues that warrant the completion of a comprehensive collaborative hearing process prior to a final decision on F-35A basing at BTV.

(3) In a statement released on December 11, 2012, 16 members of the Vermont clergy recommended that “Vermont be removed from the first round of basing decisions so that we Vermonters can reach a consensus, based on clearing up so many of the questions that remain unanswered in the minds of many residents.”

(4) In a letter to a constituent, Senator Patrick Leahy stated “I have heard from a number of Vermonters who have specifically questioned the value of the F-35. The F-35 program has been poorly managed and is a textbook example of how not to buy military equipment. The causes of the F-35 program’s present difficulties are too numerous to detail in my response to your letter; however, I believe the F-35 program is approaching a point where the military services and a majority of Congress will recognize that the jet is just too costly to proceed with purchases at today’s planned levels. That recognition may lead to a decision to diversify our future fighter jet fleet, with the Air Force, Navy, and Marine Corps opting to modernize their current fleet of fighter jets and substantially reduce the total number of F-35s that they plan to buy.”

Sec. 7b. F-35A BASING DECISION

The General Assembly agrees with the learned clergy’s advice and the cautions stated by Senator Leahy and requests that Vermont be removed from consideration in this round of F-35A basing decisions.

Amendment to be offered by Rep. Cross of Winooski to H. 536

In Sec. 1, 2 V.S.A. § 12 in subsection (c) by striking out subdivisions (2), (3), (4), and (5) in their entirety, and by striking out subdivision (6) through the semicolon

and by renumbering the remaining subdivision to be numerically correct.

NOTICE CALENDAR

Favorable with Amendment

S. 150

An act relating to miscellaneous amendments to laws related to motor vehicles

Rep. Brennan of Colchester, for the Committee on **Transportation**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 23 V.S.A. § 4(11) is amended to read:

(11) “Enforcement officers” shall include:

(A) the following persons certified pursuant to 20 V.S.A. § 2358: sheriffs, deputy sheriffs, constables whose authority has not been limited under 24 V.S.A. § 1936a, police officers, state’s attorneys, capitol police officers, motor vehicle inspectors, state game wardens, and state police,~~and;~~

(B) for enforcement of offenses relating to parking of motor vehicles, meter checkers, and other duly authorized employees of a municipality employed to assist in the enforcement of parking regulations.~~“Enforcement officers” shall also include;~~

(C) for enforcement of nonmoving traffic violations enumerated in subdivisions 2302(a)(1), (2), (3), and (4) of this title, duly authorized employees of the department of motor vehicles for the purpose of issuing Department of Motor Vehicles. Such employees may issue complaints related to their administrative duties, pursuant to 4 V.S.A. § 1105, in accordance with 4 V.S.A. § 1105.

Sec. 2. 23 V.S.A. § 4(11) is amended to read:

(11) “Enforcement officers” shall include:

(A) the following persons certified pursuant to 20 V.S.A. § 2358: sheriffs, deputy sheriffs, constables whose authority has not been limited under 24 V.S.A. § 1936a, police officers, state’s attorneys, capitol police officers, motor vehicle inspectors, liquor investigators, state game wardens, and state

police, ~~and;~~

(B) for enforcement of offenses relating to parking of motor vehicles, meter checkers, and other duly authorized employees of a municipality employed to assist in the enforcement of parking regulations. ~~“Enforcement officers” shall also include;~~

(C) for enforcement of nonmoving traffic violations enumerated in subdivisions 2302(a)(1), (2), (3), and (4) of this title, duly authorized employees of the ~~department of motor vehicles for the purpose of issuing~~ Department of Motor Vehicles. Such employees may issue complaints ~~related to their administrative duties, pursuant to 4 V.S.A. § 1105,~~ in accordance with 4 V.S.A. § 1105.

Sec. 3. 23 V.S.A. § 4(42) is amended to read:

(42) “Transporter” shall mean a person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer, and includes persons regularly engaged in the business of towing trailer coaches, owned by them or temporarily in their custody, on their own wheels over public highways; persons towing office trailers owned by them or temporarily in their custody, on their own wheels over public highways; persons regularly engaged and properly licensed for the short-term rental of “storage trailers” owned by them and who move these storage trailers on their own wheels over public highways, ~~and;~~ persons regularly engaged in the business of moving modular homes over public highways; and ~~shall also include~~ dealers and automobile repair shop owners when engaged in the transportation of motor vehicles to and from their place of business for repair purposes. “Transporter” shall ~~also include other persons, firms or corporations, provided the transportation and delivery of motor vehicles is a common and usual incident to the towing overwidth trailers owned by them in connection with their business, or whose business is the repossession of motor vehicles in connection with~~ provided that the transportation and delivery of motor vehicles is a common and usual incident to their business. For purposes of this subdivision, “short-term rental” shall mean a period of less than one year. Before a person may become licensed as a transporter, he or she shall present proof of compliance with section 800 of this title. He or she shall also either own or lease a permanent place of business located in this ~~state~~ State where business shall be conducted during regularly established business hours and the required records stored and maintained.

* * * Placards for Persons with Disabilities * * *

Sec. 4. 23 V.S.A. § 304a(c) is amended to read:

(c) Vehicles with special registration plates or removable windshield placards from any state ~~or which have a handicapped parking card issued by the commissioner of motor vehicles~~ may use the special parking spaces when:

(1) ~~the card or placard is displayed in the lower right side of the windshield;~~

(A) by hanging it from the front windshield rearview mirror in such a manner that it may be viewed from the front and rear of the vehicle; or

(B) if the vehicle has no rearview mirror, on the dashboard;

(2) the plate is mounted as provided in section 511 of this title; or

(3) the plate is mounted or the placard displayed as provided by the law of the state jurisdiction where the vehicle is registered.

* * * Temporary Registrations * * *

Sec. 5. 23 V.S.A. § 305(d) is amended to read:

(d) When a registration for a motor vehicle, snowmobile, motorboat, or all-terrain vehicle is processed electronically, a receipt shall be available for printing. The receipt shall serve as a temporary registration. To be valid, the temporary registration shall be in the possession of the operator at all times, and it shall expire ten days after the date of the transaction.

* * * Registration Fees, Taxes on Trailers * * *

Sec. 6. 23 V.S.A. § 371 is amended to read:

§ 371. TRAILER AND SEMI-TRAILER

(a)(1) The one-year and two-year fees for registration of a trailer or semi-trailer, except a contractor's trailer or farm trailer, shall be as follows:

(A) \$25.00 and \$48.00, respectively, when such trailer or semi-trailer has a gross weight of trailer and load of ~~less than~~ 1,500 pounds or less;

(B) \$49.00 and \$96.00, respectively, when such trailer or semi-trailer has a gross weight of trailer and load of more than 1,500 pounds ~~or more~~, and is drawn by a vehicle of the pleasure car type;

(C) \$49.00 and \$96.00, respectively, when such trailer or semi-trailer is drawn by a motor truck or tractor, when such trailer or semi-trailer has a gross weight of more than 1,500 pounds ~~or more~~, but ~~not in excess of~~ less than 3,000 pounds;

(D) \$49.00 and \$96.00, respectively, when such trailer or semi-trailer is used in combination with a truck-tractor or motor truck registered at the fee provided for combined vehicles under section 367 of this title. Excepting for

the fees, the provisions of this subdivision shall not apply to trailer coaches as defined in section 4 of this title nor to modular homes being transported by trailer or semi-trailer.

(2) The one-year and two-year fees for registration of a contractor's trailer shall be \$145.00 and \$290.00, respectively.

(b)(1) ~~A~~ Except as provided in subdivision (2) of this subsection, a trailer or semi-trailer, except a farm trailer, may be registered for a period of five years for a fee equal to five times the annual fee established by subsection (a) of this section.

(2) A trailer or semi-trailer may be registered for a period of five years for a fee of \$100.00 if at least 80 percent of the miles that it is drawn is outside the State of Vermont.

~~(2)(3)~~ (3) Any registration made for a period of five years shall cost the full fee regardless of the month in which the registration is made, but a five-year registration may be transferred or cancelled in the same manner as an annual registration.

Sec. 6a. 23 V.S.A. § 371(b) is amended to read:

(b)(1) ~~Except as provided in subdivision (2) of this subsection,~~ A trailer or semi-trailer, except a farm trailer, may be registered for a period of five years for a fee equal to five times the annual fee established by subsection (a) of this section.

~~(2) A trailer or semi-trailer may be registered for a period of five years for a fee of \$100.00 if at least 80 percent of the miles that it is drawn is outside the State of Vermont. [Repealed.]~~

(3) Any registration made for a period of five years shall cost the full fee regardless of the month in which the registration is made, but a five-year registration may be transferred or cancelled in the same manner as an annual registration.

Sec. 6b. 23 V.S.A. § 301 is amended to read:

§ 301. PERSONS REQUIRED TO REGISTER

Residents, except as provided in section 301a and chapter 35 of this title, shall annually register motor vehicles owned or leased for a period of more than 30 days and operated by them, unless currently registered in Vermont. Notwithstanding this section, a resident who has moved into the ~~state~~ State from another jurisdiction shall register his or her motor vehicle within 60 days of moving into the ~~state~~ State. A person shall not operate a motor vehicle nor draw a trailer or semi-trailer on any highway unless such vehicle is registered

as provided in this chapter. Vehicle owners who have apportioned power units registered under the International Registration Plan are exempt from the requirement to register their trailers in this State.

Sec. 6c. 23 V.S.A. § 301 is amended to read:

§ 301. PERSONS REQUIRED TO REGISTER

Residents, except as provided in section 301a and chapter 35 of this title, shall annually register motor vehicles owned or leased for a period of more than 30 days and operated by them, unless currently registered in Vermont. Notwithstanding this section, a resident who has moved into the State from another jurisdiction shall register his or her motor vehicle within 60 days of moving into the State. A person shall not operate a motor vehicle nor draw a trailer or semi-trailer on any highway unless such vehicle is registered as provided in this chapter. ~~Vehicle owners who have apportioned power units registered under the International Registration Plan are exempt from the requirement to register their trailers in this State.~~

Sec. 6d. 32 V.S.A. § 8911 is amended to read:

§ 8911. EXCEPTIONS

The tax imposed by this chapter shall not apply to:

* * *

(23) a trailer or semi-trailer if at least 80 percent of the miles that the trailer or semi-trailer has been or will be drawn is outside the State of Vermont.

Sec. 6e. 32 V.S.A. § 8911(23) is amended to read:

~~(23) a trailer or semi-trailer if at least 80 percent of the miles that the trailer or semi-trailer has been or will be drawn is outside the State of Vermont.~~
[Repealed.]

* * * Biennial Motorboat Registration * * *

Sec. 7. 23 V.S.A. § 3305 is amended to read:

§ 3305. FEES

(a) A person shall not operate a motorboat on the public waters of this state unless the motorboat is registered in accordance with this chapter.

(b) Annually or biennially, the owner of each motorboat required to be registered by this state shall file an application for a number with the ~~commissioner of motor vehicles~~ Commissioner of Motor Vehicles on forms approved by him or her. The application shall be signed by the owner of the motorboat and shall be accompanied by a an annual fee of \$22.00 and a

surcharge of \$5.00, or a biennial fee of \$39.00 and a surcharge of \$10.00, for a motorboat in class A; by ~~a~~ an annual fee of \$33.00 and a surcharge of \$10.00, or a biennial fee of \$61.00 and a surcharge of \$20.00, for a motorboat in class 1; by ~~a~~ an annual fee of \$60.00 and a surcharge of \$10.00, or a biennial fee of \$115.00 and a surcharge of \$20.00, for a motorboat in class 2; by ~~a~~ an annual fee of \$126.00 and a surcharge of \$10.00, or a biennial fee of \$247.00 and a surcharge of \$20.00, for a motorboat in class 3. Upon receipt of the application in approved form, the ~~commissioner~~ Commissioner shall enter the application upon the records of the ~~department of motor vehicles~~ Department of Motor Vehicles and issue to the applicant a registration certificate stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules of the ~~commissioner~~ Commissioner in order that it may be clearly visible. The registration shall be void one year from the first day of the month following the month of issue in the case of annual registrations, or void two years from the first day of the month following the month of issue in the case of biennial registrations. A vessel of less than 10 horsepower used as a tender to a registered vessel shall be deemed registered, at no additional cost, and shall have painted or attached to both sides of the bow, the same registration number as the registered vessel with the number "1" after the number. The number shall be maintained in legible condition. The registration certificate shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever the motorboat is in operation. A duplicate registration may be obtained upon payment of a fee of \$2.00 to the ~~commissioner~~ Commissioner. Notwithstanding section 3319 of this chapter, \$5.00 of each registration fee shall be allocated to the ~~transportation fund~~ Transportation Fund. The remainder of the fee shall be allocated in accordance with section 3319 of this title.

* * *

(d)(1) Registration of a motorboat ends when the owner transfers title to another. The former owner shall immediately return directly to the ~~commissioner~~ Commissioner the registration certificate previously assigned to the transferred motorboat with the date of sale and the name and residence of the new owner endorsed on the back of the certificate.

(2) When a person transfers the ownership of a registered motorboat to another, files a new application and pays a fee of \$5.00, he or she may have registered in his or her name another motorboat of the same class for the remainder of the registration year period without payment of any additional registration fee. However, if the fee for the registration of the motorboat sought to be registered is greater than the registration fee for the transferred

motorboat, the applicant shall pay the difference between the fee first paid and the fee for the class motorboat sought to be registered.

* * *

(f) Every registration certificate awarded under this subchapter shall continue in effect ~~for one year from the first day of the month of issue as prescribed in subsection (b) of this section~~ unless sooner ended under this chapter. The registration certificate may be renewed by the owner in the same manner provided for in securing the initial certificate.

* * *

* * * Off-Site Display of Vehicles by Dealers * * *

Sec. 8. 23 V.S.A. § 451(b) is amended to read:

(b) With the prior approval of the ~~commissioner~~ Commissioner, a Vermont dealer may display vehicles on a temporary basis, but in no instance for more than ~~10~~ 14 days, at fairs, shows, exhibitions, and other off-site locations within the manufacturer's stated area of responsibility in the franchise agreement. No sales may be transacted at these ~~off-site~~ off-site locations. A dealer desiring to display vehicles temporarily at an off-site location shall notify the ~~commissioner~~ Commissioner in a manner prescribed by the ~~commissioner~~ Commissioner no less than two days prior to the first day for which approval is requested.

* * * Penalties for Unauthorized Operation by Junior Operators and Learner's Permit Holders * * *

Sec. 9. 23 V.S.A. § 607a is amended to read:

§ 607a. RECALL OF LEARNER'S PERMIT OR JUNIOR OPERATOR'S LICENSE

(a) A learner's permit or junior operator's license shall contain an admonition that it is recallable and that the later procurement of an operator's license is conditional on the establishment of a record which is satisfactory to the ~~commissioner~~ Commissioner and showing compliance with the motor vehicle laws of this and other states. The ~~commissioner~~ Commissioner may recall any permit or license issued to a minor whenever he or she is satisfied, from information provided by a credible person and upon investigation, that the operator is mentally or physically unfit or, because of his or her habits or record as to accidents or convictions, is unsafe to be trusted with the operation of motor vehicles. On recommendation of a diversion or reparative board, the ~~commissioner~~ Commissioner may recall the learner's permit or junior operator's license of a person in a diversion or reparative program for up to 30 days. The ~~commissioner~~ Commissioner shall also recall any learner's

permit or junior operator's license for 30 days when an operator is adjudicated of a single texting violation under section 1099 of this title, 90 days following adjudication of a single speeding violation resulting in a three-point assessment, 90 days when a total of six points has been accumulated, or 90 days when an operator is adjudicated of a violation of ~~section 678~~ subsection 614(c) or 615(a) of this title. When a learner's permit or junior operator's license is so recalled, it shall be reinstated upon expiration of a specific term, and, if required by the ~~commissioner~~ Commissioner, when the person has passed a reexamination approved by the ~~commissioner~~ Commissioner.

(b) When a license or permit is recalled under the provisions of this section, the person whose license or permit is so recalled shall have the same right of hearing before the ~~commissioner~~ Commissioner as is provided in subsection 671(a) of this title.

(c) Except for a recall based solely upon the provisions of subsection (d) of this section, any recall of a license or permit may extend past the operator's 18th birthday. While the recall is still in effect, that operator shall be ineligible for any operator's license.

(d) The ~~commissioner~~ Commissioner shall recall a learner's permit or junior operator's license upon written request of the individual's custodial parent or guardian.

(e) Any recall period under this section shall run concurrently with any suspension period imposed under chapter 13 of this title.

Sec. 10. 23 V.S.A. § 614 is amended to read:

§ 614. RIGHTS UNDER LICENSE

(a) An operator's license shall entitle the holder to operate a registered motor vehicle with the consent of the owner whether employed to do so or not.

(b) A junior operator's license shall entitle the holder to operate a registered motor vehicle, with the consent of the owner, but shall not entitle him or her to operate a motor vehicle in the course of his or her employment or for direct or indirect compensation for one year following issuance of the license, except that the holder may operate a farm tractor with or without compensation upon a public highway in going to and from different parts of a farm of the tractor's owner or to go to any repair shop for repair purposes. A junior operator's license shall not entitle the holder to carry passengers for hire.

(c) During the first three months of operation, the holder of a junior operator's license is restricted to driving alone or with a licensed parent or guardian, licensed or certified driver education instructor, or licensed person at

least 25 years of age. During the following three months, a junior operator may additionally transport family members. No person operating with a junior operator's license shall transport more passengers than there are safety belts unless he or she is operating a vehicle that has not been manufactured with a federally approved safety belt system. A person convicted of operating a motor vehicle in violation of this subsection shall be subject to a penalty of not more than \$50.00, and his or her license shall be recalled for a period of 90 days. The provisions of this subsection may be enforced only if a law enforcement officer has detained the operator for a suspected violation of another traffic offense.

~~(b) This section shall not prohibit a holder of a junior operator's license from operating a farm tractor with or without compensation upon a public highway in going to and from different parts of a farm of the owner of such tractor and for repair purposes to any repair shop.~~

Sec. 11. 23 V.S.A. § 615 is amended to read:

§ 615. UNLICENSED OPERATORS

(a)(1) An unlicensed person 15 years of age or older, may operate a motor vehicle, if he or she ~~has in possession,~~ possesses a valid learner's permit issued to him or her by the ~~commissioner~~ Commissioner and if ~~their~~ his or her licensed parent or guardian, licensed or certified driver education instructor, or a licensed person at least 25 years of age rides beside him or her. Nothing in this section shall be construed to permit a person against whom a revocation or suspension of license is in force, or a person less than 15 years of age, or a person who has been refused a license by the ~~commissioner,~~ Commissioner to operate a motor vehicle.

(2) A licensed person who does not possess a valid motorcycle endorsement may operate a motorcycle, with no passengers, only during daylight hours and then only if he or she has upon his or her person a valid motorcycle learner's permit issued to him or her by the ~~commissioner~~ Commissioner.

~~(b) The commissioner in his or her discretion, may recall a learner's permit in the same circumstances as he or she may recall a provisional license~~ A person convicted of operating a motor vehicle in violation of this section shall be subject to a penalty of not more than \$50.00, and his or her learner's permit shall be recalled for a period of 90 days. No person may be issued traffic complaints alleging a violation of this section and a violation of section 676 of this title from the same incident. The provisions of this section may be enforced only if a law enforcement officer has detained the operator for a suspected violation of another traffic offense.

Sec. 12. REPEAL

23 V.S.A. § 678 (penalties for unauthorized operation) is repealed.

* * * Nondriver Identification Cards * * *

Sec. 13. 23 V.S.A. § 115 is amended to read:

§ 115. NONDRIVER IDENTIFICATION CARDS

(a) Any Vermont resident may make application to the ~~commissioner~~ Commissioner and be issued an identification card which is attested by the ~~commissioner~~ Commissioner as to true name, correct age, residential address unless the listing of another address is requested by the applicant or is otherwise authorized by law, and any other identifying data as the ~~commissioner~~ Commissioner may require which shall include, in the case of minor applicants, the written consent of the applicant's parent, guardian, or other person standing in loco parentis. Every application for an identification card shall be signed by the applicant and shall contain such evidence of age and identity as the ~~commissioner~~ Commissioner may require. New and renewal application forms shall include a space for the applicant to request that a "veteran" designation be placed on his or her identification card. If a veteran, as defined in 38 U.S.C. § 101(2), requests a veteran designation and provides a Department of Defense Form 214 or other proof of veteran status specified by the Commissioner, and the Office of Veterans Affairs confirms his or her status as an honorably discharged veteran or a veteran discharged under honorable conditions, the identification card shall include the term "veteran" on its face. The ~~commissioner~~ Commissioner shall require payment of a fee of \$20.00 at the time application for an identification card is made.

* * *

~~(i) An identification card issued under this subsection to an individual under the age of 30 shall include a magnetic strip that includes only the name, date of birth, height, and weight of the individual identified on the card. Each identification card issued to an initial or renewal applicant shall include a bar code encoded with minimum data elements as prescribed in 6 C.F.R. § 37.19.~~

* * *

* * * License Certificates * * *

Sec. 14. 23 V.S.A. § 603 is amended to read:

§ 603. APPLICATION FOR AND ISSUANCE OF LICENSE

(a)(1) The ~~commissioner~~ Commissioner or his or her authorized agent may license operators and junior operators when an application, on a form prescribed by the ~~commissioner~~ Commissioner, signed and sworn to by the

applicant for the license, is filed with him or her, accompanied by the required license fee and any valid license from another state or Canadian jurisdiction is surrendered.

(2) ~~The commissioner~~ Commissioner may, however, in his or her discretion, refuse to issue a license to any person whenever he or she is satisfied from information given him or her by credible persons, and upon investigation, that the person is mentally or physically unfit, or because of his or her habits, or record as to accidents or convictions, is unsafe to be trusted with the operation of motor vehicles. A person refused a license, under the provisions of this subsection or section 605 of this title, shall be entitled to hearing as provided in sections 105-107 of this title.

(3) Any new or renewal application form shall include a space for the applicant to request that a "veteran" designation be placed on his or her license certificate. An applicant who requests the designation shall provide a Department of Defense Form 214, or other proof of veteran status specified by the Commissioner.

* * *

Sec. 15. 23 V.S.A. § 610 is amended to read:

§ 610. LICENSE CERTIFICATES

(a) ~~The commissioner~~ Commissioner shall assign a distinguishing number to each licensee and shall furnish the licensee with a license certificate, ~~showing that shows~~ the number, and the licensee's full name, date of birth, and residential address unless the listing of another address is requested by the applicant or is otherwise authorized by law. The certificate also shall include a brief physical description, and mailing address and a space for the signature of the licensee. The license shall be void until signed by the licensee. If a veteran, as defined in 38 U.S.C. § 101(2), requests a veteran designation and provides proof of veteran status as specified in subdivision 603(a)(3) of this title, and the Office of Veterans Affairs confirms his or her status as an honorably discharged veteran or a veteran discharged under honorable conditions, the license certificate shall include the term "veteran" on its face.

* * *

(c) Each license certificate issued to a first-time applicant and each subsequent renewal by that person shall be issued with the photograph or imaged likeness of the licensee included on the certificate. ~~The commissioner~~ Commissioner shall determine the locations where photographic licenses may be issued. ~~A photographic motor vehicle operator's license issued under this subsection to an individual under the age of 30 shall include a magnetic strip~~

~~that includes only the name, date of birth, height, and weight of the licensee.~~
A person issued a license under this subsection that contains an imaged likeness may renew his or her license by mail. Except that a renewal by a licensee required to have a photograph or imaged likeness under this subsection must be made in person so that an updated imaged likeness of the person is obtained no less often than once every eight years.

(d) Each license certificate issued to an initial or renewal applicant shall include a bar code with minimum data elements as prescribed in 6 C.F.R. § 37.19.

Sec. 16. 23 V.S.A. § 7 is amended to read:

§ 7. ENHANCED DRIVER LICENSE; MAINTENANCE OF DATABASE INFORMATION; FEE

(a) The face of an enhanced license shall contain the individual's name, date of birth, gender, a unique identification number, full facial photograph or imaged likeness, address, signature, issuance and expiration dates, ~~and~~ citizenship, and, if applicable, a veteran designation. The back of the enhanced license shall have a machine-readable zone. A Gen 2 vicinity Radio Frequency Identification chip shall be embedded in the enhanced license in compliance with the security standards of the U.S. Department of Homeland Security. Any additional personal identity information not currently required by the Department of Homeland Security shall need the approval of either the ~~general assembly~~ General Assembly or the ~~legislative committee on administrative rules~~ Legislative Committee on Administrative Rules prior to the implementation of the requirements.

(b) In addition to any other requirement of law or rule, before an enhanced license may be issued to a person, the person shall present for inspection and copying satisfactory documentary evidence to determine identity and United States citizenship. An application shall be accompanied by: a photo identity document, documentation showing the person's date and place of birth, proof of the person's Social Security number, and documentation showing the person's principal residence address. New and renewal application forms shall include a space for the applicant to request that a "veteran" designation be placed on the enhanced license. If a veteran, as defined in 38 U.S.C. § 101(2), requests a veteran designation and provides a Department of Defense Form 214 or other proof of veteran status specified by the Commissioner, and the Office of Veterans Affairs confirms his or her status as an honorably discharged veteran or a veteran discharged under honorable conditions, the identification card shall include the term "veteran" on its face. To be issued, an enhanced license must meet the same requirements as those for the issuance of a United States passport. Before an application may be processed, the

documents and information shall be verified as determined by the ~~commissioner~~ Commissioner. Any additional personal identity information not currently required by the U.S. Department of Homeland Security shall need the approval of either the ~~general assembly~~ General Assembly or the ~~legislative committee on administrative rules~~ Legislative Committee on Administrative Rules prior to the implementation of the requirements.

(c) No person shall compile or maintain a database of electronically readable information derived from an operator's license, junior operator's license, enhanced license, learner permit, or nondriver identification card. This prohibition shall not apply to a person who accesses, uses, compiles, or maintains a database of the information for law enforcement or governmental purposes or for the prevention of fraud or abuse or other criminal conduct.

* * *

* * * Driver Training Instructors * * *

Sec. 17. 23 V.S.A. § 705 is amended to read:

§ 705. QUALIFICATIONS FOR INSTRUCTOR'S LICENSE

In order to qualify for an instructor's license, each applicant shall:

(1) not have been convicted of:

(A) a felony nor incarcerated for a felony within the 10 years prior to the date of application; ~~or~~

(B) a violation of section 1201 of this title; or a ~~conviction like~~ offense in another jurisdiction reported to the ~~commissioner~~ Commissioner pursuant to subdivision 3905(a)(2) of this title within the three years prior to the date of application; ~~or~~

(C) a subsequent ~~conviction for an~~ violation of an offense listed in subdivision 2502(a)(5) of this title or of section 674 of this title; or

(D) a sex offense that requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3.

* * *

* * * Operating on Closed Highways * * *

Sec. 18. 23 V.S.A. § 1112 is amended to read:

§ 1112. CLOSED HIGHWAYS

(a) Except by the written permit of the authority responsible for the closing, ~~no~~ a person shall not drive any vehicle over any highway across which there is a barrier or a sign indicating that the highway is closed to public travel.

(b) An authority responsible for closing a highway to public travel may erect a sign, which shall be visible to highway users and proximate to the barrier or sign indicating that the highway is closed to public travel, indicating that violators are subject to penalties and civil damages.

(c) A municipal, county, or state entity that deploys police, fire, ambulance, rescue, or other emergency services in order to aid a stranded operator of a vehicle, or to move a disabled vehicle, operated on a closed highway in violation of this section, may recover from the operator in a civil action the cost of providing the services, if at the time of the violation a sign satisfying the requirements of subsection (b) of this section was installed.

* * * DUI Suspensions; Credit * * *

Sec. 19. 23 V.S.A. § 1205(p) is amended to read:

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

Sec. 20. 23 V.S.A. § 1216(i) is amended to read:

(i) Suspensions imposed under this section or any comparable statute of any other jurisdiction shall run concurrently with suspensions imposed under sections 1205, 1206, and 1208 of this title or any comparable statutes of any other jurisdiction or with any suspension resulting from a conviction for a violation of section 1091 of this title from the same incident, and a person shall receive credit for any elapsed period of a suspension served in Vermont against a later suspension imposed in this ~~state~~ State. ~~In order for suspension credit to be available against a later suspension, the suspension issued under this section must appear and remain on the individual's motor vehicle record.~~

* * * Sirens and Lights on Exhibition Vehicles * * *

Sec. 21. 23 V.S.A. § 1252 is amended to read:

§ 1252. ~~USES OF~~ ISSUANCE OF PERMITS FOR SIRENS OR COLORED LAMPS OR BOTH; USE OF AMBER LAMPS

(a) When satisfied as to the condition and use of the vehicle, the ~~commissioner~~ Commissioner shall issue and may revoke, for cause, permits for

sirens or colored signal lamps in the following manner:

(1) Sirens or blue or blue and white signal lamps, or a combination of these, may be authorized for all law enforcement vehicles, owned or leased by a law enforcement agency ~~or~~, a certified law enforcement officer ~~and if, or the~~ Vermont Criminal Justice Training Council. If the applicant is a constable, the application shall be accompanied by a certification by the town clerk that the applicant is the duly elected or appointed constable and attesting that the town has not voted to limit the constable's authority to engage in enforcement activities under 24 V.S.A. § 1936a.

(2) Sirens and red or red and white signal lamps may be authorized for all ambulances, fire apparatus, vehicles used solely in rescue operations, or vehicles owned or leased by, or provided to, volunteer ~~firemen~~ firefighters and voluntary rescue squad members, including a vehicle owned by a volunteer's employer when the volunteer has the written authorization of the employer to use the vehicle for emergency fire or rescue activities ~~and motor vehicles used solely in rescue operations.~~

(3) No vehicle may be authorized a permit for more than one of the combinations described in subdivisions (1) and (2) of this subsection.

(4) ~~Notwithstanding subdivisions (1) and (2) of this subsection, no~~ No motor vehicle, other than one owned by the applicant, shall be issued a permit until ~~such time as the commissioner can adequately record~~ Commissioner has recorded the information regarding both the owner of the vehicle and the applicant for the permit.

(5) Upon application to the ~~commissioner~~ Commissioner, the ~~commissioner~~ Commissioner may issue a single permit for all the vehicles owned or leased by the applicant.

(6) Sirens and red or red and white signal lamps, or sirens and blue or blue and white signal lamps, may be authorized for restored emergency or enforcement vehicles used for exhibition purposes. Sirens and lamps authorized under this subdivision may only be activated during an exhibition, such as a car show or parade.

* * *

* * * Motor Vehicle Arbitration Board; Administrative Support * * *

Sec. 22. 9 V.S.A. § 4174 is amended to read:

§ 4174. VERMONT MOTOR VEHICLE ARBITRATION BOARD

(a) There is created a Vermont ~~motor vehicle arbitration board~~ Motor Vehicle Arbitration Board consisting of five members and three alternate

members to be appointed by the ~~governor~~ Governor for terms of three years. Board members may be appointed for two additional three-year terms. One member of the ~~board~~ Board and one alternate shall be new car dealers in Vermont, one member and one alternate shall be persons active as automobile technicians, and three members and one alternate shall be persons having no direct involvement in the design, manufacture, distribution, sales, or service of motor vehicles or their parts. Board members shall be compensated in accordance with the provisions of 32 V.S.A. § 1010. ~~The board shall be attached to the department of motor vehicles and shall receive administrative services from the department of motor vehicles~~ Administrative support for the Board shall be provided as determined by the Secretary of Transportation.

* * *

* * * Traffic Violations; Judicial Bureau * * *

Sec. 23. 4 V.S.A. § 1105 is amended to read:

§ 1105. ANSWER TO COMPLAINT; DEFAULT

(a) A violation shall be charged upon a summons and complaint form approved and distributed by the ~~court administrator~~ Court Administrator. The complaint shall be signed by the issuing officer or by the state's attorney. The original shall be filed with the ~~judicial bureau~~, Judicial Bureau; a copy shall be retained by the issuing officer or state's attorney and two copies shall be given to the defendant. The Judicial Bureau may, consistent with rules adopted by the Supreme Court pursuant to 12 V.S.A. § 1, accept electronic signatures on any document, including the signatures of issuing officers, state's attorneys, and notaries public. The complaint shall include a statement of rights, instructions, notice that a defendant may admit, not contest, or deny a violation, notice of the fee for failure to answer within 20 days, and other notices as the ~~court administrator~~ Court Administrator deems appropriate. The ~~court administrator~~ Court Administrator, in consultation with appropriate law enforcement agencies, may approve a single form for charging all violations, or may approve two or more forms as necessary to administer the operations of the ~~judicial bureau~~ Judicial Bureau.

* * *

(f) If a person fails to appear or answer a complaint the ~~bureau~~ Bureau shall enter a default judgment against the person. However, no default judgment shall be entered until the filing of a declaration by the issuing officer or state's attorney, under penalty of perjury, setting forth facts showing that the defendant is not a person in military service as defined at 50 App. U.S.C. § 511 (Servicemembers Civil Relief Act definitions), except upon order of the hearing officer in accordance with the Servicemembers Civil Relief Act,

50 App. U.S.C. Titles I–II. The ~~bureau~~ Bureau shall mail a notice to the person that a default judgment has been entered. A default judgment may be set aside by the hearing officer for good cause shown.

* * *

* * * Texting While Driving; Penalties * * *

Sec. 24. 23 V.S.A. § 1099 is amended to read:

§ 1099. TEXTING PROHIBITED

* * *

(c) A person who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to a penalty of not less than \$100.00 and not more than \$200.00 upon adjudication of a first violation, and of not less than \$250.00 and not more than \$500.00 upon adjudication of a second or subsequent violation within any two-year period.

* * * Portable Electronic Devices in Work Zones * * *

Sec. 25. 23 V.S.A. § 4(5) is amended to read:

(5) ~~“Construction area” shall mean and include all of that portion or~~ “work zone” or “work site” means an area of a highway while under ~~undergoing construction, maintenance, or utility work activities by order or~~ undergoing construction, maintenance, or utility work activities by order or ~~with the permission of the state State or a municipality thereof; that is~~ with the permission of the state State or a municipality thereof; that is ~~designated by and located within properly posted warning signs maintained at~~ designated by and located within properly posted warning signs maintained at ~~each end thereof showing such area to have been designated as a “Construction~~ Area” devices.

Sec. 26. 23 V.S.A. § 1095b is added to read:

§ 1095b. HANDHELD USE OF PORTABLE ELECTRONIC DEVICE IN WORK ZONE PROHIBITED

(a) Definition. As used in this section, “hands-free use” means the use of a portable electronic device without use of either hand and outside the immediate proximity of the user’s ear, by employing an internal feature of, or an attachment to, the device.

(b) Use of handheld portable electronic device in work zone prohibited. A person shall not use a portable electronic device while operating a moving motor vehicle within a highway work zone. The prohibition of this subsection shall not apply unless the work zone is properly designated with warning devices in accordance with subdivision 4(5) of this title, and shall not apply:

(1) to hands-free use, or

(2) when use of a portable electronic device is necessary to communicate with law enforcement or emergency service personnel under emergency circumstances.

(c) Penalty. A person who violates this section commits a traffic violation and shall be subject to a penalty of not less than \$100.00 and not more than \$200.00 upon adjudication of a first violation, and of not less than \$250.00 and not more than \$500.00 upon adjudication of a second or subsequent violation within any two-year period.

* * * Assessment of Points * * *

Sec. 27. 23 V.S.A. § 2502 is amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) Any person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

(1) Two points assessed for:

* * *

- (LL)(i) § 1095. ~~Operating with television set installed~~
Entertainment picture visible to operator;
- (ii) § 1095b. Use of portable electronic device in work zone—
first offense;
- (MM) § 1099. ~~Texting prohibited—first offense;~~
[Deleted.]

* * *

(4) Five points assessed for:

* * *

- (C) § 1099. ~~Texting prohibited—second and subsequent—~~
~~offenses;~~
- (D) ~~Deleted~~
§ 1095b. Use of portable electronic device in work zone—
second and subsequent offenses;

* * *

* * * Prohibited Idling of Motor Vehicles * * *

Sec. 28. 23 V.S.A. § 1110 is added to subchapter 11 of chapter 13 to read:

§ 1110. PROHIBITED IDLING OF MOTOR VEHICLES

(a)(1) General prohibition. A person shall not cause or permit operation of the primary propulsion engine of a motor vehicle for more than five minutes in any 60-minute period, while the vehicle is stationary.

(2) Exceptions. The five-minute limitation of subdivision (1) of this subsection shall not apply when:

(A) a military vehicle; an ambulance; a police, fire, or rescue vehicle; or another vehicle used in a public safety or emergency capacity idles as necessary for the conduct of official operations;

(B) an armored vehicle idles while a person remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded;

(C) a motor vehicle idles because of highway traffic conditions, at the direction of an official traffic control device or signal, or at the direction of a law enforcement official;

(D) the health or safety of a vehicle occupant requires idling, or when a passenger bus idles as necessary to maintain passenger comfort while nondriver passengers are on board;

(E) idling is necessary to operate safety equipment such as windshield defrosters, and operation of the equipment is needed to address specific safety concerns;

(F) idling of the primary propulsion engine is needed to power work-related mechanical, hydraulic, or electrical operations other than propulsion, such as mixing or processing cargo or straight truck refrigeration, and the motor vehicle is idled to power such work-related operations;

(G) a motor vehicle of a model year prior to 2018 with an occupied sleeper berth compartment is idled for purposes of air-conditioning or heating during a rest or sleep period;

(H) a motor vehicle idles as necessary for maintenance, service, repair, or diagnostic purposes or as part of a state or federal inspection; or

(I) a school bus idles on school grounds in compliance with rules adopted pursuant to the provisions of subsection 1282(f) of this title.

(b) Operation of an auxiliary power unit, generator set, or other mobile idle reduction technology is an alternative to operating the primary propulsion engine of a motor vehicle and is not subject to the prohibition of subdivision (a)(1) of this section.

(c) In addition to the exemptions set forth in subdivision (a)(2) of this section, the Commissioner of Motor Vehicles, in consultation with the Secretary of Natural Resources, may adopt rules governing times or circumstances when operation of the primary propulsion engine of a stationary motor vehicle is reasonably required.

(d) A person adjudicated of violating subdivision (a)(1) of this section shall be:

(1) assessed a penalty of not more than \$10.00, which penalty shall be exempt from surcharges under 13 V.S.A. § 7282(a), for a first violation;

(2) assessed a penalty of not more than \$50.00 for a second violation; and

(3) assessed a penalty of not more than \$100.00 for a third or subsequent violation.

Sec. 29. 16 V.S.A. § 1045 is amended to read:

§ 1045. DRIVER TRAINING COURSE

* * *

(d) All driver education courses shall include instruction on the adverse environmental, health, economic, and other effects of unnecessary idling of motor vehicles and on the law governing prohibited idling of motor vehicles.

* * * Veteran Indicator on Commercial Driver Licenses * * *

Sec. 30. 23 V.S.A. § 4110(a)(5) is amended to read:

(5) The person's signature, as well as a space for the applicant to request that a "veteran" designation be placed on a commercial driver license. An applicant who requests a veteran designation shall provide a Department of Defense Form 214, or other proof of veteran status specified by the Commissioner.

Sec. 31. 23 V.S.A. § 4111 is amended to read:

§ 4111. COMMERCIAL DRIVER LICENSE

(a) Contents of license. A commercial driver's license shall be marked "commercial driver license" or "CDL," and shall be, to the maximum extent practicable, tamper proof, and shall include, ~~but not be limited to~~ the following information:

* * *

(12) A veteran designation if a veteran, as defined in 38 U.S.C. § 101(2), requests the designation and provides proof of veteran status as

specified in subdivision 4110(a)(5) of this title, and if the Office of Veterans Affairs confirms his or her status as an honorably discharged veteran or a veteran discharged under honorable conditions.

* * *

* * * Effective Dates and Sunsets * * *

Sec. 32. EFFECTIVE DATES AND SUNSETS

(a) This section and Sec. 22 of this act (administrative support for the Motor Vehicle Arbitration Board) shall take effect on passage.

(b)(1) Sec. 1 of this act shall take effect on July 1, 2013, if the deletion of “liquor investigators” from the definition of “enforcement officers” provided for in 2011 Acts and Resolves No. 17, Sec. 4 takes effect on or before July 1, 2013.

(2) Sec. 2 of this act shall take effect on July 1, 2013, if the deletion of “liquor investigators” from the definition of “enforcement officers” provided for in 2011 Acts and Resolves No. 17, Sec. 4 does not take effect on or before July 1, 2013.

(c) Secs. 25, 26, and 28, and in Sec. 27, § 2502(a)(1)(LL) and (a)(4)(D) of this act shall take effect on January 1, 2014.

(d) Secs. 6a, 6c, and 6e of this act shall take effect on July 1, 2018.

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

(Committee vote: 10-0-1)

(For text see Senate Journal 3/19/2013)

S. 151

An act relating to miscellaneous changes to the laws governing commercial motor vehicle licensing and operation

Rep. Kilmartin of Newport City, for the Committee on **Transportation**, recommends that the House propose to the Senate that the bill be amended as follows:

by inserting a new Sec. 2 to read:

Sec. 2. 23 V.S.A. § 102(d) is amended to read:

(d) The ~~commissioner~~ **Commissioner** may authorize background investigations for potential employees that may include criminal, traffic, and financial records checks; provided, however, that the potential employee is

notified and has the right to withdraw his or her name from application. Additionally, employees who are ~~authorized to manufacture or produce~~ involved in the manufacturing or production of operators' licenses and identification cards, including enhanced licenses, or who have the ability to affect the identity information that appears on a license or identification card, or current employees who will be assigned to such positions, shall be subject to appropriate background checks and shall be provided notice of the background check and the contents of that check. These background checks will include a name-based and fingerprint-based criminal history records check using at a minimum the Federal Bureau of Investigation's National Crime Information Center and the Integrated Automated Fingerprint Identification database and state repository records on each covered employee. Employees may be subject to further appropriate security ~~clearance~~ clearances if required by federal law, including background investigations that may include criminal and traffic- records checks, and providing proof of United States citizenship. The ~~commissioner~~ Commissioner may, in connection with a formal disciplinary investigation, authorize a criminal or traffic record background investigation of a current employee; provided, however, that the background review is relevant to the issue under disciplinary investigation. Information acquired through the investigation shall be provided to the ~~commissioner~~ Commissioner or designated division director, and must be maintained in a secure manner. If the information acquired is used as a basis for any disciplinary action, it must be given to the employee during any pretermination hearing or contractual grievance hearing to allow the employee an opportunity to respond to or dispute the information. If no disciplinary action is taken against the employee, the information acquired through the background check shall be destroyed.

and by renumbering the remaining section to be numerically correct.

(Committee vote: 10-0-1)

(No Senate Amendments)

Senate Proposal of Amendment

H. 511

An act relating to “zappers” and automated sales suppression devices

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

Sec. 1. 13 V.S.A. § 2032 is added to read:

§ 2032. SALES SUPPRESSION DEVICES

(a) As used in this section:

(1) “Automated sales suppression device,” also known as a “zapper,” means a software program, carried on a memory stick or removable compact disc, accessed through an Internet link, or accessed through any other means, that falsifies transaction data, transaction reports, or any other electronic records of electronic cash registers and other point-of-sale systems.

(2) “Electronic cash register” means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in any manner.

(3) “Phantom-ware” means a hidden programming option, whether preinstalled or installed at a later time, embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that:

(A) can be used to create a virtual second till; or

(B) may eliminate or manipulate transaction records.

(4) “Transaction data” includes items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(5) “Transaction reports” means a report documenting, but not limited to, the sales, taxes collected, media totals, and discount voids at an electronic cash register that is printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register that is stored electronically.

(b)(1) A person shall not knowingly sell, purchase, install, or transfer or possess an automated sales suppression device or phantom-ware.

(2) A person who violates subdivision (1) of this subsection shall be imprisoned for not less than one year and not more than five years and fined not more than \$100,000.00, or both.

(c) A person who violates subdivision (b)(1) of this section shall be liable to the State for:

(1) all taxes, interest, and penalties due as the result of the person’s use of an automated sales suppression device or phantom-ware; and

(2) all profits associated with the person’s sale of an automated sales suppression device or phantom-ware.

(d) An automated sales suppression device or phantom-ware and any

device containing such device or software shall be deemed contraband and shall be subject to seizure by the Commissioner of Taxes or by a law enforcement officer when directed to do so by the Commissioner of Taxes.

Sec. 2. SAFE HARBOR

(a) A person shall not be subject to prosecution under 13 V.S.A. 2032 if, by October 1, 2013, the person:

(1) notifies the Department of Taxes of the person's possession of an automated sales suppression device;

(2) provides any information requested by the Department of Taxes, including transaction records, software specifications, encryption keys, passwords, and other data; and

(3) corrects any underreported sales tax records and fully pays the Department any amounts previously owed.

(b) This section shall not be construed to limit the person's civil or criminal liability under 32 V.S.A. § 9814a (submitting fraudulent sales tax return) or any other provision of law.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read: "An act relating to automated sales suppression devices, also known as 'zappers'"

(No House Amendments)

Public Hearings

April 18, 2013 - Room 11 - 6:00-8:00 PM - H. 208 Earned Sick Days - House General, Housing and Military Affairs

April 17, 2013 - Room 11, 5:30-7:30 PM - H. 225, Statewide Policy on Training Requirements for Electronic Control Devices (Tasers) - House Government Operations