House Calendar

Wednesday, May 08, 2013

120th DAY OF THE BIENNIAL SESSION

House Convenes at 9:30 A.M.

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An act relating to the regulation of octaBDE, pentaBDE, decaBDE, and the flame retardant known as Tris in consumer products

S. 82

An act relating to campaign finance law

Amendment to be offered by Reps. Stevens of Shoreham, Goodwin of Weston, and Greshin of Warren to S. 82

First: In Sec. 3, in section 2941 (limitations of contributions), by striking out subdivision (1)(A)(i) in its entirety and inserting in lieu thereof the following:

(i) $1,000.00 from a single source, except that an independent candidate may accept unlimited contributions from a single source; or

Second: In Sec. 3, in section 2941 (limitations of contributions), by striking out subdivision (2)(A)(i) in its entirety and inserting in lieu thereof the following:

(i) $1,500.00 from a single source, except that an independent candidate may accept unlimited contributions from a single source; or

Third: In Sec. 3, in section 2941 (limitations of contributions), by striking out subdivision (3)(A)(i) in its entirety and inserting in lieu thereof the following:

(i) $4,000.00 from a single source, except that an independent candidate may accept unlimited contributions from a single source; or

Amendment to be offered by Rep. Koch of Barre Town to S. 82

In Sec. 3, in section 2963 (campaign reports; Secretary of State; forms; filing), in subsection (a), by striking out subdivisions (2)–(5) in their entirety and inserting in lieu thereof the following:

(2) the cash balance carried over from the previous report or last campaign;

(3) the total amount of all contributions of $100.00 or less and the total number of all such contributions;

(4) each expenditure listed by amount, date, to whom paid, and for what purpose;

(5) the amount contributed or loaned by the candidate to his or her own campaign during the reporting period;

(6) each debt or other obligation, listed by amount, date incurred, to whom owed, and for what purpose, incurred during the reporting period; and

(7) the cash balance remaining at the end of the reporting period.

Amendment to be offered by Rep. Koch of Barre Town to S. 82

In Sec. 3 by striking out section 2973 (specific identification requirements for radio or television communications) in its entirety and inserting in lieu thereof the following:

§ 2973. SPECIFIC IDENTIFICATION REQUIREMENTS FOR RADIO OR TELEVISION COMMUNICATIONS

(a) In addition to the identification requirements set forth in section 2972 of this subchapter, a person, candidate, political committee, or political party that makes an expenditure for an electioneering communication shall include in any communication which is transmitted through radio or television, in a clearly spoken manner, an audio statement of the name and title of the person who paid for the communication and that the person paid for the communication.

(b) If the person who paid for the communication is not a natural person, the audio statement required by this section shall include the name of that person and the name and title of the principal officer of the person.

Amendment to be offered by Rep. Shaw of Pittsford to S. 82

In Sec. 3, in 17 V.S.A. § 2945 (accepting contributions), in subsection (b), by striking out "$100.00" and inserting in lieu thereof "200.00"

S. 99

An act relating to the standard measure of recidivism

S. 132

An act relating to sheriffs, deputy sheriffs, and the service of process

S. 148

An act relating to criminal investigation records and the Vermont Public Records Act

Committee Bill for Second Reading

H. 543

An act relating to records and reports of the Auditor of Accounts.

(Rep. Cole of Burlington will speak for the Committee on **Government Operations.)**

Favorable with Amendment

S. 152

An act relating to the Green Mountain Care Board's rate review authority

Rep. Fisher of Lincoln, for the Committee on **Health Care,** 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:

* * * Health Insurance Rate Review * * *

Sec. 1. 8 V.S.A. § 4062 is amended to read:

§ 4062. FILING AND APPROVAL OF POLICY FORMS AND PREMIUMS

(a)(1) No policy of health insurance or certificate under a policy filed by an insurer offering health insurance as defined in subdivision 3301(a)(2) of this title, a nonprofit hospital or medical service corporation, health maintenance organization, or a managed care organization and not exempted by subdivision 3368(a)(4) of this title shall be delivered or issued for delivery in this ~~state~~ State, nor shall any endorsement, rider, or application which becomes a part of any such policy be used, until~~:~~

~~(A)~~ a copy of the form~~,~~ and of the rules for the classification of risks has been filed with the Department of Financial Regulation and a copy of the premium rates~~, and rules for the classification of risks pertaining thereto have~~ has been filed with the ~~commissioner of financial regulation~~ Green Mountain Care Board; and

~~(B) a decision by~~ the Green Mountain Care ~~board~~ Board has ~~been applied by the commissioner as provided in subdivision (2) of this subsection~~ issued a decision approving, modifying, or disapproving the proposed rate.

(2)(A) ~~Prior to approving a rate pursuant to this subsection, the commissioner shall seek approval for such rate from the Green Mountain Care board established in 18 V.S.A. chapter 220. The commissioner shall make a recommendation to the Green Mountain Care board about whether to approve, modify, or disapprove the rate within 30 days of receipt of a completed application from an insurer. In the event that the commissioner does not make a recommendation to the board within the 30-day period, the commissioner~~

~~shall be deemed to have recommended approval of the rate, and the Green Mountain Care board shall review the rate request pursuant to subdivision (B) of this subdivision (2).~~

~~(B)~~ The Green Mountain Care ~~board~~ Board shall review rate requests ~~forwarded by the commissioner pursuant to subdivision (A) of this subdivision (2)~~ and shall approve, modify, or disapprove a rate request within ~~30~~ 90 calendar days ~~of receipt of the commissioner's recommendation or, in the absence of a recommendation from the commissioner, the expiration of the 30-day period following the department's receipt of the completed application. In the event that the board does not approve or disapprove a rate within 30 days, the board shall be deemed to have approved the rate request~~ after receipt of an initial rate filing from an insurer. If an insurer fails to provide necessary materials or other information to the Board in a timely manner, the Board may extend its review for a reasonable additional period of time, not to exceed 30 calendar days.

~~(C) The commissioner shall apply the decision of the Green Mountain Care board as to rates referred to the board within five business days of the board's decision.~~

(B) Prior to the Board's decision on a rate request, the Department of Financial Regulation shall provide the Board with an analysis and opinion on the impact of the proposed rate on the insurer's solvency and reserves.

(3) The ~~commissioner~~ Board shall ~~review policies and rates to~~ determine whether a ~~policy or~~ rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this ~~state~~ State. ~~The commissioner shall notify in writing the insurer which has filed any such form, premium rate, or rule if it contains any provision which does not meet the standards expressed in this section. In such notice, the commissioner shall state that a hearing will be granted within 20 days upon written request of the insurer.~~ In making this determination, the Board shall consider the analysis and opinion provided by the Department of Financial Regulation pursuant to subdivision (2)(B) of this subsection.

(b) ~~The commissioner may, after a hearing of which at least 20 days' written notice has been given to the insurer using such form, premium rate, or rule, withdraw approval on any of the grounds stated in this section. For premium rates, such withdrawal may occur at any time after applying the decision of the Green Mountain Care board pursuant to subdivision (a)(2)(C) of this section. Disapproval pursuant to this subsection shall be effected by written order of the commissioner which shall state the ground for disapproval and the date, not less than 30 days after such hearing when the withdrawal of~~

~~approval shall become effective.~~

~~(c)~~ In conjunction with a rate filing required by subsection (a) of this section, an insurer shall file a plain language summary of ~~any requested rate increase of five percent or greater. If, during the plan year, the insurer files for rate increases that are cumulatively five percent or greater, the insurer shall file a summary applicable to the cumulative rate increase~~ the proposed rate. All summaries shall include a brief justification of any rate increase requested, the information that the Secretary of the U.S. Department of Health and Human Services (HHS) requires for rate increases over 10 percent, and any other information required by the ~~commissioner~~ Board. The plain language summary shall be in the format required by the Secretary of HHS pursuant to the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and shall include notification of the public comment period established in subsection ~~(d)~~(c) of this section. In addition, the insurer shall post the summaries on its website.

~~(d)~~(c)(1) The ~~commissioner~~ Board shall provide information to the public on the ~~department's~~ Board's website about the public availability of the filings and summaries required under this section.

(2)(A) Beginning no later than January 1, ~~2012~~ 2014, the ~~commissioner~~ Board shall post the rate filings pursuant to subsection (a) of this section and summaries pursuant to subsection ~~(c)~~(b) of this section on the ~~department's~~ Board's website within five calendar days of filing. The Board shall also establish a mechanism by which members of the public may request to be notified automatically each time a proposed rate is filed with the Board.

(B) The ~~department~~ Board shall provide an electronic mechanism for the public to comment on ~~proposed rate increases over five percent~~ all rate filings. The ~~public shall have 21 days from the posting of the summaries and filings to provide~~ Board shall accept public comment on each rate filing from the date on which the Board posts the rate filing on its website pursuant to subdivision (A) of this subdivision (2) until 15 calendar days after the Board posts on its website the analyses and opinions of the Department of Financial Regulation and of the Board's consulting actuary, if any, as required by subsection (d) of this section. The ~~department~~ Board shall review and consider the public comments prior to ~~submitting the policy or rate for the Green Mountain Care board's approval pursuant to subsection (a) of this section. The department shall provide the Green Mountain Care board with the public comments for its consideration in approving any rates~~ issuing its decision.

(3)(A) In addition to the public comment provisions set forth in this subsection, the Office of the Health Care Advocate established in 18 V.S.A.

chapter 229 may, within 30 calendar days after the Board receives an insurer's rate request pursuant to this section, submit questions regarding the filing to the insurer and to the Board's contracting actuary, if any.

(B) The Office of the Health Care Advocate may also submit to the Board written comments on an insurer's rate request. The Board shall post the comments on its website and shall consider the comments prior to issuing its decision.

~~(e)~~(d)(1) No later than 60 calendar days after receiving an insurer's rate request pursuant to this section, the Green Mountain Care Board shall make available to the public the insurer's rate filing, the Department's analysis and opinion of the effect of the proposed rate on the insurer's solvency, and the analysis and opinion of the rate filing by the Board's contracting actuary, if any.

(2) The Board shall post on its website, after redacting any confidential or proprietary information relating to the insurer or to the insurer's rate filing:

(A) all questions the Board poses to its contracting actuary, if any, and the actuary's responses to the Board's questions;

(B) all questions the Office of the Health Care Advocate poses to the Board's contracting actuary, if any, and the actuary's responses to the Office's questions; and

(C) all questions the Board, the Board's contracting actuary, if any, the Department, or the Office of the Health Care Advocate poses to the insurer and the insurer's responses to those questions.

(e) Within 30 calendar days after making the rate filing and analysis available to the public pursuant to subsection (d) of this section, the Board shall:

(1) conduct a public hearing, at which the Board shall:

(A) call as witnesses the Commissioner of Financial Regulation or designee and the Board's contracting actuary, if any, unless all parties agree to waive such testimony; and

(B) provide an opportunity for testimony from the insurer, the Office of the Health Care Advocate, and members of the public;

(2) at a public hearing, announce the Board's decision of whether to approve, modify, or disapprove the proposed rate; and

(3) issue its decision in writing.

(f)(1) The insurer shall notify its policyholders of the Board's decision in a

timely manner, as defined by the Board by rule.

(2) Rates shall take effect on the date specified in the insurer's rate filing.

(3) If the Board has not issued its decision by the effective date specified in the insurer's rate filing, the insurer shall notify its policyholders of its pending rate request and of the effective date proposed by the insurer in its rate filing.

(g) An insurer, the Office of the Health Care Advocate, and any member of the public with party status, as defined by the Board by rule, may appeal a decision of the Board approving, modifying, or disapproving the insurer's proposed rate to the Vermont Supreme Court.

(h)~~(1) The following provisions of this~~ This section shall apply only to policies for major medical insurance coverage and shall not apply to policies for specific disease, accident, injury, hospital indemnity, dental care, vision care, disability income, long-term care, or other limited benefit coverage~~:~~; to Medicare supplemental insurance; or

~~(A) the requirement in subdivisions (a)(1) and (2) of this section for the Green Mountain Care board's approval on rate requests;~~

~~(B) the review standards in subdivision (a)(3) of this section as to whether a policy or rate is affordable, promotes quality care, and promotes access to health care; and~~

~~(C) subsections (c) and (d) of this section.~~

~~(2) The exemptions from the provisions described in subdivisions (1)(A) through (C) of this subsection shall also apply~~ to benefit plans that are paid directly to an individual insured or to his or her assigns and for which the amount of the benefit is not based on potential medical costs or actual costs incurred.

~~(3) Medicare supplemental insurance policies shall be exempt only from the requirement in subdivisions (a)(1) and (2) of this section for the Green Mountain Care board's approval on rate requests and shall be subject to the remaining provisions of this section.~~

(i) Notwithstanding the procedures and timelines set forth in subsections (a) through (e) of this section, the Board may establish, by rule, a streamlined rate review process for certain rate decisions, including proposed rates affecting fewer than a minimum number of covered lives and proposed rates for which a de minimis increase, as defined by the Board by rule, is sought.

Sec. 2. 8 V.S.A. § 4062a is amended to read:

§ 4062a. FILING FEES

Each filing of a policy, contract, or document form or premium rates or rules, submitted pursuant to section 4062 of this title, shall be accompanied by payment to the ~~commissioner~~ Commissioner or the Green Mountain Care Board, as appropriate, of a nonrefundable fee of ~~$50.00~~ $150.00.

Sec. 3. 8 V.S.A. § 4089b(d)(1)(A) is amended to read:

(d)(1)(A) A health insurance plan that does not otherwise provide for management of care under the plan, or that does not provide for the same degree of management of care for all health conditions, may provide coverage for treatment of mental health conditions through a managed care organization provided that the managed care organization is in compliance with the rules adopted by the ~~commissioner~~ Commissioner that assure that the system for delivery of treatment for mental health conditions does not diminish or negate the purpose of this section. In reviewing rates and forms pursuant to section 4062 of this title, the ~~commissioner~~ Commissioner or the Green Mountain Care Board established in 18 V.S.A. chapter 220, as appropriate, shall consider the compliance of the policy with the provisions of this section.

Sec. 4. 8 V.S.A. § 4512(b) is amended to read:

(b) Subject to the approval of the ~~commissioner~~ Commissioner or the Green Mountain Care Board established in 18 V.S.A. chapter 220, as appropriate, a hospital service corporation may establish, maintain, and operate a medical service plan as defined in section 4583 of this title. The ~~commissioner~~ Commissioner or the Board may refuse approval if the ~~commissioner~~ Commissioner or the Board finds that the rates submitted are excessive, inadequate, or unfairly discriminatory, fail to protect the hospital service corporation's solvency, or fail to meet the standards of affordability, promotion of quality care, and promotion of access pursuant to section 4062 of this title. The contracts of a hospital service corporation which operates a medical service plan under this subsection shall be governed by chapter 125 of this title to the extent that they provide for medical service benefits, and by this chapter to the extent that the contracts provide for hospital service benefits.

Sec. 5. 8 V.S.A. § 4513(c) is amended to read:

(c) In connection with a rate decision, the ~~commissioner~~ Green Mountain Care Board may also make reasonable supplemental orders to the corporation and may attach reasonable conditions and limitations to such orders as ~~he~~ the Board finds, on the basis of competent and substantial evidence, necessary to ~~insure~~ ensure that benefits and services are provided at minimum cost under efficient and economical management of the corporation. The ~~commissioner~~ Commissioner and, except as otherwise provided by 18 V.S.A. §§ 9375 and

9376, the Green Mountain Care Board, shall not set the rate of payment or reimbursement made by the corporation to any physician, hospital, or other health care provider.

Sec. 6. 8 V.S.A. § 4515a is amended to read:

§ 4515a. FORM AND RATE FILING; FILING FEES

Every contract or certificate form, or amendment thereof, including the rates charged therefor by the corporation shall be filed with the ~~commissioner~~ Commissioner or the Green Mountain Care Board established in 18 V.S.A. chapter 220, as appropriate, for ~~his or her~~ the Commissioner's or the Board's approval prior to issuance or use. Prior to approval, there shall be a public comment period pursuant to section 4062 of this title. In addition, each such filing shall be accompanied by payment to the ~~commissioner~~ Commissioner or the Board, as appropriate, of a nonrefundable fee of ~~$50.00~~ $150.00 and the plain language summary of rate increases pursuant to section 4062 of this title.

Sec. 7. 8 V.S.A. § 4584(c) is amended to read:

(c) In connection with a rate decision, the ~~commissioner~~ Green Mountain Care Board may also make reasonable supplemental orders to the corporation and may attach reasonable conditions and limitations to such orders as ~~he or she~~ the Board finds, on the basis of competent and substantial evidence, necessary to ~~insure~~ ensure that benefits and services are provided at minimum cost under efficient and economical management of the corporation. The ~~commissioner~~ Commissioner and, except as otherwise provided by 18 V.S.A. §§ 9375 and 9376, the Green Mountain Care Board, shall not set the rate of payment or reimbursement made by the corporation to any physician, hospital, or other health care provider.

Sec. 8. 8 V.S.A. § 4587 is amended to read:

§ 4587. FILING AND APPROVAL OF CONTRACTS

A medical service corporation which has received a permit from the ~~commissioner of financial regulation~~ Commissioner of Financial Regulation under section 4584 of this title shall not thereafter issue a contract to a subscriber or charge a rate therefor which is different from copies of contracts and rates originally filed with such ~~commissioner~~ Commissioner and approved by him or her at the time of the issuance to such medical service corporation of its permit, until it has filed copies of such contracts which it proposes to issue and the rates it proposes to charge therefor and the same have been approved by ~~such commissioner~~ the Commissioner or the Green Mountain Care Board established in 18 V.S.A. chapter 220, as appropriate. Prior to approval, there shall be a public comment period pursuant to section 4062 of this title. Each

such filing of a contract or the rate therefor shall be accompanied by payment to the ~~commissioner~~ Commissioner or the Board, as appropriate, of a nonrefundable fee of ~~$50.00~~ $150.00. A medical service corporation shall file a plain language summary of rate increases pursuant to section 4062 of this title.

Sec. 9. 8 V.S.A. § 5104 is amended to read:

§ 5104. FILING AND APPROVAL OF RATES AND FORMS; SUPPLEMENTAL ORDERS

(a)(1) A health maintenance organization which has received a certificate of authority under section 5102 of this title shall file and obtain approval of all policy forms and rates as provided in sections 4062 and 4062a of this title. This requirement shall include the filing of administrative retentions for any business in which the organization acts as a third party administrator or in any other administrative processing capacity. The ~~commissioner~~ Commissioner or the Green Mountain Care Board, as appropriate, may request and shall receive any information that the ~~commissioner~~ Commissioner or the Board deems necessary to evaluate the filing. In addition to any other information requested, the ~~commissioner~~ Commissioner or the Board shall require the filing of information on costs for providing services to the organization's Vermont members affected by the policy form or rate, including Vermont claims experience, and administrative and overhead costs allocated to the service of Vermont members. Prior to approval, there shall be a public comment period pursuant to section 4062 of this title. A health maintenance organization shall file a summary of rate filings pursuant to section 4062 of this title.

(2) The ~~commissioner~~ Commissioner or the Board shall refuse to approve~~, or to seek the Green Mountain Care board's approval of,~~ the form of evidence of coverage, filing, or rate if it contains any provision which is unjust, unfair, inequitable, misleading, or contrary to the law of the ~~state~~ State or plan of operation, or if the rates are excessive, inadequate or unfairly discriminatory, fail to protect the organization's solvency, or fail to meet the standards of affordability, promotion of quality care, and promotion of access pursuant to section 4062 of this title. No evidence of coverage shall be offered to any potential member unless the person making the offer has first been licensed as an insurance agent in accordance with chapter 131 of this title.

(b) In connection with a rate decision, the ~~commissioner~~ Board may also~~, with the prior approval of the Green Mountain Care board established in 18 V.S.A. chapter 220,~~ make reasonable supplemental orders and may attach reasonable conditions and limitations to such orders as the ~~commissioner~~

Board finds, on the basis of competent and substantial evidence, necessary to ~~insure~~ ensure that benefits and services are provided at reasonable cost under efficient and economical management of the organization. The ~~commissioner~~ Commissioner and, except as otherwise provided by 18 V.S.A. §§ 9375 and 9376, the Green Mountain Care Board, shall not set the rate of payment or reimbursement made by the organization to any physician, hospital, or health care provider.

Sec. 10. 18 V.S.A. § 9375(b) is amended to read:

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

* * *

(6) Approve, modify, or disapprove requests for health insurance rates pursuant to 8 V.S.A. § 4062 ~~within 30 days of receipt of a request for approval from the commissioner of financial regulation~~, taking into consideration the requirements in the underlying statutes, changes in health care delivery, changes in payment methods and amounts, protecting insurer solvency, and other issues at the discretion of the ~~board~~ Board;

* * *

Sec. 11. 18 V.S.A. § 9381 is amended to read:

§ 9381. APPEALS

(a)~~(1)~~ The Green Mountain Care ~~board~~ Board shall adopt procedures for administrative appeals of its actions, orders, or other determinations. Such procedures shall provide for the issuance of a final order and the creation of a record sufficient to serve as the basis for judicial review pursuant to subsection (b) of this section.

~~(2) Only decisions by the board shall be appealable under this subsection. Recommendations to the board by the commissioner of financial regulation pursuant to 8 V.S.A. § 4062(a) shall not be subject to appeal.~~

(b) Any person aggrieved by a final action, order, or other determination of the Green Mountain Care ~~board~~ Board may, upon exhaustion of all administrative appeals available pursuant to subsection (a) of this section, appeal to the ~~supreme court~~ Supreme Court pursuant to the Vermont Rules of Appellate Procedure.

(c) If an appeal or other petition for judicial review of a final order is not filed in connection with an order of the Green Mountain Care ~~board~~ Board pursuant to subsection (b) of this section, the ~~chair~~ Chair may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be

recorded, enforced, or satisfied in the same manner as a judgment of the court.

(d) A decision of the Board approving, modifying, or disapproving a health insurer's proposed rate pursuant to 8 V.S.A. § 4062 shall be considered a final action of the Board and may be appealed to the Supreme Court pursuant to subsection (b) of this section.

Sec. 12. 33 V.S.A. § 1811(j) is amended to read:

(j) The ~~commissioner~~ Commissioner or the Green Mountain Care Board established in 18 V.S.A. chapter 220, as appropriate, shall disapprove any rates filed by any registered carrier, whether initial or revised, for insurance policies unless the anticipated medical loss ratios for the entire period for which rates are computed are at least 80 percent, as required by the ~~Patient Protection and~~ Affordable Care Act ~~(Public Law 111-148)~~.

* * * Office of the Health Care Advocate * * *

Sec. 13. 18 V.S.A. chapter 229 is added to read:

CHAPTER 229. OFFICE OF THE HEALTH CARE ADVOCATE

§ 9601. DEFINITIONS

As used in this chapter:

(1) "Green Mountain Care Board" or "Board" means the Board established in chapter 220 of this title.

(2) "Health insurance plan" means a policy, service contract, or other health benefit plan offered or issued by a health insurer and includes beneficiaries covered by the Medicaid program unless they are otherwise provided with similar services.

(3) "Health insurer" shall have the same meaning as in section 9402 of this title.

§ 9602. OFFICE OF THE HEALTH CARE ADVOCATE; COMPOSITION

(a) The Agency of Administration shall establish the Office of the Health Care Advocate by contract with any nonprofit organization.

(b) The Office shall be administered by the Chief Health Care Advocate, who shall be an individual with expertise and experience in the fields of health care and advocacy. The Advocate may employ legal counsel, administrative staff, and other employees and contractors as needed to carry out the duties of the Office.

§ 9603. DUTIES AND AUTHORITY

(a) The Office of the Health Care Advocate shall:

(1) Assist health insurance consumers with health insurance plan selection by providing information, referrals, and assistance to individuals and employers with not more than 10 full-time equivalent employees about means of obtaining health insurance coverage and services. The Office shall accept referrals from the Vermont Health Benefit Exchange and Exchange navigators created pursuant to 33 V.S.A. chapter 18, subchapter 1, to assist consumers experiencing problems related to the Exchange.

(2) Assist health insurance consumers to understand their rights and responsibilities under health insurance plans.

(3) Provide information to the public, agencies, members of the General Assembly, and others regarding problems and concerns of health insurance consumers as well as recommendations for resolving those problems and concerns.

(4) Identify, investigate, and resolve complaints on behalf of individual health insurance consumers and employers with not more than 10 full-time equivalent employees who purchase insurance for their employees, and assist those consumers with filing and pursuit of complaints and appeals.

(5) Provide information to individuals and employers regarding their obligations and responsibilities under the Patient Protection and Affordable Care Act (Public Law 111-148).

(6) Analyze and monitor the development and implementation of federal, state, and local laws, rules, and policies relating to patients and health insurance consumers.

(7) Facilitate public comment on laws, rules, and policies, including policies and actions of health insurers.

(8) Suggest policies, procedures, or rules to the Green Mountain Care Board in order to protect patients' and consumers' interests.

(9) Promote the development of citizen and consumer organizations.

(10) Ensure that patients and health insurance consumers have timely access to the services provided by the Office.

(11) Submit to the General Assembly and the Governor on or before January 1 of each year a report on the activities, performance, and fiscal accounts of the Office during the preceding calendar year.

(b) The Office of the Health Care Advocate may:

(1) Review the health insurance records of a consumer who has provided written consent. Based on the written consent of the consumer or his or her guardian or legal representative, a health insurer shall provide the Office

with access to records relating to that consumer.

(2) Pursue administrative, judicial, and other remedies on behalf of any individual health insurance consumer or group of consumers.

(3) Represent the interests of the people of the State in cases requiring a hearing before the Green Mountain Care Board established in chapter 220 of this title.

(4) Adopt policies and procedures necessary to carry out the provisions of this chapter.

(5) Take any other action necessary to fulfill the purposes of this chapter.

(c) The Office of the Health Care Advocate shall be able to speak on behalf of the interests of health care and health insurance consumers and to carry out all duties prescribed in this chapter without being subject to any disciplinary or retaliatory action; provided, however, that nothing in this subsection shall limit the authority of the Agency of Administration to enforce the terms of the contract.

§ 9604. DUTIES OF STATE AGENCIES

All state agencies shall comply with reasonable requests from the Office of the Health Care Advocate for information and assistance. The Agency of Administration may adopt rules necessary to ensure the cooperation of state agencies under this section.

§ 9605. CONFIDENTIALITY

In the absence of written consent by a complainant or an individual using the services of the Office or by his or her guardian or legal representative or the absence of a court order, the Office of the Health Care Advocate, its employees, and its contractors shall not disclose the identity of the complainant or individual.

§ 9606. CONFLICTS OF INTEREST

The Office of the Health Care Advocate, its employees, and its contractors shall not have any conflict of interest relating to the performance of their responsibilities under this chapter. For the purposes of this chapter, a conflict of interest exists whenever the Office of the Health Care Advocate, its employees, or its contractors or a person affiliated with the Office, its employees, or its contractors:

(1) have a direct involvement in the licensing, certification, or accreditation of a health care facility, health insurer, or health care provider;

(2) have a direct ownership interest or investment interest in a health care facility, health insurer, or health care provider;

(3) are employed by or participating in the management of a health care facility, health insurer, or health care provider; or

(4) receive or have the right to receive, directly or indirectly, remuneration under a compensation arrangement with a health care facility, health insurer, or health care provider.

§ 9607. CONSUMER ASSISTANCE ASSESSMENT

(a) The premium for each health insurance policy issued in this state shall include a monthly consumer assistance assessment of $0.22 per covered life to fund the activities of the Office of the Health Care Advocate. Each health insurer shall remit the assessments collected during the preceding calendar quarter to the Commissioner of Financial Regulation by January 15, April 15, July 15, and October 15 of each year.

(b) There is established pursuant to 32 V.S.A. chapter 7, subchapter 5 a special fund called the "Consumer Assistance Assessment Fund" into which shall be deposited the funds collected under this section. The fund shall be administered by the Secretary of Administration and disbursements are authorized to fund the activities of the Office of the Health Care Advocate as appropriated by the General Assembly.

(c) Health insurers and the Vermont Health Benefit Exchange shall clearly communicate to all applicants and enrollees on materials such as enrollment forms, member handbooks, and the Exchange website information regarding the consumer assistance assessment established by this section and contact information for the Office of the Health Care Advocate.

(d) As used in this section:

(1) "Health insurance" means any group or individual health care benefit policy, contract, or other health benefit plan offered, issued, renewed, or administered by any health insurer, including any health care benefit plan offered, issued, renewed, or administered by any health insurance company, any nonprofit hospital and medical service corporation, or any managed care organization as defined in section 9402 of this title. The term includes comprehensive major medical policies, contracts, or plans but does not include Medicaid or any other state health care assistance program financed in whole or in part through a federal program. The term does not include policies issued for specified disease, accident, injury, hospital indemnity, dental care, long-term care, disability income, or other limited benefit health insurance policies.

(2) "Health insurer" means any person who offers, issues, renews, or

administers a health insurance policy, contract, or other health benefit plan in this State and includes third-party administrators or pharmacy benefit managers who provide administrative services only for a health benefit plan offering coverage in this State. The term does not include a third-party administrator or pharmacy benefit manager to the extent that a health insurer has collected and remitted the surcharges which would otherwise be imposed on the covered lives attributed to the third-party administrator or pharmacy benefit manager. The term also does not include a health insurer with a monthly average of fewer than 200 Vermont insured lives.

Sec. 14. 18 V.S.A. § 9374(f) is amended to read:

(f) In carrying out its duties pursuant to this chapter, the ~~board~~ Board shall seek ~~the~~ advice ~~of the state health care ombudsman established in 8 V.S.A. § 4089w~~ from the Office of the Health Care Advocate. The ~~state health care ombudsman~~ Office shall advise the ~~board~~ Board regarding the policies, procedures, and rules established pursuant to this chapter. The ~~ombudsman~~ Office shall represent the interests of Vermont patients and Vermont consumers of health insurance and may suggest policies, procedures, or rules to the ~~board~~ Board in order to protect patients' and consumers' interests.

Sec. 15. 18 V.S.A. § 9377(e) is amended to read:

(e) The ~~board~~ Board or designee shall convene a broad-based group of stakeholders, including health care professionals who provide health services, health insurers, professional organizations, community and nonprofit groups, consumers, businesses, school districts, the ~~state health care ombudsman~~ Office of the Health Care Advocate, and state and local governments, to advise the ~~board~~ Board in developing and implementing the pilot projects and to advise the Green Mountain Care ~~board~~ Board in setting overall policy goals.

Sec. 16. 18 V.S.A. § 9410(a)(2) is amended to read:

(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~~ Commissioner determines is necessary to empower individuals, including uninsured individuals, to make economically sound and medically appropriate decisions.

(B) The ~~commissioner~~ Commissioner shall convene a working group composed of the ~~commissioner of mental health, the commissioner of Vermont health access~~ Commissioner of Mental Health, the Commissioner of Vermont Health Access, health care consumers, the ~~office of the health care ombudsman~~ Office of the Health Care Advocate, employers and other payers, health care providers and facilities, the Vermont ~~program for quality in health care~~

Program for Quality in Health Care, health insurers, and any other individual or group appointed by the ~~commissioner~~ Commissioner to advise the ~~commissioner~~ Commissioner on the development and implementation of the consumer health care price and quality information system.

* * *

Sec. 17. 18 V.S.A. § 9440(c) is amended to read:

(c) The application process shall be as follows:

* * *

(9) The ~~health care ombudsman's office~~ Office of the Health Care Advocate established under ~~8 V.S.A. chapter 107, subchapter 1A~~ chapter 229 of this title or, in the case of nursing homes, the ~~long-term care ombudsman's office~~ Long-Term Care Ombudsman's Office established under 33 V.S.A. § 7502~~,~~ is authorized but not required to participate in any administrative or judicial review of an application under this subchapter and shall be considered an interested party in such proceedings upon filing a notice of intervention with the ~~board~~ Board.

Sec. 18. 18 V.S.A. § 9445(b) is amended to read:

(b) In addition to all other sanctions, if any person offers or develops any new health care project without first having been issued a certificate of need or certificate of exemption ~~therefore~~ for the project, or violates any other provision of this subchapter or any lawful rule ~~or regulation promulgated thereunder~~ adopted pursuant to this subchapter, the ~~board~~ Board, the ~~commissioner~~ Commissioner, the ~~state health care ombudsman~~ Office of the Health Care Advocate, the ~~state long-term care ombudsman~~ State Long-Term Care Ombudsman, and health care providers and consumers located in the ~~state~~ State shall have standing to maintain a civil action in the ~~superior court~~ Superior Court of the county ~~wherein~~ in which such alleged violation has occurred, or ~~wherein~~ in which such person may be found, to enjoin, restrain, or prevent such violation. Upon written request by the ~~board~~ Board, it shall be the duty of the ~~attorney general of the state~~ Vermont Attorney General to furnish appropriate legal services and to prosecute an action for injunctive relief to an appropriate conclusion, which shall not be reimbursed under subdivision (a)(2) of this ~~subsection~~ section.

Sec. 19. 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:

* * *

(16) Referring consumers to the ~~office of health care ombudsman~~ Office of the Health Care Advocate for assistance with grievances, appeals, and other issues involving the Vermont ~~health benefit exchange~~ Health Benefit Exchange.

* * *

Sec. 20. 33 V.S.A. § 1807(b) is amended to read:

(b) Navigators shall have the following duties:

* * *

(4) Provide referrals to the ~~office of health care ombudsman~~ Office of the Health Care Advocate and any other appropriate agency for any enrollee with a grievance, complaint, or question regarding his or her health benefit plan, coverage, or a determination under that plan or coverage;

* * *

* * * Allocation of Expenses * * *

Sec. 21. 18 V.S.A. § 9374(h) is amended to read:

(h)(1) ~~Expenses~~ Except as otherwise provided in subdivision (2) of this subsection, expenses incurred to obtain information, analyze expenditures, review hospital budgets, and for any other contracts authorized by the ~~board~~ Board shall be borne as follows:

(A) 40 percent by the ~~state~~ State from state monies;

(B) 15 percent by the hospitals;

(C) 15 percent by nonprofit hospital and medical service corporations licensed under 8 V.S.A. chapter 123 or 125;

(D) 15 percent by health insurance companies licensed under 8 V.S.A. chapter 101; and

(E) 15 percent by health maintenance organizations licensed under 8 V.S.A. chapter 139.

(2) The Board may determine the scope of the incurred expenses to be allocated pursuant to the formula set forth in subdivision (1) of this subsection if, in the Board's discretion, the expenses to be allocated are in the best interests of the regulated entities and of the State.

(3) Expenses under subdivision (1) of this subsection shall be billed to persons licensed under Title 8 based on premiums paid for health care

coverage, which for the purposes of this section shall include major medical, comprehensive medical, hospital or surgical coverage, and comprehensive health care services plans, but shall not include long-term care or limited benefits, disability, credit or stop loss, or excess loss insurance coverage.

Sec. 22. 18 V.S.A. § 9415 is amended to read:

§ 9415. ALLOCATION OF EXPENSES

(a) ~~Expenses~~ Except as otherwise provided in subsection (b) of this section, expenses incurred to obtain information and to analyze expenditures, review hospital budgets, and for any other related contracts authorized by the ~~commissioner~~ Commissioner shall be borne as follows:

(1) 40 percent by the ~~state~~ State from state monies~~,~~;

(2) 15 percent by the hospitals~~,~~;

(3) 15 percent by nonprofit hospital and medical service corporations licensed under 8 V.S.A. chapter 123 or 125~~,~~;

(4) 15 percent by health insurance companies licensed under 8 V.S.A. chapter 101~~,~~; and

(5) 15 percent by health maintenance organizations licensed under 8 V.S.A. chapter 139.

(b) The Commissioner may determine the scope of the incurred expenses to be allocated pursuant to the formula set forth in subsection (a) of this section if, in the Commissioner's discretion, the expenses to be allocated are in the best interests of the regulated entities and of the State.

(c) Expenses under subsection (a) of this section shall be billed to persons licensed under Title 8 based on premiums paid for health care coverage, which for the purposes of this section include major medical, comprehensive medical, hospital or surgical coverage, and any comprehensive health care services plan, but ~~does~~ shall not include long-term care, limited benefits, disability, credit or stop loss or excess loss insurance coverage

Sec. 23. BILL-BACK REPORT

(a) Annually on or before September 15, the Green Mountain Care Board and the Department of Financial Regulation shall report to the House Committee on Health Care, the Senate Committees on Health and Welfare and on Finance, and the House and Senate Committees on Appropriations the total amount of all expenses eligible for allocation pursuant to 18 V.S.A. §§ 9374(h) and 9415 during the preceding state fiscal year and the total amount actually billed back to the regulated entities during the same period.

(b) The Board and the Department shall also present the information required by subsection (a) of this section to the Joint Fiscal Committee annually at its September meeting.

* * * Prior Authorizations * * *

Sec. 24. 18 V.S.A. § 9377a is added to read:

§ 9377a. PRIOR AUTHORIZATION PILOT PROGRAM

(a) The Green Mountain Care Board shall develop and implement a pilot program or programs for the purpose of measuring the change in system costs within primary care associated with eliminating prior authorization requirements for imaging, medical procedures, prescription drugs, and home care. The program shall be designed to measure the effects of eliminating prior authorizations on provider satisfaction and on the number of requests for and expenditures on imaging, medical procedures, prescription drugs, and home care. In developing the pilot program proposal, the Board shall collaborate with health care professionals and health insurers throughout the State or regionally.

(b) The Board shall submit an update regarding implementation of prior authorization pilot programs as part of its annual report under subsection 9375(d) of this title.

Sec. 25. 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~~ House Committee on ~~health care~~ Health Care and the ~~senate committee~~ Senate Committee on ~~health and welfare~~ Health and Welfare. The report shall include any changes to the payment rates for health care professionals pursuant to section 9376 of this title, any new developments with respect to health information technology, the evaluation criteria adopted pursuant to subdivision (b)(8) of this section and any related modifications, the results of the systemwide performance and quality evaluations required by subdivision (b)(8) of this section and any resulting recommendations, the process and outcome measures used in the evaluation, an update regarding implementation of any prior authorization pilot programs under section 9377a of this title, any recommendations for modifications to Vermont statutes, and any actual or anticipated impacts on the work of the ~~board~~ Board as a result of modifications to federal laws, regulations, or programs. The report shall identify how the work of the ~~board~~ Board comports with the principles expressed in section 9371 of this title.

Sec. 26. 18 V.S.A. § 9414b is added to read:

§ 9414b. ANNUAL REPORTING BY THE DEPARTMENT OF VERMONT HEALTH ACCESS

(a) The Department of Vermont Health Access shall annually report the following information, in plain language, to the House Committee on Health Care and the Senate Committee on Health and Welfare, as well as posting the information on its website:

(1) the total number of Vermont lives covered by Medicaid;

(2) the total number of claims submitted to the Department for services provided to Medicaid beneficiaries;

(3) the total number of claims denied by the Department;

(4) the total number of denials of service by the Department at the preauthorization level, the total number of denials that were appealed, and of those, the total number overturned;

(5) the total number of adverse determinations made by the Department;

(6) the total number of claims denied by the Department because the service was experimental, investigational, or an off-label use of a drug; was not medically necessary; or involved access to a provider that is inconsistent with the limitations imposed by Medicaid;

(7) the total number of claims denied by the Department as duplicate claims, as coding errors, or for services or providers not covered;

(8) the Department's legal expenses related to claims or service denials during the preceding year; and

(9) the effects of the Department's policy of allowing automatic approval of certain prior authorizations on the number of requests for imaging, medical procedures, prescription drugs, and home care.

(b) The Department may indicate the extent of overlap or duplication in reporting the information described in subsection (a) of this section.

(c) To the extent practicable, the Department shall model its report on the standardized form created by the Department of Financial Regulation for use by health insurers under subsection 9414a(c) of this title.

(d) The Department of Financial Regulation shall post on its website, in the same location as the forms posted under subdivision 9414a(d)(1) of this title, a link to the information reported by the Department of Vermont Health Access under subsection (a) of this section.

Sec. 27. 18 V.S.A. § 9414a(a)(5) is amended to read:

(5) data regarding the number of denials of service by the health insurer at the preauthorization level, including:

(A) the total number of denials of service by the health insurer at the preauthorization level~~, including:~~;

~~(A)~~(B) the total number of denials of service at the preauthorization level appealed to the health insurer at the first-level grievance and, of those, the total number overturned;

~~(B)~~(C) the total number of denials of service at the preauthorization level appealed to the health insurer at any second-level grievance and, of those, the total number overturned;

~~(C)~~(D) the total number of denials of service at the preauthorization level for which external review was sought and, of those, the total number overturned;

* * * Additional Provisions * * *

Sec. 28. RATE FILINGS FOR 2014

In reviewing health insurance rate filings to take effect in calendar year 2014 pursuant to 8 V.S.A. § 4062, the Department of Financial Regulation and the Green Mountain Care Board shall take into account the consumer assistance assessment established by this act in 18 V.S.A. § 9607.

Sec. 29. REPEAL

8 V.S.A. § 4089w (Health Care Ombudsman) is repealed.

Sec. 30. APPROPRIATION

The sum of $250,000.00 is appropriated from the Consumer Assistance Assessment Fund established by 18 V.S.A. § 9607 to the Agency of Administration in fiscal year 2014 for the purposes of a contract with Vermont Legal Aid to carry out the duties of the Office of the Health Care Advocate established in 18 V.S.A. chapter 229.

Sec. 31. APPLICABILITY AND EFFECTIVE DATES

(a) Secs. 1–12 (rate review) of this act shall take effect on January 1, 2014 and shall apply to all insurers filing rates and forms for major medical insurance plans on and after January 1, 2014, except that the Green Mountain Care Board and the Department of Financial Regulation may amend their rules and take such other actions before that date as are necessary to ensure that the revised rate review process will be operational on January 1, 2014.

(b) Secs. 13–20 (Office of the Health Care Advocate) shall take effect on January 1, 2014.

(c) Sec. 28 (2014 rate filings) of this act and this section shall take effect on passage.

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

(Committee vote: 8-3-0)

(For text see Senate Journal 3/27/2013)

Rep. Ancel of Calais, for the Committee on **Ways and Means,** recommends the bill ought to pass when amended as recommended by the Committee on **Health Care** and when further amended as follows:

First: In Sec. 13, 18 V.S.A. chapter 229, in subsection 9603(c), preceding the word "retaliatory", by striking out the words "disciplinary or"

Second: In Sec. 13, 18 V.S.A. chapter 229, by striking out § 9607 in its entirety

Third: In Sec. 21, 18 V.S.A. § 9374(h), by adding a subdivision (4) to read:

(4) Financial support for the Office of the Health Care Advocate established pursuant to chapter 229 of this title for services related to the Board's regulatory and supervisory duties shall be considered expenses incurred by the Board under this subsection and shall be an acceptable use of the funds realized pursuant to this subsection.

Fourth: In Sec. 22, 18 V.S.A. § 9415, by adding a subsection (d) to read:

(d) Financial support for the Office of the Health Care Advocate established pursuant to chapter 229 of this title for services related to the Department's regulatory and supervisory duties shall be considered expenses incurred by the Department under this subsection and shall be an acceptable use of the funds realized pursuant to this subsection.

Fifth: By striking out Sec. 28, Rate filings for 2014, in its entirety and inserting in lieu thereof a new Sec. 28 to read:

Sec. 28. OFFICE OF THE HEALTH CARE ADVOCATE BUDGET; INTENT

(a) Beginning in fiscal year 2015, the Governor's budget submitted to the General Assembly in accordance with 32 V.S.A. § 306 shall include a separate line item within the Agency of Administration for the Office of the Health Care Advocate program and related program costs and shall specify the sums appropriated for the program's actuarial services.

(b) It is the intent of the General Assembly that the Office of the Health Care Advocate shall maximize the amount of federal and grant funds available to support the activities of the Office.

Fifth: By striking out Sec. 30, Appropriation, in its entirety

Sixth: By renumbering Sec. 31, Applicability and Effective Dates, to be Sec. 30 and by striking subsections (b)–(d) in their entirety and inserting in lieu thereof the following:

(b) Secs. 13–20 (Office of the Health Care Advocate) and 28 (budget) of this act shall take effect on January 1, 2014.

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

(Committee Vote: 8-3-0)

Rep. Keenan of St. Albans City, for the Committee on **Appropriations,** recommends the bill ought to pass when amended as recommended by the Committee on **Health Care and Ways and Means** and when further amended as follows:

amended in Sec. 28 by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) Beginning with the 2014 annual report filed pursuant to 18 V.S.A. § 9603(a)(11), the Office of the Health Care Advocate shall specify the sums expended by the Office in carrying out its duties, including identifying the specific amount expended for actuarial services.

(Committee Vote: 7-3-1)

Amendment to be offered by Rep. Fisher of Lincoln to the recommendation of amendment of the Committee on Health Care as amended to S. 152

In Sec. 13, in 18 V.S.A. § 9603, as follows:

First: In subdivision (a)(1), following "individuals", by striking out "and employers with not more than 10 full-time equivalent employees"

Second: In subdivision (a)(4), following "consumers", by striking out "and employers with not more than 10 full-time equivalent employees who purchase insurance for their employees"

Third: In subdivision (a)(5), following "individuals", by striking out "and employers"

NOTICE CALENDAR

Favorable with Amendment

H. 112

An act relating to the labeling of food produced with genetic engineering

Rep. Bartholomew of Hartland, for the Committee on **Agriculture and Forest Products,** 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 and declares that:

(1) U.S. federal law does not provide for the regulation of the safety and labeling of food that is produced with genetic engineering, as evidenced by the following:

(A) U.S. federal labeling and food and drug laws do not require manufacturers of food produced with genetic engineering to label such food as genetically engineered.

(B) As indicated by the testimony of Dr. Robert Merker, a U.S. Food and Drug Administration (FDA) Supervisory Consumer Safety Officer, the FDA has statutory authority to require labeling of food products, but does not consider genetically engineered foods to be materially different from their traditional counterparts to justify such labeling.

(C) No formal FDA policy on the labeling of genetically engineered foods has been adopted. Currently, the FDA only provides nonbinding guidance on the labeling of genetically engineered foods, including a 1992 draft guidance regarding the need for the FDA to regulate labeling of food produced from genetic engineering and a 2001 draft guidance for industry regarding voluntary labeling of food produced from genetic engineering.

(D) The FDA regulates genetically engineered foods in the same way it regulates foods developed by traditional plant breeding.

(E) Under its regulatory framework, the FDA does not independently test the safety of genetically engineered foods. Instead, manufacturers may submit safety research and studies, the majority of which the manufacturers finance or conduct. The FDA reviews the manufacturers' research and reports through a voluntary safety consultation, and issues a letter to the manufacturer acknowledging the manufacturer's conclusion regarding the safety of the genetically engineered food product being tested.

(F) The FDA does not use meta-studies or other forms of statistical

analysis to verify that the studies it reviews are not biased by financial or professional conflicts of interest.

(G) There is a lack of consensus regarding the validity of the research and science surrounding the safety of genetically engineered foods, as indicated by the fact that there are peer-reviewed studies published in international scientific literature showing negative, neutral, and positive health results.

(H) There have been no long-term or epidemiologic studies in the United States that examine the safety of human consumption of genetically engineered foods.

(I) Independent scientists are limited from conducting safety and risk-assessment research of genetically engineered materials used in food products due to industry restrictions on the use for research of those genetically engineered materials used in food products.

(2) Genetically engineered foods are increasingly available for human consumption, as evidenced by the fact that:

(A) it is estimated that up to 80 percent of the processed foods sold in the United States are at least partially produced from genetic engineering; and

(B) according to the U.S. Department of Agriculture, in 2012, genetically engineered soybeans accounted for 93 percent of U.S. soybean acreage, and genetically engineered corn accounted for 88 percent of U.S. corn acreage.

(3) Genetically engineered foods pose potential risks to health, safety, agriculture, and the environment, as evidenced by the following:

(A) Independent studies in laboratory animals indicate that the ingestion of genetically engineered foods may lead to health problems such as gastrointestinal damage, liver and kidney damage, reproductive problems, immune system interference, and allergic responses.

(B) The genetic engineering of plants and animals may cause unintended consequences. The use of genetic engineering to manipulate genes by inserting them into organisms is an imprecise process. Mixing plant, animal, bacteria, and viral genes through genetic engineering in combinations that cannot occur in nature may produce results that lead to adverse health or environmental consequences.

(C) The use of genetically engineered crops is increasing in commodity agricultural production practices. Genetically engineered crops promote large-scale monoculture production, which contributes to genetic homogeneity, loss of biodiversity, and increased vulnerability of crops to pests,

diseases, and variable climate conditions.

(D) Genetically engineered crops that include pesticides may adversely affect populations of bees, butterflies, and other nontarget insects.

(E) Cross-pollination of or cross-contamination by genetically engineered crops may contaminate organic crops and prevent organic farmers and organic food producers from qualifying for organic certification under federal law.

(F) Cross-pollination from genetically engineered crops may have an adverse effect on native flora and fauna. The transfer of unnatural deoxyribonucleic acid to wild relatives can lead to displacement of those native plants, and in turn, displacement of the native fauna dependent on those wild varieties.

(4) For multiple health, personal, cultural, religious, environmental, and economic reasons, the State of Vermont finds that food produced from genetic engineering should be labeled as such, as evidenced by the following:

(A) Public opinion polls conducted by the Center for Rural Studies at the University of Vermont indicate that a large majority of Vermonters want foods produced with genetic engineering to be labeled as such.

(B) Because genetic engineering, as regulated by this act, involves the direct injection of genes into cells, the fusion of cells, or the hybridization of genes that does not occur in nature, labeling foods produced with genetic engineering as "natural," "naturally made," "naturally grown," "all natural," or other similar descriptors is inherently misleading, poses a risk of confusing or deceiving consumers, and conflicts with the general perception that "natural" foods are not genetically engineered.

(C) Persons with certain religious beliefs object to producing foods using genetic engineering because of objections to tampering with the genetic makeup of life forms and the rapid introduction and proliferation of genetically engineered organisms and, therefore, need food to be labeled as genetically engineered in order to conform to religious beliefs and comply with dietary restrictions.

(D) Requiring that foods produced through genetic engineering be labeled as such will create additional market opportunities for those producers who are not certified as organic and whose products are not produced from genetic engineering. Such additional market opportunities will also contribute to vibrant and diversified agricultural communities.

(E) Labeling gives consumers information they can use to make informed decisions about what products they would prefer to purchase.

(5) Because both the FDA and the U.S. Congress do not require the labeling of food produced with genetic engineering, the State should require food produced with genetic engineering to be labeled as such in order to serve the interests of the State, notwithstanding limited exceptions, to prevent inadvertent consumer deception, prevent potential risks to human health, promote food safety, protect cultural and religious practices, protect the environment, and promote economic development.

Sec. 2. 9 V.S.A. chapter 82A is added to read:

CHAPTER 82A: LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

§ 3041. PURPOSE

It is the purpose of this chapter to:

(1) Public health and food safety. Promote food safety and protect public health by enabling consumers to avoid the potential risks associated with genetically engineered foods, and serve as a risk management tool enabling consumers, physicians, and scientists to identify unintended health effects resulting from the consumption of genetically engineered foods.

(2) Environmental impacts. Assist consumers who are concerned about the potential effects of genetic engineering on the environment to make informed purchasing decisions.

(3) Consumer confusion and deception. Reduce and prevent consumer confusion and deception and promote the disclosure of factual information on food labels to allow consumers to make informed decisions.

(4) Promoting economic development. Create additional market opportunities for those producers who are not certified organic and whose products are not produced using genetic engineering and to enable consumers to make informed purchasing decisions.

(5) Protecting religious and cultural practice. Provide consumers with data from which they may make informed decisions for personal, religious, moral, cultural, or ethical reasons.

§ 3042. DEFINITIONS

As used in this chapter:

(1) "Consumer" shall have the same meaning as in subsection 2451a(a) of this title.

(2) "Enzyme" means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the

reactions.

(3) "Genetic engineering" is a process by which a food is produced from an organism or organisms in which the genetic material has been changed through the application of:

(A) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic acid into cells or organelles; or

(B) fusion of cells (including protoplast fusion) or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic group, in a way that does not occur by natural multiplication or natural recombination.

(4) "In vitro nucleic acid techniques" means techniques, including recombinant DNA or ribonucleic acid techniques, that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as micro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion.

(5) "Organism" means any biological entity capable of replication, reproduction, or transferring of genetic material.

(6) "Processed food" means any food other than a raw agricultural commodity and includes any food produced from a raw agricultural commodity that has been subjected to processing such as canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

(7) "Processing aid" means:

(A) a substance that is added to a food during the processing of the food but that is removed in some manner from the food before the food is packaged in its finished form;

(B) a substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; or

(C) a substance that is added to a food for its technical or functional effect in the processing but is present in the finished food at levels that do not have any technical or functional effect in that finished food.

(8) "Raw agricultural commodity" means any food in its raw or natural state, including any fruit that is washed, colored, or otherwise treated in its unpeeled natural form prior to marketing.

§ 3043. LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

(a) Except as set forth in section 3044 of this title, food shall be labeled as produced entirely or in part from genetic engineering if it is a product:

(1) offered for retail sale in Vermont; and

(2) entirely or partially produced with genetic engineering.

(b) If a food is required to be labeled under subsection (a) of this section, it shall be labeled as follows:

(1) in the case of a raw agricultural commodity, on the package offered for retail sale, with the clear and conspicuous words, "produced with genetic engineering" or "genetically engineered" on the front of the package of the commodity or in the case of any such commodity that is not separately packaged or labeled, on a label appearing on the retail store shelf or bin in which the commodity is displayed for sale; or

(2) in the case of any processed food that contains a product or products of genetic engineering, in clear and conspicuous language on the front or back of the package of the food, with the words "partially produced with genetic engineering" or "may be partially produced with genetic engineering."

(c) Except as set forth under section 3044 of this title, a food produced entirely or in part from genetic engineering shall not be labeled on the product, in signage, or in advertising as "natural," "naturally made," "naturally grown," "all natural," or any words of similar import that would have a tendency to mislead a consumer.

(d) This law shall not be construed to require:

(1) the listing or identification of any ingredient or ingredients that were genetically engineered; or

(2) the placement of the term "genetically engineered" immediately preceding any common name or primary product descriptor of a food.

§ 3044. EXEMPTIONS

The following foods shall not be subject to the labeling requirements of section 3043 of this title:

(1) Food consisting entirely of or derived entirely from an animal which has not itself been produced with genetic engineering, regardless of whether the animal has been fed or injected with any food or drug produced with genetic engineering.

(2) A raw agricultural commodity or processed food derived from it that has been grown, raised, or produced without the knowing and intentional use of food or seed produced with genetic engineering. Food will be deemed to be as described in this subdivision only if the person otherwise responsible for complying with the requirements of subsection 3043(a) of this title with respect to a raw agricultural commodity or processed food obtains, from whomever sold the commodity or food to that person, a sworn statement that the commodity or food has not been knowingly or intentionally produced with genetic engineering and has been segregated from and has not been knowingly or intentionally commingled with food that may have been produced with genetic engineering at any time. In providing such a sworn statement, any person may rely on a sworn statement from his or her own supplier that contains the affirmation set forth in this subdivision.

(3) Any processed food which would be subject to subsection 3043(a) of this title solely because it includes one or more processing aids or enzymes produced with genetic engineering.

(4) Any beverage that is subject to the provisions of Title 7.

(5) Until July 1, 2019, any processed food that would be subject to subsection 3043(a) of this title solely because it includes one or more materials that have been produced with genetic engineering, provided that the genetically engineered materials in the aggregate do not account for more than nine-tenths of one percent of the total weight of the processed food.

(6) Food that an independent organization has verified has not been knowingly and intentionally produced from or commingled with food or seed produced with genetic engineering. The Office of the Attorney General, after consultation with the Department of Health, shall approve by procedure the independent organizations from which verification shall be acceptable under this section.

(7) Food that has been lawfully certified to be labeled, marketed, and offered for sale as "organic" pursuant to the federal Organic Food Products Act of 1990 and the regulations promulgated pursuant thereto by the U.S. Department of Agriculture.

(8) Food that is not packaged for retail sale and that is:

(A) a processed food prepared and intended for immediate human consumption; or

(B) served, sold, or otherwise provided in any restaurant or other food establishment, as defined in 18 V.S.A. § 4301, that is primarily engaged in the sale of food prepared and intended for immediate human consumption.

(9) Medical food, as that term is defined in 21 U.S.C. § 360ee(b)(3).

§ 3045. RETAILER LIABILITY

(a) A retailer shall not be liable for the failure to label a processed food as required by section 3043 of this title, unless:

(1) the retailer is the producer or manufacturer of the processed food; or

(2) the retailer sells the processed food under a brand it owns, but the food was produced or manufactured by another producer or manufacturer.

(b) A retailer shall not be held liable for failure to label a raw agricultural commodity as required by section 3043 of this title, provided that the retailer, within 20 days of any proposed enforcement action or notice of violation, obtains a sworn statement in accordance with subdivision 3044(2) of this title.

§ 3046. SEVERABILITY

If any provision of this subchapter or its application to any person or circumstance is held invalid or in violation of the Constitution or laws of the United States or in violation of the Constitution or laws of Vermont, the invalidity or the violation shall not affect other provisions of this section which can be given effect without the invalid provision or application, and to this end, the provisions of this section are severable.

§ 3047. PENALTIES; ENFORCEMENT

(a) A violation of this chapter is deemed to be a violation of section 2453 of this title.

(b) The Attorney General shall have the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions, and consumers shall have the same rights and remedies as provided under subchapter 1 of chapter 63 of this title.

Sec. 3. EFFECTIVE DATE

This act shall take effect on the first occurring of the following two dates:

(1) 18 months after two other states enact legislation with requirements substantially comparable to the requirements of this act for the labeling of food produced from genetic engineering; or

(2) July 1, 2015.

(Committee Vote: 8-3-0)

Rep. Conquest of Newbury, for the Committee on **Judiciary,** recommends the bill ought to pass when amended as recommended by the Committee on **Agriculture and Forest Products.**

(Committee Vote: 7-4-0)

S. 129

An act relating to workers' compensation liens

Rep. Marcotte of Coventry, for the Committee on **Commerce and Economic Development,** 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. 21 V.S.A. § 7 is added to read:

§ 7. POWERS OF COMMISSIONER

In addition to all other powers granted the Commissioner by this title, the Commissioner or designee may, upon presenting appropriate credentials, at reasonable times and without disrupting critical business operations, enter and inspect any place of business or employment, question any employees, and investigate any facts, conditions, or matters necessary and material to the administration of chapters 9 and 17 of this title. The Commissioner shall inform the employer of his or her right to refuse entry. If entry is refused, the Commissioner may apply to the Civil Division of the Superior Court of Washington County for an order to enforce the rights given the Commissioner under this section.

Sec. 2. 21 V.S.A. § 397 is added to read:

§ 397. WORKPLACE POSTINGS AND EMPLOYER REQUIREMENTS

(a) The Department of Labor shall develop and include in its workplace posters information regarding the rights of employees to unemployment compensation, workers compensation, wages and overtime pay, workplace safety and protections, and misclassification of employees. The information shall also contain contact information for individuals to inquire about their rights and obligations and to file complaints or inquire about employment classification status. This information shall be provided in English or other languages required by the Commissioner. The posters shall be posted by employers in a conspicuous location at the worksite.

(b) Employers who violate this section shall be subject to an administrative penalty of up to $100.00 per violation.

Sec. 3. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the ~~commissioner~~ Commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the ~~commissioner~~ Commissioner and shall include the date of the proposed discontinuance, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for seven days after the notice is received by the ~~commissioner~~ Commissioner and the employee. If the claimant disputes the discontinuance, the claimant may file with the Commissioner an objection to the discontinuance and seek an extension of the seven-day limit. The Commissioner may grant an extension up to seven days. The request for an extension shall be specific as to the number of days needed and the reason for the extension and must be received by the Commissioner prior to the end of the seven-day limit. A copy of the request for an extension shall be provided to the employer at the time the request is made to the Commissioner. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the ~~commissioner~~ Commissioner determines that the discontinuance is warranted or if otherwise ordered by the ~~commissioner~~ Commissioner. Every notice shall be reviewed by the ~~commissioner~~ Commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the ~~commissioner~~ Commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the ~~commissioner~~ Commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the ~~department~~ Department that establishes that a preponderance of all evidence now supports the claim. If the ~~commissioner's~~ Commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the ~~commissioner~~ Commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction.

Sec. 4. 21 V.S.A. § 655 is amended to read:

§ 655. PROCEDURE IN OBTAINING COMPENSATION; MEDICAL

EXAMINATION; VIDEO AND AUDIO RECORDING

After an injury and during the period of disability, if so requested by his or her employer, or ordered by the ~~commissioner~~ Commissioner, the employee shall submit to examination, at reasonable times and places, by a duly licensed physician or surgeon designated and paid by the employer. The employee may make a video or audio recording of any examination performed by the insurer's physician or surgeon or have a licensed health care provider designated and paid by the employee present at the examination. The employer may make an audio recording of the examination. The right of the employee to record the examination shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability. If an employee refuses to submit to or in any way obstructs the examination, the employee's right to prosecute any proceeding under the provisions of this chapter shall be suspended until the refusal or obstruction ceases, and compensation shall not be payable for the period which the refusal or obstruction continues. The physician shall provide a report of the examination to the employee at the same time any report is provided to the employer.

Sec. 5. 21 V.S.A. § 678 is amended to read:

§ 678. COSTS; ATTORNEY FEES

(a) Necessary costs of proceedings under this chapter, including deposition expenses, subpoena fees, and expert witness fees, shall be assessed by the ~~commissioner~~ Commissioner against the employer or its workers' compensation carrier when the claimant prevails. The ~~commissioner~~ Commissioner may allow the claimant to recover reasonable ~~attorney~~ attorney's fees when the claimant prevails. Costs shall not be taxed or allowed either party except as provided in this section.

(b) In appeals to the ~~superior or supreme courts~~ Superior or Supreme Court, if the claimant prevails, he or she shall be entitled to reasonable ~~attorney~~ attorney's fees as approved by the ~~court~~ Court, necessary costs, including deposition expenses, subpoena fees, and expert witness fees, and interest at the rate of 12 percent per annum on that portion of any award the payment of which is contested. Interest shall be computed from the date of the award of the ~~commissioner~~ Commissioner.

* * *

Sec. 6. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES; FAILURE TO INSURE; ~~STOP WORK~~ STOP-WORK ORDERS

(a) Failure to insure. If after a hearing under section 688 of this title, the ~~commissioner~~ Commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the employer shall be assessed an administrative penalty of not more than $100.00 for every day for the first seven days the employer neglected to secure liability and not more than $150.00 for every day thereafter. In addition to any other remedies and proceedings authorized by this chapter, the Commissioner may bring an action in the Civil Division of the Superior Court. The remedies available in a civil action, including attachment and trustee process, shall be available for the collection of any fines, penalties, and amounts assessed under this chapter

(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the ~~commissioner~~ Commissioner, the ~~commissioner~~ Commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the ~~commissioner~~ Commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the ~~commissioner~~ Commissioner may permit work to continue until the immediate threat to public safety or health is removed. The ~~commissioner~~ Commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than $250.00 for every day that the employer fails to secure workers' compensation coverage after the ~~commissioner~~ Commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than $250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the ~~commissioner~~ Commissioner shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with the provisions of section 687 of this title and that work at the work site has been ordered to cease until workers' compensation insurance is secured. The stop-work order shall be rescinded as soon as the ~~commissioner~~ Commissioner determines that the employer is in compliance with section 687 of this title. An employer against whom a stop-work order has been issued is prohibited from contracting, directly or indirectly, with the ~~state~~ State or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order, as determined by the ~~commissioner~~ Commissioner in consultation with the ~~commissioner of buildings and general services or the secretary of transportation~~ Commissioner of Buildings and General Services or the Secretary of Transportation, as appropriate. Either the ~~secretary or the commissioner~~ Secretary or Commissioner, as appropriate, shall be consulted in

any contest of the prohibition of the employer from contracting with the ~~state~~ State or its subdivisions.

(c) The Commissioner may issue an order of conditional release from a stop-work order upon a finding that the employer has secured the required workers' compensation coverage and has agreed to remit periodic payments to satisfy any penalties assessed under this chapter pursuant to a written payment arrangement approved by the Commissioner. If the Commissioner issues an order of conditional release, the employer's failure to meet any term or condition of the order or to make periodic payments shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become due immediately.

(d) A stop-work order issued against an employer shall apply to any successor employer that has substantially common ownership, management, or control as the employer on whom the stop-work order was issued and is engaged in the same or similar trade or activity.

(e) The Commissioner may bring an action in the Civil Division of the Superior Court of Washington County or in the county in which the employer has its principal office or is continuing to work in violation of the stop-work order to enjoin any employer from violating a stop-work order until the employer establishes that it is in compliance with this chapter and has paid any penalty assessed by the Commissioner.

(f) Penalty for violation of stop-work order. In addition to any other penalties, an employer who violates a stop-work order described in subsection (b) of this section is subject to:

(1) A civil penalty of not more than $5,000.00 for the first violation and a civil penalty of not more than $10,000.00 for a second or subsequent violation; or

(2) A criminal fine of not more than $10,000.00 or imprisonment for not more than 180 days, or both.

Sec. 7. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

(b) The ~~judicial bureau~~ Judicial Bureau shall have jurisdiction of the following matters:

* * *

(20) ~~Violations of 21 V.S.A. § 692(c)(1).~~ [Deleted.]

* * *

Sec. 8. 21 V.S.A. § 1253 is amended to read:

§ 1253. ELIGIBILITY

The ~~commissioner~~ Commissioner shall make all determinations for eligibility under this chapter. An individual shall be eligible for up to 26 weekly payments when the ~~commissioner~~ Commissioner determines that the individual voluntarily left work due to circumstances directly resulting from domestic and sexual violence, provided the individual:

(1) Leaves employment for one of the following reasons:

* * *

(D) The individual is physically or emotionally unable to work as a result of experiencing domestic or sexual violence as certified by a medical professional. The certification shall be reviewed by the Commissioner every six weeks and may be renewed until the individual is able to work or the benefits are exhausted.

* * *

Sec. 9. 21 V.S.A. § 1254 is amended to read:

§ 1254. CONDITIONS

An individual shall be eligible to receive payments with respect to any week, only if the ~~commissioner~~ Commissioner finds that the individual complies with all of the following requirements:

(1) ~~Files~~ files a claim certifying that he or she did not work during the week~~.~~;

(2) ~~Is~~ is not eligible for unemployment compensation benefits~~.~~; and

(3) ~~Is taking steps to become employed~~ is working with the Department to determine work readiness and taking reasonable steps as determined by the Commissioner to become employed.

Sec. 10. 21 V.S.A. § 1255 is amended to read:

§ 1255. PROCEDURES

(a) The ~~commissioner~~ Commissioner or designee shall review all claims for payment and shall promptly provide written notification to the individual of any claim that is denied and the reasons for the denial.

(b) Within 30 days after receipt of a denial, the individual may appeal the determination to the ~~commissioner~~ Commissioner by requesting a review of

the decision. On appeal to the Commissioner the individual may provide supplementary evidence to the record. The ~~commissioner~~ Commissioner shall review the record within seven working days after the notice of the appeal is filed and promptly notify the individual in writing of the ~~commissioner's~~ Commissioner's decision. The decision of the ~~commissioner~~ Commissioner shall become final unless an appeal to the ~~supreme court~~ Supreme Court is taken within 30 days of the date of the ~~commissioner's~~ Commissioner's decision.

Sec. 11. 21 V.S.A. § 1314a is amended to read:

§ 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION; PENALTIES

* * *

(g) Notwithstanding any other provisions of this section, the ~~commissioner~~ Commissioner may where practicable require of employing units ~~with 25 or more employees~~ that the reports required to be filed pursuant to subsections (a) through (d) of this section be filed in an electronic media form.

Sec. 12. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS; DISCLOSURE TO SUCCESSOR ENTITY~~; EMPLOYEE PAID $1,000.00 OR LESS DURING BASE PERIOD~~

* * *

(d) Notwithstanding any other provision of law, the following shall apply to assignment of rates and transfers of experience:

(1) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, the ~~employment~~ unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of trade or business.

* * *

Sec. 13. 21 V.S.A. § 1451 is amended to read:

§ 1451. DEFINITIONS

~~For the purpose of this subchapter~~ As used in this subchapter:

(1) "Affected unit" means a specific plan, department, shift, or other definable unit consisting of not less than five employees to which an approved

short-time compensation plan applies.

(2) "Defined benefit plan" means a plan described in 26 U.S.C. § 414(j).

(3) "Defined contribution plan" means a plan described in 26 U.S.C. § 414(i).

(4) "Short-time compensation" or "STC" means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan as distinguished from the unemployment benefits otherwise payable under the conventional unemployment compensation provisions of this chapter.

~~(3)~~(5) "Short-time compensation plan" means a plan of an employer under which there is a reduction in the number of hours worked by employees of an affected unit rather than ~~temporary~~ layoffs. The term "~~temporary~~ layoffs" for this purpose means the total separation of one or more workers in the affected unit ~~for an indefinite period expected to last for more than two months but not more than six months~~.

~~(4)~~(6) "Short-time compensation employer" means an employer who has one or more employees covered by an approved "Short-Time Compensation Plan." "Short-time compensation employer" ~~includes~~ means an employer with ~~experience-rating records~~ an experience rating record ~~and~~ or an employer who makes payments in lieu of ~~tax~~ contributions to the unemployment compensation trust fund and that meets all of the following criteria:

(A) ~~Has~~ has five or more employees covered by an approved short-time compensation plan~~.~~;

(B) ~~Is~~ is not delinquent in the payment of contributions or reimbursement, or in the reporting of wages~~.~~; and

(C) ~~Is~~ is not a negative balance employer. For the purposes of this section, a negative balance employer is an employer who has for three or more consecutive calendar years immediately prior to applying for the STC plan paid more in unemployment benefits to its employees than it has contributed to its unemployment insurance account. In the event that an employer has been a negative balance employer for three consecutive years, the employer shall be ineligible for participation unless the ~~commissioner~~ Commissioner grants a waiver based upon extenuating economic conditions or other good cause.

~~(5)~~(7) "Usual weekly hours of work" means the normal hours of work for full-time ~~and regular~~ or part-time employees in the affected unit when that unit is operating on its ~~normally full-time basis not less than 30 hours and~~ regular basis not to exceed 40 hours and not including hours of overtime work.

~~(6)~~(8) "Unemployment compensation" means the unemployment benefits payable under this chapter other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

~~(7)~~(9) "Fringe benefits" means benefits, including health insurance, retirement benefits, paid vacations and holidays, sick leave, and similar benefits that are incidents of employment.

~~(8)~~(10) "Intermittent employment" means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work.

~~(9)~~(11) "Seasonal employment" means employment with an employer who experiences at least a 20-percent difference between its highest level of employment during a particular season and its lowest level of employment during the off-season in each of the previous three years as reported to the ~~department~~ Department, or employment with an employer on a temporary basis during a particular season.

Sec. 14. 21 V.S.A. § 1452 is amended to read:

§ 1452. CRITERIA FOR APPROVAL

(a) An employer wishing to participate in an STC program shall submit a ~~department of labor~~ Department of Labor electronic application or a signed written short-time compensation plan to the ~~commissioner~~ Commissioner for approval. The ~~commissioner~~ Commissioner may approve an STC plan only if the following criteria are met:

* * *

(3) the plan ~~outlines to the commissioner the extent to which fringe benefits, including health insurance, of employees participating in the plan may be reduced, which shall be factored into the evaluation of the business plan for resolving the conditions that lead to the need for the STC plan~~ provides that if the employer provides fringe benefits, including health benefits and retirement benefits under a defined benefit plan or contributions under a defined contribution plan, to any employee whose workweek is reduced under the program, that the benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the workweek had not been reduced. However, reductions in the benefits of short-time compensation plan participants are permitted to the extent that the reductions also apply to nonparticipant employees;

* * *

(5) the plan certifies that the aggregate reduction in work hours is in lieu of ~~temporary total~~ layoffs of one or more workers which would have resulted in an equivalent reduction in work hours and which the c~~ommissioner~~ Commissioner finds would have caused an equivalent dollar amount to be payable in unemployment compensation;

* * *

(7) the identified workweek reduction is applied consistently throughout the duration of the plan unless otherwise approved by the ~~department~~ Department. The plan shall not subsidize seasonal employers during the off-season;

* * *

(11) the plan certifies that the collective bargaining agent or agents for the employees, if any, have agreed to participate in the program. If there is no bargaining unit, the employer specifies how he or she will notify the employees in the affected group and work with them to implement the program once the plan is approved; ~~and~~

(12) ~~in addition to subdivisions (1) through (11) of this section, the commissioner shall take into account any other factors which may be pertinent to the approval and proper implementation of the plan~~ the plan describes the manner in which the requirements of this section will be implemented and where feasible how notice will be given to an employee whose workweek is to be reduced and an estimate of the number of layoffs that would have occurred absent the ability to participate in the short-time compensation program and any other information that the U.S. Secretary of Labor determines is appropriate; and

(13) the employer certifies that the plan is consistent with employer obligations under applicable state and federal laws.

(b) In the event of any conflict between any provisions of sections 1451–1460 of this title, or the regulations implemented pursuant to these sections, and applicable federal law, the federal law shall prevail and the provision shall be deemed invalid.

Sec. 15. 21 V.S.A. § 1457 is amended to read:

§ 1457. ELIGIBILITY

(a) An individual is eligible to receive STC benefits with respect to any week only if, in addition to eligibility for monetary entitlement, the ~~commissioner~~ Commissioner finds that:

(1) the individual is employed during that week as a member of an affected unit under an approved short-time compensation plan which was in effect for that week;

(2) the individual is able to work and is available for the normal work week with the short-time employer;

(3) notwithstanding any other provisions of this chapter to the contrary, an individual is deemed unemployed in any week for which remuneration is payable to him or her as an employee in an affected unit for less than his or her normal weekly hours of work as specified under the approved short-time compensation plan in effect for the week;

(4) notwithstanding any other provisions of this chapter to the contrary, an individual shall not be denied STC benefits for any week by reason of the application of provisions relating to availability for work and active search for work with an employer other than the short-time employer.

(b) Eligible employees may participate, as appropriate, in training, including employer-sponsored training or worker training funded under the Workforce Investment Act of 1998, to enhance job skills if the program has been approved by the Department.

Sec. 16. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

* * *

(14) "Worker" and "employee" means an individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury shall include a reference to the worker's dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor's committee, guardian, or next friend. The term "worker" or "employee" does not include:

* * *

(I) An individual who receives foster care payments excluded from the definition of gross income under Section 131 of Title 26 of the Internal Revenue Code.

* * *

Sec. 17. INFORMATION AND EDUCATION; INDEPENDENT

CONTRACTOR STATUS

The Commissioner shall conduct a comprehensive information and education campaign regarding independent contractor status. The campaign shall address the tests for determining independent contractor status under Vermont law, the rights and responsibilities of employers and employees under Vermont law, including wage and hour laws, workers' compensation and unemployment compensation requirements, information regarding the misclassification and miscoding laws, including the requirements for employers to comply with those laws and the penalties for failing to do so, and other information the Commissioner determines is necessary and appropriate.

Sec. 18. STUDY; UNEMPLOYMENT COMPENSATION; WORKERS' COMPENSATION; JOB TRAINING

(a) The Department of Labor in consultation with interested parties shall evaluate and make recommendations regarding:

(1) whether the principles of fairness, equity, proportionality, affordability, and fiscal responsibility embodied in 2010 Acts and Resolves No. 124 would be affected if any changes are made to the act. Specifically, the Department shall study the potential impacts to employers, employees, and the trust fund if changes are made to certain aspects of the unemployment compensation system, including the earnings disregard, the one-week waiting period, the weekly benefit amount, and the taxable wage base. The Department shall study these potential impacts as they relate to paying off the trust fund debt and establishing the fund's solvency.

(2) whether the annual report on trust fund solvency required by 21 V.S.A. § 1309 is providing appropriate and sufficient information regarding the long-term health and solvency of the unemployment compensation trust fund, or whether further measures are required to provide information necessary to achieve and maintain solvency.

(3) whether any structural, administrative, or procedural changes should be made to the workers' compensation system, including changes that would increase the affordability and regional competitiveness of workers' compensation insurance for employers while ensuring fairness for beneficiaries.

(4) whether the agencies and departments of state government are in compliance with required workers' compensation and unemployment compensation coverage related to their contracts with designated agencies and other subcontractors.

(5) whether the current workers' compensation system can better

incentivize and promote healthy and safe work environments through information, education, and collaboration with employers, insurers, and employees; and whether private and public training programs and enforcement divisions could be better utilized to achieve improved safety in workplaces.

(6) the benefits and feasibility of developing and implementing a job training program for persons collecting unemployment benefits in Vermont that allows the Department to place persons collecting unemployment into job sites for job training and skill development in order to enhance the individual's job prospects and career development. The Department shall examine conformity issues with federal and state unemployment and wage and hour laws. The Commissioner shall solicit public input and engage interested parties from the business and labor communities in determining the benefits of a job training program.

(7) how workers' compensation cases are resolved under 21 V.S.A. § 624(e), including whether the operation of workers' compensation liens may or may not result in an equitable distribution of third party payments to the employer and employee, and the equities and appropriateness of using third party payments as an advance on any future workers' compensation benefits.

(8) whether there should be any limitations placed on how independent medical examinations are conducted, including their timing and location.

(9) whether school district employees who are not federally exempted from unemployment compensation should be included in Vermont's unemployment compensation system and be eligible for benefits during periods of layoff.

(b) The Department shall examine whether existing state and federal laws would allow a student who is under the age of 18 and enrolled at a regional technical center to gain practical working experience outside the classroom setting. The Department shall make recommendations to enhance the learning experience of students enrolled at regional technical centers by providing practical work experiences while also maintaining adequate health and safety protections.

(c) The Department, in consultation with the Agency of Commerce and Community Development and interested parties, shall evaluate and make recommendations regarding whether the current workers' compensation system and other relevant employment laws are suited to the needs of an evolving workforce. As part of the evaluation, the Department shall consider Vermont's growing knowledge-based economic sector, the future of the Vermont economy, and changing workforce habits. The Department shall make recommendations regarding how to modernize the employment laws to

meet employer and employee needs while maintaining employee protections.

(d) The Department shall report its findings and any recommendations to the House Committee on Commerce and Economic Development and the Senate Committee on Finance on or before December 15, 2013.

Sec. 19. WORKERS' COMPENSATION PREMIUMS

The Department of Financial Regulation in consultation with the Department of Labor shall study the issue of workers' compensation premiums increasing as a result of an employee completing a job-related safety course. The Department of Financial Regulation shall investigate how workers' compensation premiums can be decreased or kept at a steady rate for employers who are providing approved safety and health training to employees.

Sec. 20. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee vote: 11-0-0)

(For text see Senate Journal 3/22/2013 and 3/29/2013)

S. 130

An act relating to encouraging flexible pathways to secondary school completion

Rep. Peltz of Woodbury, for the Committee on **Education,** 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:

* * * Flexible Pathways Initiative; Dual Enrollment * * *

Sec. 1. 16 V.S.A. chapter 23, subchapter 2 is added to read:

Subchapter 2. Flexible Pathways to Secondary School Completion

§ 941. FLEXIBLE PATHWAYS INITIATIVE

(a) There is created within the Agency a Flexible Pathways Initiative:

(1) to encourage and support the creativity of school districts as they develop and expand high-quality educational experiences that are an integral part of secondary education in the evolving 21st Century classroom;

(2) to promote opportunities for Vermont students to achieve postsecondary readiness through high-quality educational experiences that acknowledge individual goals, learning styles, and abilities; and

(3) to increase the rates of secondary school completion and postsecondary continuation in Vermont.

(b) The Secretary shall develop, publish, and regularly update guidance, in the form of technical assistance, sharing of best practices and model documents, legal interpretations, and other support designed to assist school districts:

(1) to identify and support secondary students who require additional assistance to succeed in school and to identify ways in which individual students would benefit from flexible pathways to graduation;

(2) to work with every student in grade seven through grade 12 in an ongoing personalized learning planning process that:

(A) identifies the student's emerging abilities, aptitude, and disposition;

(B) includes participation by families and other engaged adults;

(C) guides decisions regarding course offerings and other high-quality educational experiences; and

(D) is documented by a personalized learning plan;

(3) to create opportunities for secondary students to pursue flexible pathways to graduation that:

(A) increase aspiration and encourage postsecondary continuation of training and education;

(B) are an integral component of a student's personalized learning plan; and

(C) include:

(i) applied or work-based learning opportunities, including career and technical education and internships;

(ii) virtual learning and blended learning;

(iii) dual enrollment opportunities as set forth in section 944 of this title;

(iv) early college programs as set forth in subsection 4011(e) of this title;

(v) the High School Completion Program as set forth in section 943 of this title; and

(vi) the Adult Diploma Program and General Educational

Development Program as set forth in section 946 of this title; and

(4) to provide students, beginning no later than in the seventh grade, with career development and postsecondary planning resources to ensure that they are able to take full advantage of the opportunities available within the flexible pathways to graduation and to achieve their career and postsecondary education and training goals.

(c) Nothing in this subchapter shall be construed as discouraging or limiting the authority of any school district to develop or continue to provide educational opportunities for its students that are otherwise permitted, including the provision of Advanced Placement courses.

(d) An individual entitlement or private right of action shall not arise from creation of a personalized learning plan.

§ 942. DEFINITIONS

As used in this title:

(1) "Accredited postsecondary institution" means a postsecondary institution that has been accredited by the New England Association of Schools and Colleges or another regional accrediting agency recognized by the U.S. Department of Education.

(2) "Approved provider" means an entity approved by the Secretary to provide educational services that may be awarded credits or used to determine proficiency necessary for a high school diploma.

(3) "Blended learning" means a formal education program in which content and instruction are delivered both in a traditional classroom setting and through virtual learning.

(4) "Career development" means the identification of student interests and aptitudes and the ability to link these to potential career paths and the training and education necessary to succeed on these paths.

(5) "Carnegie unit" means 125 hours of class or contact time with a teacher over the course of one year at the secondary level.

(6) "Contracting agency" means an entity that enters into a contract with the Agency to provide "flexible pathways to graduation" services itself or in conjunction with one or more approved providers in Vermont.

(7) "Dual enrollment" means enrollment by a secondary student in a course offered by an accredited postsecondary institution and for which, upon successful completion of the course, the student will receive:

(A) secondary credit toward graduation from the secondary school in

which the student is enrolled; and

(B) postsecondary credit from the institution that offered the course if the course is a credit-bearing course at that institution.

(8) "Early college" means full-time enrollment, pursuant to subsection 4011(e) of this title, by a 12th grade Vermont student for one academic year in a program offered by a postsecondary institution in which the credits earned apply to secondary school graduation requirements.

(9) "Flexible pathways to graduation" means any combination of high-quality academic and experiential components leading to secondary school completion and postsecondary readiness, which may include assessments that allow the student to apply his or her knowledge and skills to tasks that are of interest to that student.

(10) "Personalized learning plan" and "PLP" mean documentation of an evolving plan developed on behalf of a student in an ongoing process involving a secondary student, a representative of the school, and, if the student is a minor, the student's parents or legal guardian and updated at least annually by November 30; provided, however, that a home study student and the student's parent or guardian shall be solely responsible for developing a plan. The plan shall be developmentally appropriate and shall reflect the student's emerging abilities, aptitude, and disposition. The plan shall define the scope and rigor of academic and experiential opportunities necessary for a secondary student to complete secondary school successfully, attain postsecondary readiness, and be prepared to engage actively in civic life. While often less formalized, personalized learning and personalized instructional approaches are critical to students in kindergarten through grade 6 as well.

(11) "Postsecondary planning" means the identification of education and training programs after high school that meet a student's academic, vocational, financial, and social needs and the identification of financial assistance available for those programs.

(12) "Postsecondary readiness" means the ability to enter the workforce or to pursue postsecondary education or training without the need for remediation.

(13) "Virtual learning" means learning in which the teacher and student communicate concurrently through real-time telecommunication. "Virtual learning" also means online learning in which communication between the teacher and student does not occur concurrently and the student works according to his or her own schedule.

§ 943. [RESERVED.]

§ 944. DUAL ENROLLMENT PROGRAM

(a) Program creation. There is created a statewide Dual Enrollment Program to be a potential component of a student's flexible pathway. The Program shall include college courses offered on the campus of an accredited postsecondary institution and college courses offered by an accredited postsecondary institution on the campus of a secondary school. The Program may include online college courses or components.

(b) Students.

(1) A Vermont resident who has completed grade 10 but has not received a high school diploma is eligible to participate in the Program if:

(A) the student:

(i) is enrolled in:

(I) a Vermont public school, including a Vermont career technical center;

(II) a public school in another state or an approved independent school that is designated as the public secondary school for the student's district of residence; or

(III) an approved independent school in Vermont to which the student's district of residence pays publicly funded tuition on behalf of the student;

(ii) is assigned to a public school through the High School Completion Program; or

(iii) is a home study student;

(B) dual enrollment is an element included within the student's personalized learning plan; and

(C) the secondary school and the postsecondary institution have determined that the student is sufficiently prepared to succeed in a dual enrollment course, which can be determined in part by the assessment tool or tools identified by the participating postsecondary institution.

(2) An eligible student may enroll in up to two dual enrollment courses prior to completion of secondary school for which neither the student nor the student's parent or guardian shall be required to pay tuition. A student may enroll in courses offered while secondary school is in session and during the summer.

(c) Public postsecondary institutions. The Vermont State Colleges and the University of Vermont shall work together to provide dual enrollment opportunities throughout the State.

(1) When a dual enrollment course is offered on a secondary school campus, the public postsecondary institution shall:

(A) retain authority to determine course content; and

(B) work with the secondary school to select, monitor, support, and evaluate instructors.

(2) The public postsecondary institution shall maintain the postsecondary academic record of each participating student and provide transcripts on request.

(3) To the extent permitted under the Family Educational Rights and Privacy Act, the public postsecondary institution shall collect and send data related to student participation and success to the student's secondary school and the Secretary and shall send data to the Vermont Student Assistance Corporation necessary for the Corporation's federal reporting requirements.

(4) The public postsecondary institution shall accept as full payment the tuition set forth in subsection (f) of this section.

(d) Secondary schools. Each school identified in subdivision (b)(1) of this section that is located in Vermont shall:

(1) provide access for eligible students to participate in any dual enrollment courses that may be offered on the campus of the secondary school;

(2) accept postsecondary credit awarded for dual enrollment courses offered by a Vermont public postsecondary institution under this section as meeting secondary school graduation requirements;

(3) collect enrollment data as prescribed by the Secretary for longitudinal review and evaluation;

(4) identify and provide necessary support for participating students and continue to provide services for students with disabilities; and

(5) provide support for a seamless transition to postsecondary enrollment upon graduation.

(e) Program management. The Agency shall manage or may contract for the management of the Dual Enrollment Program in Vermont by:

(1) marketing the Dual Enrollment Program to Vermont students and their families;

(2) assisting secondary and postsecondary partners to develop memoranda of understanding, when requested;

(3) coordinating with secondary and postsecondary partners to understand and define student academic readiness;

(4) convening regular meetings of interested parties to explore and develop improved student support services;

(5) coordinating the use of technology to ensure access and coordination of the Program;

(6) reviewing program costs;

(7) evaluating all aspects of the Dual Enrollment Program and ensuring

overall quality and accountability; and

(8) performing other necessary or related duties.

(f) Tuition and funding.

(1) Tuition shall be paid to public postsecondary institutions in Vermont as follows:

(A) For any course for which the postsecondary institution pays the instructor, the student's school district of residence shall pay tuition to the postsecondary institution in an amount equal to the tuition rate charged by the Community College of Vermont (CCV) at the time the dual enrollment course is offered; provided however, that tuition paid to CCV under this subdivision (A) shall be in an amount equal to 90 percent of the CCV rate.

(B) For any course that is taught by an instructor who is paid as part of employment by a secondary school, the student's school district of residence shall pay tuition to the postsecondary institution in an amount equal to 20 percent of the tuition rate charged by the Community College of Vermont at the time the dual enrollment course is offered.

(2) Notwithstanding subdivision (1) of this subsection requiring the district of residence to pay tuition, the State shall pay 50 percent of the tuition owed to public postsecondary institutions under subdivision (1)(A) of this subsection from the Next Generation Initiative Fund created in section 2887 of this title; provided, however, that the total amount paid by the State in any fiscal year shall not exceed the total amount of General Fund dollars the General Assembly appropriated from the Fund in that year for dual enrollment purposes plus any balance carried forward from the previous fiscal year.

(3) If it agrees to the terms of subsection (c) of this section, an accredited private postsecondary institution in Vermont approved pursuant to section 176 of this title shall receive tuition pursuant to subdivisions (1) and (2) of this subsection (f) for each eligible student it enrolls in a college-level course under this section.

(g) Private and out-of-state postsecondary institutions. Nothing in this section shall be construed to limit a school district's authority to enter into a contract for dual enrollment courses with an accredited private or public postsecondary institution not identified in subsection (c) of this section located in or outside Vermont. The school district may negotiate terms different from those set forth in this section, including the amount of tuition to be paid. The school district may determine whether enrollment by an eligible student in a course offered under this subsection shall constitute one of the two courses authorized by subdivision (b)(2) of this section.

(h) Number of courses. Nothing in this section shall be construed to limit a school district's authority to pay for more than the two courses per eligible student authorized by subdivision (b)(2) of this section; provided, however,

that payment under subdivision (f)(2) of this section shall not be made for more than two courses per eligible student.

(i) Other postsecondary courses. Nothing in this section shall be construed to limit a school district's authority to award credit toward graduation requirements to a student who receives prior approval from the school and successfully completes a course offered by an accredited postsecondary institution that was not paid for by the district pursuant to this section. The school district shall determine the number and nature of credits it will award to the student for successful completion of the course, including whether the course will satisfy one or more graduation requirements, and shall inform the student prior to enrollment. Credits awarded shall be based on performance and not solely on Carnegie units; provided, however, that unless the school district determines otherwise, a three-credit postsecondary course shall be presumed to equal one-half of a Carnegie unit. A school district shall not withhold approval or credit without reasonable justification. A student may request that the superintendent review the district's determination regarding course approval or credits. The superintendent's decision shall be final.

(j) Reports. Notwithstanding 2 V.S.A. § 20(d), the Secretary shall report to the House and Senate Committees on Education annually in January regarding the Dual Enrollment Program, including data relating to student demographics, levels of participation, marketing, and program success.

§ 945. [RESERVED.]

Sec. 2. DUAL ENROLLMENT; TRANSITION; FUNDING; NONOPERATING DISTRICTS

(a) Notwithstanding any provision of Sec. 1, 16 V.S.A. § 944(f), to the contrary, the State shall pay 100 percent of the tuition owed to postsecondary institutions under subdivision (f)(1) for courses offered in fiscal years 2014 and 2015; provided, however, that the total amount paid by the State in either fiscal year shall not exceed the total amount of General Fund dollars the General Assembly appropriated from the Fund in that year for dual enrollment purposes plus any balance carried forward from the previous fiscal year. Any balance carried forward from fiscal year 2015 shall be used to satisfy the financial obligations of school districts under subsection (f) in fiscal year 2016.

(b)(1) The Secretary shall analyze issues relating to providing dual enrollment opportunities pursuant to Sec. 1 of this act to publicly funded students enrolled in Vermont approved independent schools. Specifically, the analysis shall include:

(A) the anticipated utilization of dual enrollment opportunities;

(B) the anticipated financial impact on sending school districts;

(C) the ways in which sending school districts will ensure student participation in a personalized learning planning process and inclusion of dual enrollment in the student's plan; and

(D) other financial and programmatic issues related to dual enrollment access by publicly funded students enrolled in approved independent schools.

(2) On or before February 1, 2014, the Secretary shall report the results of the analysis to the House and Senate Committees on Education together with any recommendations for amendment to statutes or rules, including whether it would be advisable to amend or repeal Sec. 1, 16 V.S.A. § 944(b)(1)(A)(i)(III) (eligibility of publicly funded student enrolled in Vermont approved independent school).

Sec. 3. REPEAL

16 V.S.A. § 913 (secondary credit; postsecondary course) is repealed.

* * * Flexible Pathways: High School Completion Program * * *

Sec. 4. 16 V.S.A. § 1049a is redesignated to read:

§ ~~1049a~~ 943. HIGH SCHOOL COMPLETION PROGRAM

Sec. 5. 16 V.S.A. § 943 is amended to read:

§ 943. HIGH SCHOOL COMPLETION PROGRAM

(a) ~~In this section:~~

~~(1) "Graduation education plan" means a written plan leading to a high school diploma for a person who is 16 to 22 years of age and has not received a high school diploma, who may or may not be enrolled in a public or approved independent school. The plan shall define the scope and rigor of services necessary for the student to attain a high school diploma, and may describe educational services to be provided by a public high school, an approved independent high school, an approved provider, or a combination of these.~~

~~(2) "Approved provider" means an entity approved by the commissioner to provide educational services which may be counted for credit toward a high school diploma.~~

~~(3) "Contracting agency" means an agency that has entered into a contract with the department of education to provide adult education services in Vermont.~~

There is created a High School Completion Program to be a potential component of a flexible pathway for any Vermont student who is at least 16 years old, who has not received a high school diploma, and who may or may not be enrolled in a public or approved independent school.

(b) If a person who wishes to work on a ~~graduation education plan~~ personalized learning plan leading to graduation through the High School Completion Program is not enrolled in a public or approved independent

school, then the ~~commissioner~~ Secretary shall assign the prospective student to a high school district, which shall be the district of residence whenever possible. The school district in which a student is enrolled or to which a non-enrolled student is assigned shall work with the contracting agency and the student to develop a ~~graduation education~~ personalized learning plan. The school district shall award a high school diploma upon successful completion of the plan.

(c) The ~~commissioner~~ Secretary shall reimburse, and net cash payments where possible, a school district that has agreed to a ~~graduation education~~ personalized learning plan developed under this section in an amount:

(1) established by the ~~commissioner~~ Secretary for the development and ongoing evaluation and revision of the ~~graduation education~~ personalized learning plan and for other educational services typically provided by the assigned district or an approved independent school pursuant to the plan, such as counseling, health services, participation in cocurricular activities, and participation in academic or other courses~~,~~; provided, however, that this amount shall not be available to a school district that provides services under this section to an enrolled student; and

(2) negotiated by the ~~commissioner~~ Secretary and the contracting agency, with the approved provider, for services and outcomes purchased from the approved provider on behalf of the student pursuant to the ~~graduation education~~ personalized learning plan.

* * * Flexible Pathways: Adult Diploma Program; GED * * *

Sec. 6. 16 V.S.A. § 1049 is redesignated to read:

~~§ 1049. PROGRAMS~~ § 945. ADULT DIPLOMA PROGRAM; GENERAL EDUCATIONAL DEVELOPMENT PROGRAM

Sec. 7. 16 V.S.A. § 945 is amended to read:

§ 945. ADULT DIPLOMA PROGRAM; GENERAL EDUCATIONAL DEVELOPMENT PROGRAM

(a) ~~The commissioner of education may provide programs designed to fit the individual needs and circumstances of adult students. Programs authorized under this section shall give priority to those adult persons with the lowest levels of literacy skills.~~

~~(b)(1) Fees for general educational development shall be $3.00 for a transcript.~~

~~(2)~~ The Secretary shall maintain an adult diploma program (ADP) ~~means~~, which shall be an assessment process administered by the ~~Vermont~~

~~department of education~~ Agency through which an ~~adult~~ individual who is at least 20 years old can receive a local high school diploma granted by one of the program's participating high schools.

~~(3) General~~ (b) The Secretary shall maintain a general educational development (GED) ~~means a testing program administered jointly by the Vermont department of education,~~ program, which it shall administer jointly with the GED testing service~~,~~ and approved local testing centers and through which an ~~adult~~ individual who is at least 16 years old and who is not enrolled in secondary school can receive a secondary school equivalency certificate based on successful completion of the GED tests ~~of general educational development~~.

(c) ~~Fees collected under this section shall be credited to a special fund established and managed pursuant to chapter 7, subchapter 5 of Title 32, and shall be available to the department to offset the costs of providing those services~~ The Secretary may provide additional programs designed to address the individual needs and circumstances of adult students, particularly students with the lowest levels of literacy skills.

* * * Flexible Pathways: Early College * * *

Sec. 8. 16 V.S.A. § 4011(e) is amended to read:

(e) Early college.

(1) ~~The commissioner~~ For each 12th grade Vermont student enrolled, the Secretary shall pay an amount equal to 87 percent of the base education amount to:

(A) the Vermont Academy of Science and Technology ~~for each Vermont resident, 12th grade student enrolled~~ (VAST); and

(B) an early college program other than the VAST program that is developed and operated or overseen by one of the Vermont State Colleges, by the University of Vermont, or by an accredited private postsecondary school located in Vermont and that is approved for operation by the Secretary; provided, however, when making a payment under this subdivision (B), the Secretary shall not pay more than the tuition charged by the institution.

(2) The Secretary shall make the payment pursuant to subdivision (1) of this subsection directly to the postsecondary institution, which shall accept the amount as full payment of the student's tuition.

(3) A student on whose behalf the Secretary makes a payment pursuant to subdivision (1) of this subsection:

(A) shall be enrolled as a full-time student in the institution receiving

the payment for the academic year for which payment is made;

(B) shall not be enrolled concurrently in a secondary school operated by the student's district of residence or to which the district pays tuition on the student's behalf; and

(C) shall not be included in the average daily membership of any school district for the academic year for which payment is made; provided, however, that if more than five percent of the 12th grade students residing in a district enroll in an early college program, then the district may include the number of students in excess of five percent in its average daily membership; but further provided that a 12th grade student enrolled in a college program shall be included in the percentage calculation only if, for the previous academic year, the student was enrolled in a school maintained by the district or was a student for whom the district paid tuition to a public or approved independent school.

(4) A postsecondary institution shall not accept a student into an early college program unless enrollment in an early college program was an element of the student's personalized learning plan.

Sec. 9. 16 V.S.A. § 1545(c) is amended to read:

(c) For any resident 12th grade student ~~attending the Vermont academy for science and technology~~ enrolled in the Vermont Academy of Science and Technology pursuant to subsection 4011(e) of this title or in another early college program pursuant to that subsection, the credits and grades earned shall, upon request of the student or the student's parent or guardian, be applied toward graduation requirements at the Vermont ~~high school which~~ secondary school that the student attended prior to enrolling in the ~~academy~~ early college program.

Sec. 10. 16 V.S.A. § 4011a is added to read:

§ 4011a. EARLY COLLEGE PROGRAM; REPORT

Notwithstanding 2 V.S.A. § 20(d), any postsecondary institution receiving funds pursuant to subsection 4011(e) of this title shall report annually in January to the Senate and House Committees on Education regarding the level of participation in the institution's early college program, the success in achieving the stated goals of the program to enhance secondary students' educational experiences and prepare them for success in college and beyond, and the specific outcomes for participating students relating to programmatic goals.

Sec. 11. EARLY COLLEGE; ENROLLMENT; CAPS; REPORTS; SUNSET

(a) A postsecondary institution receiving funds in connection with an early

college program pursuant to Sec. 8, 16 V.S.A. § 4011(e), of this act shall not enroll more than 18 Vermont students in the program in one academic year; provided, however, that:

(1) the Vermont Academy of Science and Technology shall not enroll more than 60 Vermont students in one academic year; and

(2) there shall be no limitations on enrollment in any early college programs offered by the Community College of Vermont.

(b) Annually in January of 2014 through 2017, the Vermont State Colleges and the University of Vermont shall report to the House and Senate Committees on Education regarding the expansion of the early college program in public and private postsecondary institutions as provided in Sec. 2 of this act, including data regarding actual enrollment, expected enrollment, unmet demand, if any, and marketing efforts for the purpose of considering whether it would be advisable to consider legislation repealing or amending the limit on the total number of students who may enroll.

(c) This section is repealed on July 1, 2017.

* * * Implementation and Transitional Provisions; Effective Dates * * *

Sec. 12. FLEXIBLE PATHWAYS IMPLEMENTATION PROJECT ON POSTSECONDARY PLANNING

To assist implementation of the Flexible Pathways Initiative established in Sec. 1 of this act, the Secretary of Education is authorized to enter into an agreement with the Vermont Student Assistance Corporation and one or more elementary or secondary schools to design and implement demonstration projects related to career planning and planning for postsecondary education and training.

Sec. 13. PERSONALIZED LEARNING PLAN PROCESS; IMPLEMENTATION; WORKING GROUP

(a) The process of developing and updating a personalized learning plan reflects the discussions and collaboration of a student and involved adults. When students engage in the personalized learning plan process, they assume an active role in the planning, assessment, and reflection required to identify developmentally appropriate academic, social, and career goals.

(b) On or before July 15, 2013, the Secretary of Education shall convene a working group to consist of teachers and principals of elementary and secondary schools, superintendents, and other interested parties to support implementation of the personalized learning plan process, particularly in those schools that do not already have a process in place. The working group shall

consider ways in which effective personalized learning plan processes enhance development of the evolving academic, career, social, transitional, and family engagement elements of a student's plan and shall identify best practices that can be replicated in other schools. The working group also shall consider ways in which the personalized learning that should occur in kindergarten through grade six can be used to reinforce and enhance the personalized learning plan process in grade seven through grade 12.

(c) By January 20, 2014, the working group shall develop and the Secretary shall publish on the Agency website guiding principles and practical tools for the personalized learning plan process and for developing personalized learning plans. The Secretary shall provide clarity regarding the differences in form, purpose, and function of personalized learning plans, educational support teams, plans created pursuant to section 504 of the federal Rehabilitation Act of 1973, and individualized education programs (IEPs). The Agency shall provide further guidance and support to schools as requested.

Sec. 14. EFFECTIVE DATE; IMPLEMENTATION DATES

(a) This act shall take effect on July 1, 2013.

(b)(1) By November 30, 2015, a school district shall ensure development of a personalized learning plan for:

(A) each student then in grade seven or nine; and

(B) for each student then in grade 11 or 12 who wishes to enroll in a dual enrollment pursuant to Sec. 1 of this act.

(2) By November 30, 2016, a school district:

(A) shall ensure development of a personalized learning plan for:

(i) each student then in grade seven or nine; and

(ii) each student then in grade 11 or 12 who wishes to enroll in a dual enrollment course; and

(B) shall ensure that the personalized learning plan process continues for enrolled students for whom plans were developed in previous years.

(3) By November 30, 2017 and by that date in each subsequent year, a school district:

(A) shall ensure development of a personalized learning plan for:

(i) each student then in grade seven; and

(ii) each student then in grade 11 or 12 who wishes to enroll in a dual enrollment course for whom a plan was not previously developed; and

(B) shall ensure that the personalized learning plan process continues for enrolled students for whom plans were developed in previous years.

(4) During academic years 2013–14 and 2014–15, a student who has not developed a personalized learning plan may enroll in a dual enrollment course pursuant to Sec. 1 of this act or an early college program pursuant to Sec. **8** of this act upon receiving prior approval of participation from the postsecondary institution and the principal or headmaster of the secondary school in which the student is enrolled. The principal or headmaster shall not withhold approval without reasonable justification. A student may request that the superintendent review a decision of the principal or headmaster to withhold approval. The superintendent's decision shall be final.

(5) Upon the recommendation of the working group created in Sec. 13 of this act, the Secretary of Education may extend by one year any of the implementation dates required under this subsection (b).

(c) Funds for new early college programs pursuant to Sec. 8, 16 V.S.A. § 4011(e)(1)(B), of this act shall be available to students beginning in the 2014–2015 academic year.

(Committee vote: 8-1-2)

(For text see Senate Journal 3/15/2013)

Rep. Ram of Burlington, for the Committee on **Ways and Means,** recommends the bill ought to pass when amended as recommended by the Committee on **Education** and when further amended as follows:

First: In Sec. 1, in 16 V.S.A. § 944, in subsection (f) (tuition and funding), in subdivision (2), before the period, by inserting the following: "; and further provided that, notwithstanding subdivision (b)(2) of this section, the cumulative amount to be paid by school districts under this subsection in any fiscal year shall not exceed the amount available to be paid by General Fund dollars in that year.

Second: In Sec. 10, 16 V.S.A. § 4011a, in the designation, after the word "REPORT" by adding the following "; APPROPRIATION" and also in § 4011a, by designating the existing language as subsection "(a)" and adding a new subsection to be subsection (b) to read:

(b) In the budget submitted annually to the General Assembly pursuant to 32 V.S.A. chapter 5, the Governor shall include the recommended appropriation for all early college programs to be funded pursuant to subsection 4011(e) of this title, including the VAST program, as a distinct amount.

(Committee Vote: 8-1-2)

Rep. Manwaring of Wilmington, for the Committee on **Appropriations,** recommends the bill ought to pass when amended as recommended by the Committee on **Education and Ways and Means.**

(Committee Vote: 9-2-0)

Favorable

H. 537

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

Rep. Higley of Lowell, for the Committee on **Government Operations,** recommends the bill ought to pass.

(Committee Vote: 11-0-0)

Information Notice

Michael Chernick is no longer accepting House Concurrent Resolution requests. All requests already submitted will be placed on the Concurrent Calendar for Thursday May 9, 2013.