House Calendar

Friday, May 10, 2013

122nd DAY OF THE BIENNIAL SESSION

House Convenes at 9:30 A.M.

TABLE OF CONTENTS

NOTICE CALENDAR

Favorable with Amendment

Senate Proposal of Amendment

Senate Proposal of Amendment to House Proposal of Amendment

Consent Calendar

ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 112

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

Amendment to be offered by Rep. Donahue of Northfield to H. 112

Rep. Donahue of Northfield moves to amend the bill 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) 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.

(2) Because both the U.S. Food and Drug Administration and the U.S. Congress do not prohibit labeling of food as natural when it is produced with genetic engineering, the State should prohibit labeling of food produced with genetic engineering as natural in order to prevent inadvertent consumer deception.

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

CHAPTER 82A. LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING AS NATURAL

§ 3041. PURPOSE

It is the purpose of this chapter to:

(1) Prevent consumer confusion and deception. Reduce and prevent consumer confusion and deception and promote the disclosure of factual information on food labels by prohibiting food produced with genetic engineering from being labeled as natural.

(2) 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.

(3) 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) "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.

(3) "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.

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

§ 3043. LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING AS NATURAL

(a) 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.

(b) This section 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 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) Any beverage that is subject to the provisions of Title 7.

(3) 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.

(4) 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.

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

§ 3045. 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 July 1, 2014.

Amendment to be offered by Rep. Johnson of Canaan to H. 112

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. law does not adequately provide for the labeling of processed food the production of which originates in a country other than the United States;

(2) The food health and safety laws in other countries are significantly inferior to those of the United States. As a result, food that originates from other countries may be adulterated or include contaminants that could cause significant human health effects.

(3) The State should require processed food originating outside the United States to be labeled with the country of origin in order to enable consumers to avoid the potential health risks associated with and resulting from the consumption of processed food that originates outside the United States.

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

CHAPTER 82A. COUNTRY OF ORIGIN LABELING OF FOOD

§ 3041. PURPOSE

It is the purpose of this chapter to promote food safety and protect public health by enabling consumers to avoid the potential risks associated with food produced and originating outside the United States

§ 3042. DEFINITIONS

As used in this chapter:

(1) "Agricultural commodity" means:

(A) Muscle cuts of beef, lamb, chicken, goat, and pork;

(B) Ground beef, ground lamb, ground chicken, ground goat, and ground pork;

(C) Perishable agricultural commodities;

(D) Peanuts;

(E) Macadamia nuts;

(F) Pecans;

(G) Ginseng.

(H) Farm-raised fish and shellfish, including fillets, steaks, nuggets, and any other flesh; and

(J) Wild fish and shellfish, including fillets, steaks, nuggets, and any other flesh.

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

(3) "Origin in the United States" means:

(A) For beef, pork, lamb, chicken and goat, from animals:

(i) exclusively born, raised, and slaughtered in the United States;

(ii) born and raised in Alaska or Hawaii and transported for a period of not more than 60 days through Canada to the United States and slaughtered in the United States; or

(iii) present in the United States on or before July 15, 2008, and once present in the United States, that remained continuously in the United States.

(B) For perishable agricultural commodities, peanuts, ginseng, pecans, and macadamia nuts, from products produced in the United States.

(C) For farm-raised fish and shellfish, from fish or shellfish hatched, raised, harvested, and processed in the United States, and that has not undergone a substantial transformation outside the United States.

(D) For wild-fish and shellfish, from fish or shellfish harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel, and that has not undergone a substantial transformation outside the United States.

(4) "Perishable agricultural commodity" means fresh and frozen fruits and vegetables of every kind and character that have not been manufactured into processed foods.

(5) "Processed food" means any food, other than an 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.

§ 3043. COUNTRY OF ORIGIN LABELING OF PROCESSED FOOD

(a) A food sold at retail in the State shall be labeled with its country of origin if the country of origin is other than the United States.

(b) A food required to be labeled under this section shall be labeled as follows:

(1) for agricultural commodities, the agricultural commodity shall be labeled according to the requirement of 7 C.F.R. parts 60 and 65.

(2) for processed food, the country of origin of the processed food shall

be labeled on the front or back of the package offered for retail sale, with the clear and conspicuous words, "country of origin" and the country from which the food originated.

(c) 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. RETAILER LIABILITY

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.

§ 3046. SEVERABILITY

If any provision of this chapter 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 chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter 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 July 1, 2015.

S. 20

An act relating to increasing the statute of limitations for certain sex offenses against children

S. 129

An act relating to workers' compensation liens

Amendment to be offered by Reps. Stevens of Shoreham and Marcotte of Coventry to S. 129

In Sec. 19, workers' compensation premiums, by adding a sentence at the end of the section to read: The Department of Financial Regulation shall report its findings and any recommendations to the House Committees on Agriculture and Forest Products and on Commerce and Economic Development and the Senate Committees on Agriculture and on Finance on or before January 15, 2014.

Amendment to be offered by Reps. Pearson of Burlington, Moran of Wardsboro, McFaun of Barre Town, and Poirier of Barre City to S. 129

By adding Sec. 16a to read:

Sec. 16a. 21 V.S.A. § 1338 is amended to read:

§ 1338. WEEKLY BENEFITS

* * *

(f) The maximum weekly benefit amount shall be $425.00. When the ~~state unemployment compensation fund has a positive balance and all advances made to the state unemployment compensation fund pursuant to Title XII of the Social Security Act have been repaid as of December 31 of the last completed calendar year, on the first day of the first calendar week of July,~~ federal unemployment tax credit has not been reduced due to borrowing, the maximum weekly benefit amount for all new claims shall be adjusted by a percentage equal to the percentage change during the preceding calendar year in the state average weekly wage as determined by subsection (g) of this section and shall thereafter be similarly readjusted for all claims on the first day of the first calendar week of July. When the unemployment contribution rate schedule established by subsection 1326(e) of this title is at schedule III, the maximum weekly benefit amount shall be adjusted on the first day of the first calendar week in July to an amount equal to 57 percent of the state annual average weekly wage as determined by subsection (g) of this section. The maximum weekly benefit amount shall not increase in any year that advances made to the state unemployment compensation fund pursuant to Title XII of the Social Security Act, as amended, remain unpaid.

* * *

Favorable with Amendment

S. 156

An act relating to home visiting standards

Rep. Mrowicki of Putney, for the Committee on **Human Services,** 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. PURPOSE

In recognition of the significant positive contribution that home visiting services make with regard to enhancing family stability, family health, and child development; fostering parenting skills; reducing child maltreatment; promoting social and emotional health; improving school readiness; and promoting economic self-sufficiency, the General Assembly seeks to ensure that home visiting services to Vermonters are of the highest quality by establishing standards for their administration, delivery, and utilization review that foster the contributions of diverse practice models.

Sec. 2. RULEMAKING

(a) As used in this section, "home visiting services" means regular, voluntary visits with a pregnant woman or a family with a young child for the purpose of providing a continuum of services that improves maternal and child health; prevents child injuries, abuse, or maltreatment; promotes social and emotional health; improves school readiness; reduces crime or domestic violence; improves economic self-sufficiency; or enhances coordination and referrals among community resources and supports, such as food, housing, and transportation.

(b) The Secretary of Human Services, in consultation with interested providers and other stakeholders, shall develop rules establishing standards for the delivery of home visiting services throughout Vermont to be adopted by the Secretary on or before July 1, 2014.

(c) In developing standards for the delivery of home visiting services, the Secretary shall be guided by best family-centered and family-directed practices and evidence-based models. The standards adopted by rule shall address the following:

(1) creation of a system of home visiting services that can respond to diverse family needs;

(2) service provider training and supervision;

(3) a structure for coordinating services at the state and local levels with respect to outreach efforts, family intake methods, referrals, and transitions;

(4) access to supports, resources, and information to address short- and long-term family needs;

(5) criteria identifying which home visiting models and home visiting programs are eligible for funding;

(6) the contributions of organizations that use trained volunteers; and

(7) performance evaluation and quality improvement measures, including mechanisms for tracking funding, utilization, and outcomes for families and children at the state, community, and program levels.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 10-0-1)

(For text see Senate Journal 3/21/2013)

S. 157

An act relating to modifying the requirements for hemp production in the State of Vermont

Rep. Zagar of Barnard, for the Committee on **Agriculture and Forest Products,** 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. 6 V.S.A. chapter 34 is amended to read:

CHAPTER 34. ~~INDUSTRIAL~~ HEMP

§ 561. FINDINGS; INTENT

(a) Findings.

(1) Hemp has been continuously cultivated for millennia, is accepted and available in the global marketplace, and has numerous beneficial, practical, and economic uses, including: high-strength fiber, textiles, clothing, bio-fuel, paper products, protein-rich food containing essential fatty acids and amino acids, biodegradable plastics, resins, nontoxic medicinal and cosmetic products, construction materials, rope, and value-added crafts.

(2) The many agricultural and environmental beneficial uses of hemp include: livestock feed and bedding, stream buffering, erosion control, water and soil purification, and weed control.

(3) The hemp plant, an annual herbaceous plant with a long slender stem ranging in height from four to 15 feet and a stem diameter of one-quarter to

three-quarters of an inch is morphologically distinctive and readily identifiable as an agricultural crop grown for the cultivation and harvesting of its fiber and seed.

(4) Hemp cultivation will enable the State of Vermont to accelerate economic growth and job creation, promote environmental stewardship, and expand export market opportunities.

(b) Purpose. The intent of this ~~act~~ chapter is to establish policy and procedures for growing ~~industrial~~ hemp in Vermont so that farmers and other businesses in the Vermont agricultural industry can take advantage of this market opportunity ~~when federal regulations permit~~.

§ 562. DEFINITIONS

As used in this chapter:

(1) ~~"Grower" means any~~ a ~~person or business entity licensed under this chapter by the secretary as an industrial hemp grower.~~ [Deleted.]

(2) "Hemp products" means all products made from ~~industrial~~ hemp, including ~~but not limited to~~ cloth, cordage, fiber, food, fuel, paint, paper, ~~particle board~~ construction materials, plastics, seed, seed meal, seed oil, and certified seed for cultivation ~~if such seeds originate from industrial hemp varieties~~.

(3) ~~"Industrial hemp" means varieties of the plant cannabis sativa having no more than 0.3 percent tetrahydrocannabinol, whether growing or not, that are cultivated or possessed by a licensed grower in compliance with this chapter.~~ "Hemp" means the plant Cannabis sativa L. and any part of the plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(4) "Secretary" means the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets.

§ 563. ~~INDUSTRIAL~~ HEMP: AN AGRICULTURAL PRODUCT

~~Industrial hemp~~ Hemp is an agricultural product which may be grown as a crop, produced, possessed, and commercially traded in Vermont pursuant to the provisions of this chapter. The cultivation of hemp shall be subject to and comply with the requirements of the accepted agricultural practices adopted under section 4810 of this title.

§ 564. ~~LICENSING; APPLICATION~~ REGISTRATION; ADMINISTRATION

~~(a) Any person or business entity wishing to engage in the production of~~

~~industrial hemp must be licensed as an industrial hemp grower by the secretary. A license from the secretary shall authorize industrial hemp production only at a site or sites specified by the license.~~

~~(b) A license from the secretary shall be valid for 24 months from the date of issuance and may be renewed but shall not be transferable.~~

~~(c)(1) The secretary shall obtain from the Vermont criminal information center a record of convictions in Vermont and other jurisdictions for any applicant for a license who has given written authorization on the application form. The secretary shall file a user's agreement with the center. The user's agreement shall require the secretary to comply with all statutes, rules, and policies regulating the release of criminal conviction records and the protection of individual privacy. Conviction records provided to the secretary under this section are confidential and shall be used only to determine the applicant's eligibility for licensure.~~

~~(2) A person who has been convicted in Vermont of a felony offense or a comparable offense in another jurisdiction shall not be eligible for a license under this chapter.~~

~~(d) When applying for a license from the secretary, an applicant shall provide information sufficient to demonstrate to the secretary that the applicant intends to grow and is capable of growing industrial hemp in accordance with this chapter, which at a minimum shall include:~~

~~(1) Filing with the secretary a set of classifiable fingerprints and written authorization permitting the Vermont criminal information center to generate a record of convictions as required by subdivision (c)(1) of this section.~~

~~(2) Filing with the secretary documentation certifying that the seeds obtained for planting are of a type and variety compliant with the maximum concentration of tetrahydrocannabinol set forth in subdivision 560(3) of this chapter.~~

~~(3) Filing with the secretary the location and acreage of all parcels sown and other field reference information as may be required by the secretary.~~

~~(e) To qualify for a license from the secretary, an applicant shall demonstrate to the satisfaction of the secretary that the applicant has adopted methods to ensure the legal production of industrial hemp, which at a minimum shall include:~~

~~(1) Ensuring that all parts of the industrial hemp plant that do not enter the stream of commerce as hemp products are destroyed, incorporated into the soil, or otherwise properly disposed of.~~

~~(2) Maintaining records that reflect compliance with the provisions of~~

~~this chapter and with all other state laws regulating the planting and cultivation of industrial hemp.~~

~~(f) Every grower shall maintain all production and sales records for at least three years.~~

~~(g) Every grower shall allow industrial hemp crops, throughout sowing, growing season, harvest, storage, and processing, to be inspected by and at the discretion of the secretary or his or her designee.~~

(a) A person who intends to grow hemp shall register with the Secretary and submit on a form provided by the Secretary the following:

(1) the name and address of the person;

(2) a statement that the seeds obtained for planting are of a type and variety that do not exceed the maximum concentration of tetrahydrocannabinol set forth in subdivision 562(3) of this title; and

(3) the location and acreage of all parcels sown and other field reference information as may be required by the Secretary.

(b) The form provided by the Secretary pursuant to subsection (a) of this section shall include a notice statement that, until current federal law is amended to provide otherwise:

(A) cultivation and possession of hemp in Vermont is a violation of the federal Controlled Substances Act; and

(B) federal prosecution for growing hemp in violation of federal law may include criminal penalties, forfeiture of property, and loss of access to federal agricultural benefits, including agricultural loans, conservation programs, and insurance programs.

(c) A person registered with the Secretary pursuant to this section shall allow hemp crops, throughout sowing, growing season, harvest, storage, and processing, to be inspected and tested by and at the discretion of the Secretary or his or her designee.

(d) The Secretary may assess an annual registration fee of $25.00 for the performance of his or her duties under this chapter.

§ 565. ~~REVOCATION AND SUSPENSION OF LICENSE;~~

~~ENFORCEMENT~~

~~(a) The secretary may deny, suspend, revoke, or refuse to renew the license of any grower who:~~

~~(1) Makes a false statement or misrepresentation on an application for a~~

~~license or renewal of a license.~~

~~(2) Fails to comply with or violates any provision of this chapter or any rule adopted under it.~~

~~(b) Revocation or suspension of a license may be in addition to any civil or criminal penalties imposed on a grower for a violation of any other state law.~~ [Repealed.]

§ 566. RULEMAKING AUTHORITY

The ~~secretary shall~~ Secretary may adopt rules to provide for the implementation of this chapter, which ~~shall~~ may include rules to ~~allow~~ require ~~for the industrial~~ hemp to be tested during growth for tetrahydrocannabinol levels and to ~~allow for~~ require inspection and supervision of ~~the industrial~~ hemp during sowing, growing season, harvest, storage, and processing. The Secretary shall not adopt under this or any other section a rule that would prohibit a person to grow hemp based on the legal status of hemp under federal law.

Sec. 2. 18 V.S.A. § 4201(15) is amended to read:

(15) "Marijuana" means any plant material of the genus ~~cannabis~~ Cannabis or any preparation, compound, or mixture thereof except:

(A) sterilized seeds of the plant ~~and~~;

(B) fiber produced from the stalks~~,~~; or

(C) hemp or hemp products, as defined in 6 V.S.A. § 562.

Sec. 3. 18 V.S.A. § 4241(b) is amended to read:

(b) This subchapter shall not apply to any property used or intended for use in an offense involving two ounces or less of marijuana or in connection with hemp or hemp products as defined in 6 V.S.A. § 562.

Sec. 4. 2008 Acts and Resolves No. 212, Sec. 3 is amended to read:

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage~~, except that the secretary shall not issue a license to grow industrial hemp pursuant to Chapter 34 of Title 6 until the United States Congress amends the definition of "marihuana" for the purposes of the Controlled Substances Act (21 U.S.C. 802(16)) or the United States drug enforcement agency amends its interpretation of the existing definition in a manner affording an applicant a reasonable expectation that a permit to grow industrial hemp may be issued in accordance with part C of chapter 13 of Title 21 of the United States Code Annotated, or the drug enforcement agency takes affirmative steps to approve or deny a permit sought~~

~~by the holder of a license to grow industrial hemp in another state~~.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 11-0-0)

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

Rep. Clarkson of Woodstock, for the Committee on **Ways and Means,** recommends the bill ought to pass when amended as recommended by the Committee on **Agriculture and Forest Products.**

(Committee Vote: 9-1-1)

Senate Proposal of Amendment

H. 299

An act relating to enhancing consumer protection provisions for propane refunds, unsolicited demands for payment, and failure to comply with civil investigations

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 4, in 9 V.S.A. § 4402(1), by striking out subdivision (B) in its entirety and inserting in lieu thereof a new subdivision (B) to read as follows:

(B) "Solicitation" does not include an offer to renew an existing agreement for the purchase of goods or services, provided that the offer specifies the date on which the existing agreement expires.

Second: By striking out Secs. 6–10 in their entirety and inserting in lieu thereof new Sec. 6 and Sec. 7 to read as follows:

Sec. 6. 9 V.S.A. chapter 120 is added to read:

CHAPTER 120. BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

§ 4195. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE

(a) The General Assembly finds that:

(1) Vermont is striving to build an entrepreneurial and knowledge based economy. Attracting and nurturing small and medium sized internet technology ("IT") and other knowledge based companies is an important part of this effort and will be beneficial to Vermont's future.

(2) Patents are essential to encouraging innovation, especially in the IT and knowledge based fields. The protections afforded by the federal patent system create an incentive to invest in research and innovation, which spurs

economic growth. Patent holders have every right to enforce their patents when they are infringed, and patent enforcement litigation is necessary to protect intellectual property.

(3) The General Assembly does not wish to interfere with the good faith enforcement of patents or good faith patent litigation. The General Assembly also recognizes that Vermont is preempted from passing any law that conflicts with federal patent law.

(4) Patent litigation can be technical, complex, and expensive. The expense of patent litigation, which may cost hundreds of thousands of dollars or more, can be a significant burden on small and medium sized companies. Vermont wishes to help its businesses avoid these costs by encouraging the most efficient resolution of patent infringement claims without conflicting with federal law.

(5) In order for Vermont companies to be able to respond promptly and efficiently to patent infringement assertions against them, it is necessary that they receive specific information regarding how their product, service, or technology may have infringed the patent at issue. Receiving such information at an early stage will facilitate the resolution of claims and lessen the burden of potential litigation on Vermont companies.

(6) Abusive patent litigation, and especially the assertion of bad faith infringement claims, can harm Vermont companies. A business that receives a letter asserting such claims faces the threat of expensive and protracted litigation and may feel that it has no choice but to settle and to pay a licensing fee, even if the claim is meritless. This is especially so for small and medium sized companies and nonprofits that lack the resources to investigate and defend themselves against infringement claims.

(7) Not only do bad faith patent infringement claims impose a significant burden on individual Vermont businesses, they also undermine Vermont's efforts to attract and nurture small and medium sized IT and other knowledge based companies. Funds used to avoid the threat of bad faith litigation are no longer available to invest, produce new products, expand, or hire new workers, thereby harming Vermont's economy.

(b) Through this narrowly focused act, the General Assembly seeks to facilitate the efficient and prompt resolution of patent infringement claims, protect Vermont businesses from abusive and bad faith assertions of patent infringement, and build Vermont's economy, while at the same time respecting federal law and being careful to not interfere with legitimate patent enforcement actions.

§ 4196. DEFINITIONS

In this chapter:

(1) "Demand letter" means a letter, e-mail, or other communication asserting or claiming that the target has engaged in patent infringement.

(2) "Target" means a Vermont person:

(A) who has received a demand letter or against whom an assertion or allegation of patent infringement has been made;

(B) who has been threatened with litigation or against whom a lawsuit has been filed alleging patent infringement; or

(C) whose customers have received a demand letter asserting that the person's product, service, or technology has infringed a patent.

§ 4197. BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

(a) A person shall not make a bad faith assertion of patent infringement.

(b) A court may consider the following factors as evidence that a person has made a bad faith assertion of patent infringement:

(1) The demand letter does not contain the following information:

(A) the patent number;

(B) the name and address of the patent owner or owners and assignee or assignees, if any; and

(C) factual allegations concerning the specific areas in which the target's products, services, and technology infringe the patent or are covered by the claims in the patent.

(2) Prior to sending the demand letter, the person fails to conduct an analysis comparing the claims in the patent to the target's products, services, and technology, or such an analysis was done but does not identify specific areas in which the products, services, and technology are covered by the claims in the patent.

(3) The demand letter lacks the information described in subdivision (1) of this subsection, the target requests the information, and the person fails to provide the information within a reasonable period of time.

(4) The demand letter demands payment of a license fee or response within an unreasonably short period of time.

(5) The person offers to license the patent for an amount that is not based on a reasonable estimate of the value of the license.

(6) The claim or assertion of patent infringement is meritless, and the

person knew, or should have known, that the claim or assertion is meritless.

(7) The claim or assertion of patent infringement is deceptive.

(8) The person or its subsidiaries or affiliates have previously filed or threatened to file one or more lawsuits based on the same or similar claim of patent infringement and:

(A) those threats or lawsuits lacked the information described in subdivision (1) of this subsection; or

(B) the person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be meritless.

(9) Any other factor the court finds relevant.

(c) A court may consider the following factors as evidence that a person has not made a bad faith assertion of patent infringement:

(1) The demand letter contains the information described in subdivision (b)(1) of this section.

(2) Where the demand letter lacks the information described in subdivision (b)(1) of this section and the target requests the information, the person provides the information within a reasonable period of time.

(3) The person engages in a good faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy.

(4) The person makes a substantial investment in the use of the patent or in the production or sale of a product or item covered by the patent.

(5) The person is:

(A) the inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee; or

(B) an institution of higher education or a technology transfer organization owned or affiliated with an institution of higher education.

(6) The person has:

(A) demonstrated good faith business practices in previous efforts to enforce the patent, or a substantially similar patent; or

(B) successfully enforced the patent, or a substantially similar patent, through litigation.

(7) Any other factor the court finds relevant.

§ 4198. BOND

Upon motion by a target and a finding by the court that a target has established a reasonable likelihood that a person has made a bad faith assertion of patent infringement in violation of this chapter, the court shall require the person to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim and amounts reasonably likely to be recovered under § 4199(b) of this chapter, conditioned upon payment of any amounts finally determined to be due to the target. A hearing shall be held if either party so requests. A bond ordered pursuant to this section shall not exceed $250,000.00. The court may waive the bond requirement if it finds the person has available assets equal to the amount of the proposed bond or for other good cause shown.

§ 4199. ENFORCEMENT; REMEDIES; DAMAGES

(a) The Attorney General shall have the same authority under this chapter to make rules, conduct civil investigations, bring civil actions, and enter into assurances of discontinuance as provided under chapter 63 of this title. In an action brought by the Attorney General under this chapter the court may award or impose any relief available under chapter 63 of this title.

(b) A target of conduct involving assertions of patent infringement, or a person aggrieved by a violation of this chapter or by a violation of rules adopted under this chapter, may bring an action in superior court. A court

may award the following remedies to a plaintiff who prevails in an action brought pursuant to this subsection:

(1) equitable relief;

(2) damages;

(3) costs and fees, including reasonable attorney's fees; and

(4) exemplary damages in an amount equal to $50,000.00 or three times the total of damages, costs, and fees, whichever is greater.

(c) This chapter shall not be construed to limit rights and remedies available to the State of Vermont or to any person under any other law and shall not alter or restrict the Attorney General's authority under chapter 63 of this title with regard to conduct involving assertions of patent infringement.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

And that after passage the title of the bill be amended to read:

An act relating to amending consumer protection provisions for propane refunds, unsolicited demands for payment, bad faith assertions of patent

infringement and failure to comply with civil investigations.

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

H. 395

An act relating to the establishment of the Vermont Clean Energy Loan Fund

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 1, in 10 V.S.A. § 280dd(c)(1), by striking out "traditional"

Second: In Sec. 1, in 10 V.S.A. § 280dd, by adding subsection (d) as follows:

(d) For all sustainable energy loans, the Authority shall maintain records on the projected reductions in greenhouse gas emissions and, for energy efficiency loans, the projected energy savings from the financed improvements and shall provide data on the projected greenhouse gas emissions reductions and projected energy savings to the Department of Public Service, the Public Service Board, and the Agency of Natural Resources on request. The methods used for calculating and reporting this data that shall be the same methods used in programs delivered under 30 V.S.A. § 209(d) and (e). The data provided shall be used for the purpose of tracking progress toward the greenhouse gas reduction goals of section 578 of this title and the building efficiency goals of section 581 of this title.

Third: In Sec. 6, in 10 V.S.A. § 213(b), in the first sentence, after the phrase "each of whom shall serve as" by striking out "a voting" and inserting in lieu thereof an

Fourth: By adding a new section to be numbered Sec. 8a to read as follows:

Sec. 8a. VERMONT STATE TREASURER; CREDIT FACILITY FOR RESIDENTIAL ENERGY EFFICIENCY LOANS

(a) Notwithstanding any other provision of law to the contrary, the Vermont State Treasurer, working in collaboration with the Vermont Housing Finance Agency, the entities appointed to deliver energy efficiency under 30 V.S.A. § 209(d)(2), NeighborWorks of Western Vermont, and other appropriate parties, shall have the authority to establish a credit facility of up to $6,500,000.00, on terms acceptable to the Treasurer.

(b) The credit facility described in subsection (a) of this section shall be used for the purpose of financing energy efficiency improvements throughout Vermont for dwellings the owners of which demonstrate that they are credit-worthy and have a need for access to financing to make energy efficiency improvements in their dwellings. For the purpose of this section, "dwelling" means a residential structure that contains one or more housing units or that

part of a structure that contains one or more residential housing units.

(c) The Treasurer shall take all reasonable steps to minimize the administrative costs of the financing programs supported by the facility described in subsection (a) of this section. On or before December 15, 2013, the Treasurer shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committees on Economic Development, Housing and General Affairs and on Finance detailing the steps taken to implement this subsection.

(d) Entities providing financing supported by the credit facility described in subsection (a) of this section shall:

(1) With respect to each dwelling that seeks financing supported by the facility:

(A) evaluate energy efficiency improvements on a whole-building basis and provide the list of potential improvements resulting from this evaluation to the owner; and

(B) provide information to the owner on other incentives or financial support available for the improvements; and

(2) With respect to each dwelling that receives financing supported by the facility, maintain records on the projected energy savings and projected reductions in greenhouse gas emissions from the financed energy efficiency improvements and provide data on the number of dwellings served, projected energy saved, and projected greenhouse gas emission reductions to the Department of Public Service, the Public Service Board, and the Agency of Natural Resources on request. The methods used for calculating and reporting this data that shall be the same methods used in programs delivered under 30 V.S.A. § 209(d) and (e). The data provided shall be used for the purpose of tracking progress toward the greenhouse gas reduction goals of 10 V.S.A. § 578 and the building efficiency goals of 10 V.S.A. § 581.

Fifth: By adding a new section to be numbered 8b to read as follows:

Sec. 8b. VERMONT CLEAN ENERGY JOBS INITIATIVE

The following shall be known collectively as the Vermont Clean Energy Jobs Initiative: the Vermont Sustainable Energy Loan Fund in Sec. 1 of this act; the Energy Efficiency Loan Guarantee Program under Sec. 2 of this act; the residential energy efficiency loans under Sec. 8a of this act; property-assessed clean energy districts under 24 V.S.A. chapter 87, subchapter 2; the delivery of energy efficiency services by entities appointed under 30 V.S.A. § 209(d)(2); the Clean Energy Development Fund under 30 V.S.A. § 8015; and the Home Weatherization Assistance Program under 33 V.S.A. chapter 25.

(For text see House Journal 4/5/2013)

H. 522

An act relating to strengthening Vermont's response to opioid addiction and methamphetamine abuse

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

* * * Legislative Intent * * *

Sec. 1. LEGISLATIVE INTENT

(a) This act is intended to provide a comprehensive approach to combating opioid addiction and methamphetamine abuse in Vermont through strategies that address prevention, treatment, and recovery, and increase community safety by reducing drug-related crime.

(b) It is the intent of the General Assembly that the initiatives described in this act should be integrated to the extent possible with the Blueprint for Health and Vermont's health care system and health care reform initiatives.

* * * Preventing Abuse of Prescription Drugs * * *

Sec. 2. 18 V.S.A. § 4201 is amended to read:

§ 4201. DEFINITIONS

As used in this chapter, unless the context otherwise requires:

* * *

(26) "Prescription" means an order for a regulated drug made by a physician, physician assistant, advanced practice registered nurse, dentist, or veterinarian licensed under this chapter to prescribe such a drug which shall be in writing except as otherwise specified ~~herein~~ in this subdivision. Prescriptions for such drugs shall be made to the order of an individual patient, dated as of the day of issue and signed by the prescriber. The prescription shall bear the full name ~~and~~, address, and date of birth of the patient, or if the patient is an animal, the name and address of the owner of the animal and the species of the animal. Such prescription shall also bear the full name, address, and registry number of the prescriber and, unless electronically prescribed, shall be written with ink, indelible pencil, or typewriter; if typewritten, it shall be signed by the ~~physician~~ prescriber. A written or typewritten prescription for a controlled substance, as defined in 21 C.F.R. Part 1308, shall contain the quantity of the drug written both in numeric and word form.

* * *

Sec. 2a. 18 V.S.A. § 4202(d) is amended to read:

(d) The regulations adopted by the ~~board of health~~ Board of Health under section 4201 of this title for the purpose of determining those drugs defined under that section may be adopted only after prior written notice to the ~~board of pharmacy~~ Board of Pharmacy and the ~~board of medical practice~~ Board of Medical Practice and after the ~~board of pharmacy~~ Board of Pharmacy and the ~~board of medical practice~~ Board of Medical Practice have had an opportunity to advise the ~~board of health~~ Board of Health with respect to the form and substance of those regulations or amendments and to recommend revisions thereof, except with respect to emergency rules adopted pursuant to 3 V.S.A. § 844, which may be adopted without notice by the Commissioner of Health.

Sec. 3. 18 V.S.A. § 4215b is added to read:

§ 4215b. IDENTIFICATION

Only a patient for whom a prescription was written, the owner of an animal for which a prescription was written, or a bona fide representative of the patient or animal owner, as defined by the Board of Pharmacy by rule after consultation with the Commissioner of Health, may pick up a prescription for a Schedule II, III, or IV controlled substance. Prior to dispensing a prescription for a Schedule II, III, or IV controlled substance, a pharmacist shall require the individual receiving the drug to provide a signature and show valid and current government-issued photographic identification as evidence that the individual is the patient for whom the prescription was written, the owner of the animal for which the prescription was written, or the bona fide representative of the patient or animal owner. If the individual does not have valid, current government-issued photographic identification, the pharmacist may request alternative evidence of the individual's identity, as appropriate.

Sec. 3a. BOARD OF PHARMACY; RULEMAKING

The Board of Pharmacy shall adopt rules pursuant to 3 V.S.A. chapter 25 to define which persons shall be considered bona fide representatives of a patient or animal owner for the purposes of picking up a prescription for a Schedule II, III, or IV controlled substance pursuant to 18 V.S.A. § 4215b.

Sec. 4. 18 V.S.A. § 4218 is amended to read:

§ 4218. ENFORCEMENT

* * *

(d) Nothing in this section shall authorize the ~~department of public safety~~ Department of Public Safety and other authorities described in subsection (a) of this section to have access to VPMS ~~(Vermont prescription monitoring system)~~ (Vermont Prescription Monitoring System) created pursuant to chapter

84A of this title, except as provided in that chapter.

(e) The Department of Public Safety, in consultation with representatives of licensed Vermont pharmacies, shall adopt standard operating guidelines for accessing pharmacy records through the authority granted in this section. Any person authorized to access pharmacy records pursuant to subsection (a) of this section shall follow the Department of Public Safety's guidelines. These guidelines shall be a public record.

Sec. 5. DEPARTMENT OF PUBLIC SAFETY; REPORTING STANDARD OPERATING GUIDELINES

On or before December 15, 2013, the Commissioner of Public Safety shall submit to the House and Senate Committees on Judiciary, the House Committees on Human Services and on Health Care, and the Senate Committee on Health and Welfare the Department's written standard operating guidelines used to access pharmacy records at individual pharmacies pursuant to 18 V.S.A. § 4218. Subsequently, if the guidelines are substantively amended by the Department, it shall submit the amended guidelines to the same committees as soon as practicable.

Sec. 6. 18 V.S.A. § 4282 is amended to read:

§ 4282. DEFINITIONS

As used in this chapter:

* * *

(3) ~~"Trained law enforcement officer" shall include any officer designated by the department of public safety who has completed a training program established by rule by the department of health, which is designed to ensure that officers have the training necessary to use responsibly and properly any information that they receive from VPMS.~~

~~(4)~~ "VPMS" shall mean the Vermont prescription monitoring system established under this chapter.

(4) "Delegate" means an individual employed by a health care provider or pharmacy or in the Office of the Chief Medical Examiner and authorized by a health care provider or dispenser or by the Chief Medical Examiner to request information from the VPMS relating to a bona fide current patient of the health care provider or dispenser or to a bona fide investigation or inquiry into an individual's death.

(5) "Department" means the Department of Health.

(6) "Drug diversion investigator" means an employee of the Department of Public Safety whose primary duties include investigations involving

violations of laws regarding prescription drugs or the diversion of prescribed controlled substances, and who has completed a training program established by the Department of Health by rule that is designed to ensure that officers have the training necessary to use responsibly and properly any information that they receive from the VPMS.

(7) "Evidence-based" means based on criteria and guidelines that reflect high-quality, cost-effective care. The methodology used to determine such guidelines shall meet recognized standards for systematic evaluation of all available research and shall be free from conflicts of interest. Consideration of the best available scientific evidence does not preclude consideration of experimental or investigational treatment or services under a clinical investigation approved by an institutional review board.

Sec. 7. 18 V.S.A. § 4283 is amended to read:

§ 4283. CREATION; IMPLEMENTATION

(a) ~~Contingent upon the receipt of funding, the department may establish~~ The Department shall maintain an electronic database and reporting system for monitoring Schedules II, III, and IV controlled substances, as defined in 21 C.F.R. Part 1308, as amended and as may be amended, that are dispensed within the ~~state~~ State of Vermont by a health care provider or dispenser or dispensed to an address within the ~~state~~ State by a pharmacy licensed by the Vermont ~~board of pharmacy~~ Board of Pharmacy.

* * *

(e) It is not the intention of the ~~department~~ Department that a health care provider or a dispenser shall have to pay a fee or tax or purchase hardware or proprietary software required by the ~~department~~ Department specifically for the use, establishment, maintenance, or transmission of the data. The ~~department~~ Department shall seek grant funds and take any other action within its financial capability to minimize any cost impact to health care providers and dispensers.

* * *

Sec. 8. 18 V.S.A. § 4284 is amended to read:

§ 4284. PROTECTION AND DISCLOSURE OF INFORMATION

(a) The data collected pursuant to this chapter and all related information and records shall be confidential, except as provided in this chapter, and shall not be subject to ~~public records law~~ the Public Records Act. The ~~department~~ Department shall maintain procedures to protect patient privacy, ensure the confidentiality of patient information collected, recorded, transmitted, and maintained, and ensure that information is not disclosed to any person except

as provided in this section.

(b)(1) The ~~department shall be authorized to provide data to~~ Department shall provide only the following persons with access to query the VPMS:

~~(1) A patient or that person's health care provider, or both, when VPMS reveals that a patient may be receiving more than a therapeutic amount of one or more regulated substances.~~

~~(2)~~(A) A health care provider ~~or~~, dispenser, or delegate who ~~requests information~~ is registered with the VPMS and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient.

(B) Personnel or contractors, as necessary for establishing and maintaining the VPMS.

(C) The Medical Director of the Department of Vermont Health Access, for the purposes of Medicaid quality assurance, utilization, and federal monitoring requirements with respect to Medicaid recipients for whom a Medicaid claim for a Schedule II, III, or IV controlled substance has been submitted.

(D) A medical examiner or delegate from the Office of the Chief Medical Examiner, for the purpose of conducting an investigation or inquiry into the cause, manner, and circumstances of an individual's death.

(E) A health care provider or medical examiner licensed to practice in another state, to the extent necessary to provide appropriate medical care to a Vermont resident or to investigate the death of a Vermont resident.

(2) The Department shall provide reports of data available to the Department through the VPMS only to the following persons:

(A) A patient or that person's health care provider, or both, when VPMS reveals that a patient may be receiving more than a therapeutic amount of one or more regulated substances.

~~(3)~~(B) A designated representative of a board responsible for the licensure, regulation, or discipline of health care providers or dispensers pursuant to a bona fide specific investigation.

~~(4)~~(C) A patient for whom a prescription is written, insofar as the information relates to that patient.

~~(5)~~(D) The relevant occupational licensing or certification authority if the ~~commissioner~~ Commissioner reasonably suspects fraudulent or illegal activity by a health care provider. The licensing or certification authority may report the data that are the evidence for the suspected fraudulent or illegal

activity to a ~~trained law enforcement officer~~ drug diversion investigator.

~~(6)~~(E)(i) The ~~commissioner of public safety~~ Commissioner of Public Safety, personally, or the Deputy Commissioner of Public Safety, personally, if the ~~commissioner of health~~ Commissioner of Health, personally, or a Deputy Commissioner of Health, personally, makes the disclosure~~,~~ and has consulted with at least one of the patient's health care providers, ~~and believes that~~ when the disclosure is necessary to avert a serious and imminent threat to a person or the public.

(ii) The Commissioner of Public Safety, personally, or the Deputy Commissioner of Public Safety, personally, when he or she requests data from the Commissioner of Health, and the Commissioner of Health believes, after consultation with at least one of the patient's health care providers, that disclosure is necessary to avert a serious and imminent threat to a person or the public.

(iii) The Commissioner or Deputy Commissioner of Public Safety may disclose such data received pursuant to this subdivision (E) as is necessary, in his or her discretion, to avert the serious and imminent threat.

~~(7) Personnel or contractors, as necessary for establishing and maintaining the VPMS.~~

(F) A prescription monitoring system or similar entity in another state pursuant to a reciprocal agreement to share prescription monitoring information with the Vermont Department of Health as described in section 4288 of this title.

(c) A person who receives data or a report from VPMS or from the ~~department~~ Department shall not share that data or report with any other person or entity not eligible to receive that data pursuant to subsection (b) of this section, except as necessary and consistent with the purpose of the disclosure and in the normal course of business. Nothing shall restrict the right of a patient to share his or her own data.

(d) The ~~commissioner~~ Commissioner shall offer health care providers and dispensers training in the proper use of information they may receive from VPMS. Training may be provided in collaboration with professional associations representing health care providers and dispensers.

(e) A ~~trained law enforcement officer~~ drug diversion investigator who may receive information pursuant to this section shall not have access to VPMS except for information provided to the officer by the licensing or certification authority.

(f) The ~~department~~ Department is authorized to use information from

VPMS for research, trend analysis, and other public health promotion purposes provided that data are aggregated or otherwise de-identified. The Department shall post the results of trend analyses on its website for use by health care providers, dispensers, and the general public. When appropriate, the Department shall send alerts relating to identified trends to health care providers and dispensers by electronic mail.

(g) Following consultation with the Unified Pain Management System Advisory Council and an opportunity for input from stakeholders, the Department shall develop a policy that will enable it to use information from VPMS to determine if individual prescribers and dispensers are using VPMS appropriately.

(h) Following consultation with the Unified Pain Management System Advisory Council and an opportunity for input from stakeholders, the Department shall develop a policy that will enable it to evaluate the prescription of regulated drugs by prescribers.

(i) Knowing disclosure of transmitted data to a person not authorized by subsection (b) of this section, or obtaining information under this section not relating to a bona fide specific investigation, shall be punishable by imprisonment for not more than one year or a fine of not more than $1,000.00, or both, in addition to any penalties under federal law.

(j) All information and correspondence relating to the disclosure of information by the Commissioner to a patient's health care provider pursuant to subdivision (b)(2)(A) of this section shall be confidential and privileged, exempt from public inspection and copying under the Public Records Act, immune from subpoena or other disclosure, and not subject to discovery or introduction into evidence.

(k) Each request for disclosure of data pursuant to subdivision (b)(2)(B) of this section shall document a bona fide specific investigation and shall specify the case number of the investigation.

Sec. 9. 18 V.S.A. § 4287 is amended to read:

§ 4287. RULEMAKING

The ~~department~~ Department shall adopt rules for the implementation of VPMS as defined in this chapter consistent with 45 C.F.R. Part 164, as amended and as may be amended, that limit the disclosure to the minimum information necessary for purposes of this act ~~and shall keep the senate and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services advised of the substance and progress of initial rulemaking pursuant to this section~~.

Sec. 10. 18 V.S.A. § 4288 is added to read:

§ 4288. RECIPROCAL AGREEMENTS

The Department of Health may enter into reciprocal agreements with other states that have prescription monitoring programs so long as access under such agreement is consistent with the privacy, security, and disclosure protections in this chapter.

Sec. 11. 18 V.S.A. § 4289 is added to read:

§ 4289. STANDARDS AND GUIDELINES FOR HEALTH CARE PROVIDERS AND DISPENSERS

(a) Each professional licensing authority for health care providers shall develop evidence-based standards to guide health care providers in the appropriate prescription of Schedules II, III, and IV controlled substances for treatment of chronic pain and for other medical conditions to be determined by the licensing authority. The standards developed by the licensing authorities shall be consistent with rules adopted by the Department of Health.

(b)(1) Each health care provider who prescribes any Schedule II, III, or IV controlled substances shall register with the VPMS by November 15, 2013.

(2) If the VPMS shows that a patient has filled a prescription for a controlled substance written by a health care provider who is not a registered user of VPMS, the Commissioner of Health shall notify the applicable licensing authority and the provider by mail of the provider's registration requirement pursuant to subdivision (1) of this subsection.

(3) The Commissioner of Health shall develop additional procedures to ensure that all health care providers who prescribe controlled substances are registered in compliance with subdivision (1) of this subsection.

(c) Each dispenser who dispenses any Schedule II, III, or IV controlled substances shall register with the VPMS.

(d) Health care providers shall query the VPMS with respect to an individual patient in the following circumstances:

(1) at least annually for patients who are receiving ongoing treatment with an opioid Schedule II, III, or IV controlled substance;

(2) when starting a patient on a Schedule II, III, or IV controlled substance for nonpalliative, long-term pain therapy of 90 days or more; and

(3) prior to writing a replacement prescription for a Schedule II, III, or IV controlled substance pursuant to section 4290 of this title.

(e) The Commissioner of Health shall, after consultation with the Unified

Pain Management System Advisory Council, adopt rules necessary to effect the purposes of this section. The Commissioner and the Council shall consider additional circumstances under which health care providers should be required to query the VPMS, including whether health care providers should be required to query the VPMS:

(1) the first time the provider prescribes an opioid Schedule II, III, or IV controlled substance written to treat chronic pain; and

(2) when a patient requests renewal of a prescription for an opioid Schedule II, III, or IV controlled substance written to treat acute pain.

(f) Each professional licensing authority for dispensers shall adopt standards, consistent with rules adopted by the Department of Health under this section, regarding the frequency and circumstances under which its respective licensees shall:

(1) query the VPMS; and

(2) report to the VPMS, which shall be no less than once every seven days.

(g) Each professional licensing authority for health care providers and dispensers shall consider the statutory requirements, rules, and standards adopted pursuant to this section in disciplinary proceedings when determining whether a licensee has complied with the applicable standard of care.

Sec. 11a. REPORTING OF DISPENSER STANDARDS

No later than March 31, 2014, each professional licensing authority for dispensers shall submit the standards required by 18 V.S.A. § 4289(e) to the VPMS Advisory Committee established in 18 V.S.A. § 4286.

Sec. 12. 18 V.S.A. § 4290 is added to read:

§ 4290. REPLACEMENT PRESCRIPTIONS AND MEDICATIONS

(a) As used in this section, "replacement prescription" means an unscheduled prescription request in the event that the document on which a patient's prescription was written or the patient's prescribed medication is reported to the prescriber as having been lost or stolen.

(b) When a patient or a patient's parent or guardian requests a replacement prescription for a Schedule II, III, or IV controlled substance, the patient's health care provider shall query the VPMS prior to writing the replacement prescription to determine whether the patient may be receiving more than a therapeutic dosage of the controlled substance.

(c) When a health care provider writes a replacement prescription pursuant

to this section, the provider shall clearly indicate as much by writing the word "REPLACEMENT" on the face of the prescription. The health care provider shall document the writing of the replacement prescription in the patient's medical record.

Sec. 13. VPMS ADVISORY COMMITTEE

(a)(1) The Commissioner shall maintain an advisory committee to assist in the implementation and periodic evaluation of the Vermont Prescription Monitoring System (VPMS).

(2) The Committee shall make recommendations regarding ways to improve the utility of the VPMS and its data.

(3) The Committee shall have access to aggregated, deidentified data from the VPMS.

(b) The VPMS Advisory Committee shall be chaired by the Commissioner of Health or designee and shall include the following members:

(1) the Deputy Commissioner of Health for Alcohol and Drug Abuse Programs;

(2) a representative from the Vermont Medical Society;

(3) a representative from the American College of Emergency Physicians - Vermont Chapter;

(4) a representative from the Vermont State Nurses Association;

(5) a representative from the Vermont Board of Medical Practice;

(6) a representative from the Vermont Board of Pharmacy;

(7) a representative from the Vermont Pharmacists Association;

(8) a representative from the Vermont State Dental Society;

(9) the Commissioner of Public Safety;

(10) a representative of the Vermont Attorney General;

(11) a representative of the Vermont Substance Abuse Treatment Providers Association;

(12) a mental health provider or a certified alcohol and drug abuse counselor;

(13) a consumer in recovery from prescription drug abuse;

(14) a consumer receiving medical treatment for chronic pain; and

(15) any other member invited by the Commissioner.

(c) The Committee shall meet at least once annually but may be convened at any time by the Commissioner or the Commissioner's designee.

(d) On or before January 15, 2014, the Committee shall provide recommendations to the House Committees on Human Services and on Health Care and the Senate Committee on Health and Welfare regarding ways to maximize the effectiveness and appropriate use of the VPMS database, including adding new reporting capabilities, in order to improve patient outcomes and avoid prescription drug diversion. The Committee shall also report on the feasibility of obtaining real-time information from the VPMS and on its evaluation of whether increasing the frequency of dispenser reporting to the VPMS from at least once every seven days to at least once every 24 hours, or more frequently, would yield substantial benefits.

(e) The Committee shall cease to exist on July 1, 2014.

Sec. 13a. REPORT ON INTEGRATION OF ELECTRONIC MEDICAL RECORDS AND THE VERMONT PRESCRIPTION MONITORING SYSTEM

On or before December 1, 2014, the Department of Health shall provide to the House Committees on Human Services and on Health Care, the Senate Committee on Health and Welfare, and the House and Senate Committees on Judiciary a report evaluating the potential for the integration of electronic medical records with the VPMS. The report shall include an assessment of the feasibility of the integration, identification of potential barriers to the integration, and an estimate of the costs associated with the integration.

Sec. 13b. REPORT ON PREVENTION ACTIVITIES

(a) The Agency of Education and the Department of Health shall use the School Health Profile to survey public and approved independent middle and high schools in Vermont to determine the quality and effectiveness of substance abuse prevention education in Vermont's schools.

(b) On or before January 15, 2015, the Secretary of Education and the Commissioner of Health shall report their evaluation of the quality and effectiveness of substance abuse prevention education in Vermont based on the results of the survey required by this section, as well as their recommendations for evidence-based and data-driven practices to be incorporated into school quality standards in the health education domain, to the House Committees on Human Services and on Health Care, the Senate Committee on Health and Welfare, and the House and Senate Committees on Education and on Judiciary.

* * * Improving Access to Treatment and Recovery * * *

Sec. 14. UNIFIED PAIN MANAGEMENT SYSTEM ADVISORY

COUNCIL

(a) There is hereby created a Unified Pain Management System Advisory Council for the purpose of advising the Commissioner of Health on matters relating to the appropriate use of controlled substances in treating chronic pain and addiction and in preventing prescription drug abuse.

(b) The Unified Pain Management System Advisory Council shall consist of the following members:

(1) the Commissioner of Health or designee, who shall serve as chair;

(2) the Deputy Commissioner of Health for Alcohol and Drug Abuse Programs or designee;

(3) the Commissioner of Mental Health or designee;

(4) the Director of the Blueprint for Health or designee;

(5) the Chair of the Board of Medical Practice or designee, who shall be a clinician;

(6) a representative of the Vermont State Dental Society, who shall be a dentist;

(7) a representative of the Vermont Board of Pharmacy, who shall be a pharmacist;

(8) a faculty member of the academic detailing program at the University of Vermont's College of Medicine;

(9) a faculty member of the University of Vermont's College of Medicine with expertise in the treatment of addiction or chronic pain management;

(10) a representative of the Vermont Medical Society, who shall be a primary care clinician;

(11) a representative of the American Academy of Family Physicians, Vermont chapter, who shall be a primary care clinician;

(12) a representative from the Vermont Board of Osteopathic Physicians, who shall be an osteopath;

(13) a representative of the Federally Qualified Health Centers, who shall be a primary care clinician selected by the Bi-State Primary Care Association;

(14) a representative of the Vermont Ethics Network;

(15) a representative of the Hospice and Palliative Care Council of

Vermont;

(16) a representative of the Office of the Health Care Ombudsman;

(17) the Medical Director for the Department of Vermont Health Access;

(18) a clinician who works in the emergency department of a hospital, to be selected by the Vermont Association of Hospitals and Health Systems in consultation with any nonmember hospitals;

(19) a member of the Vermont Board of Nursing Subcommittee on APRN Practice, who shall be an advanced practice registered nurse;

(20) a representative from the Vermont Assembly of Home Health and Hospice Agencies;

(21) a psychologist licensed pursuant to 26 V.S.A. chapter 55 who has experience in treating chronic pain, to be selected by the Board of Psychological Examiners;

(22) a drug and alcohol abuse counselor licensed pursuant to 33 V.S.A. chapter 8, to be selected by the Deputy Commissioner of Health for Alcohol and Drug Abuse Programs;

(23) a retail pharmacist, to be selected by the Vermont Pharmacists Association;

(24) an advanced practice registered nurse full-time faculty member from the University of Vermont's Department of Nursing; and

(25) a consumer representative who is either a consumer in recovery from prescription drug abuse or a consumer receiving medical treatment for chronic noncancer-related pain.

(c) Advisory Council members who are not employed by the State or whose participation is not supported through their employment or association shall be entitled to a per diem and expenses as provided by 32 V.S.A. § 1010.

(d)(1) The Advisory Council shall provide advice to the Commissioner concerning rules for the appropriate use of controlled substances in treating chronic noncancer pain and addiction and in preventing prescription drug abuse.

(2) The Advisory Council shall evaluate the use of nonpharmacological approaches to treatment for chronic pain, including the appropriateness, efficacy, and cost-effectiveness of using complementary and alternative therapies such as chiropractic, acupuncture, and massage.

(e) The Commissioner of Health may adopt rules pursuant to 3 V.S.A.

chapter 25 regarding the appropriate use of controlled substances after seeking the advice of the Council.

Sec. 14a. COMPLEMENTARY AND ALTERNATIVE TREATMENT REPORT

On or before January 15, 2014, the Commissioner of Health shall provide to the House Committees on Human Services and on Health Care and the Senate Committee on Health and Welfare the findings and recommendations of the Unified Pain Management System Advisory Council's initial evaluation of the use of nonpharmacological approaches to treatment for chronic pain, including the use of complementary and alternative therapies. The Commissioner shall provide the Committees with additional recommendations as appropriate as the Advisory Council continues to consider nonpharmacological approaches to treating chronic pain.

Sec. 14b. DEPARTMENT OF HEALTH; ACCESS TO OPIOID TREATMENT

(a) The prevalence of opioid addiction and the lack of sufficient access to opioid treatment in Vermont pose an imminent peril to the public health, welfare, and safety to our citizens.

(b) The Vermont Department of Health shall study how Vermont can increase access to opioid treatment, including methadone and suboxone, by establishing a program whereby state-licensed physicians who are affiliated with a licensed opioid maintenance treatment program may provide methadone or suboxone to opiod-dependent people.

(c) The Commissioner of Health shall consult with the following people:

(1) The Deputy Commissioner of Health for Alcohol and Drug Abuse Programs;

(2) a representative from the Vermont Medical Society;

(3) a representative from the Vermont State Nurses Association;

(4) a representative from the Vermont Board of Medical Practice;

(5) a representative from the Vermont Board of Pharmacy;

(6) a representative from the Vermont Pharmacists Association;

(7) the Commissioner of Public Safety;

(8) a representative of the Vermont Attorney General;

(9) a representative of the Vermont Substance Abuse Treatment Providers Association;

(10) a mental health provider or a certified alcohol and drug abuse counselor;

(11) a consumer in recovery from prescription drug abuse;

(12) a representative from a clinical laboratory providing drug testing and clinical support services to addiction treatment programs;

(13) the Commissioner of Corrections;

(14) The Defender General; and

(15) any other member designated by the Commissioner of Health.

(d)(1) The Department of Health shall adopt rules establishing a program whereby state-licensed physicians who are affiliated with a licensed opioid maintenance treatment program may provide methadone or suboxone to opiod-dependent people. Such rules may be adopted as emergency rules in accordance with 3 V.S.A. chapter 25. The Department may adopt and enforce such reasonable rules and procedures as are deemed necessary to carry out the administration of the provisions of this section.

(2) The Commissioner of Health shall report its findings, including any recommendations or proposed legislation to the House Committees on Health Care and on Human Services and Senate Committees on Judiciary and on Health and Welfare on or before January 15, 2014.

Sec. 14c. 33 V.S.A. § 703 is amended to read:

§ 703. ALCOHOL AND DRUG ABUSE COUNCIL; CREATION; TERMS; PER DIEM

(a) The ~~alcohol and drug abuse council~~ Alcohol and Drug Abuse Council is established within the ~~agency of human services~~ Agency of Human Services to promote the reduction of problems arising from alcohol and drug abuse by advising the Secretary on policy areas that can inform agency programs.

(b) The ~~council~~ Council shall consist of ~~eleven~~ 11 members:

(1) the ~~secretary of the agency of human services, commissioner of public safety, commissioner of education, commissioner of liquor control, and commissioner of motor vehicles~~ Secretary of Human Services, Commissioner of Public Safety, Secretary of Education, Commissioner of Liquor Control, and Commissioner of Motor Vehicles or their designees;

(2) one member shall be a member of a mental health or substance abuse agency who shall be appointed by the ~~governor~~ Governor; and

(3) five members shall be appointed by the ~~governor~~ Governor of which every consideration shall be given, if possible, to equal geographic

apportionment. ~~One of these~~ Consideration will be given for one of these members ~~shall~~ to be a certified practicing teacher and one of these members ~~shall~~ to be a school administrator.

(c) The term of office of members appointed pursuant to subdivisions (b)(2) and (b)(3) of this section shall be three years.

(d) The ~~secretary of the agency of human services~~ council membership shall annually elect a member to serve as chairperson.

(e) All members shall be voting members.

(f) At the expiration of the term of an appointed member, or in the event of a vacancy during an unexpired term, the new member shall be appointed in the same manner as his or her predecessor. Members of the ~~council~~ Council may be reappointed.

(g) Each member of the ~~council~~ Council not otherwise receiving compensation from the ~~state~~ State of Vermont or any political subdivision thereof shall be entitled to receive per diem compensation ~~of $30.00 for each day~~ as provided in 32 V.S.A. § 1010(b). Each member shall be entitled to his or her actual and necessary expenses.

Sec. 15. OPIOID ADDICTION TREATMENT IN HOSPITALS

Pursuant to 18 V.S.A. § 4240(b)(5), the Department of Health, in collaboration with the Vermont Association of Hospitals and Health Systems, the Vermont Association for Mental Health and Addiction Recovery, and the Vermont Council of Developmental and Mental Health Services, shall, subject to available resources, develop evidence-based guidelines and training for hospitals regarding:

(1) screening for addiction;

(2) performing addiction interventions;

(3) making referrals to addiction treatment and recovery services for victims admitted to or treated in a hospital emergency department; and

(4) informing hospitals about the specific addiction treatment and recovery services available in the hospital's service area.

Sec. 15a. REPORT ON OPIOID ADDICTION TREATMENT PROGRAMS

(a) On or before December 15, 2013, the Commissioners of Health and of Vermont Health Access shall provide a written report to the House Committees on Health Care and on Human Services, the Senate Committee on Health and Welfare, and the House and Senate Committees on Judiciary regarding opioid addiction treatment and recovery services being provided in Vermont.

(b) The report shall include:

(1) each program's capacity, including the number of persons currently served and the program's maximum capacity;

(2) the number of persons on the waiting list for each program, if applicable, and the average length of time a person spends on the program's waiting list before services become available;

(3) specific information regarding the number of persons served by each program that uses buprenorphine, buprenorphine/naloxone, or methadone for the treatment of opioid addiction and the number of persons on the waiting list for that program, if any;

(4) specific information about the implementation of the Hub and Spoke Opioid Integrated Treatment Initiative, including a description of specialty addiction treatment programs and general medical practices currently providing medication-assisted treatment (MAT) and the number of persons currently being served in specialty addiction treatment programs and in Blueprint primary care practices toward a goal of reducing current waiting lists statewide by 90 percent by January 15, 2015;

(5) how opioid addiction treatment services are integrated with existing recovery and counseling programs in Vermont; and

(6) the Department of Health's plans for addressing the need for additional opioid addiction treatment programs, including a description of the resources that the Department would need to meet the statewide demand for specialty services, of continued barriers to treatment, and of particular workforce needs.

* * * Safe Disposal of Prescription Medication * * *

Sec. 16. UNUSED DRUG DISPOSAL PROGRAM PROPOSAL

(a) On or before January 15, 2014, the Commissioners of Health and of Public Safety shall provide recommendations to the House and Senate Committees on Judiciary, the House Committees on Human Services and on Health Care, and the Senate Committee on Health and Welfare regarding the design and implementation of a voluntary statewide drug disposal program for unused over-the-counter and prescription drugs at no charge to the consumer. In preparing their recommendations, the Commissioners shall consider successful unused drug disposal programs in Vermont, including the Bennington County Sheriff's Department's program, and programs in other states.

(b) On or before July 1, 2014, the Commissioners of Health and of Public Safety shall implement the voluntary unused drug disposal program developed

pursuant to subsection (a) of this section and shall take steps to publicize the program and to make all Vermont residents aware of opportunities to avail themselves of it.

* * * Preventing Deaths from Opioid Overdose * * *

Sec. 17. 18 V.S.A. § 4240 is added to read:

§ 4240. PREVENTION AND TREATMENT OF OPIOID-RELATED OVERDOSES

(a) As used in this section:

(1) "Health care professional" means a physician licensed pursuant to 26 V.S.A. chapter 23 or 33, a physician's assistant certified to prescribe and dispense prescription drugs pursuant to 26 V.S.A. chapter 31, or an advanced practice registered nurse authorized to prescribe and dispense prescription drugs pursuant to 26 V.S.A. chapter 28.

(2) "Opioid antagonist" means a drug that, when administered, negates or neutralizes in whole or part the pharmacological effects of an opioid in the body.

(3) "Victim" means the person who has overdosed on an opioid drug or who is believed to have overdosed on an opiate drug.

(b) For the purpose of addressing prescription and nonprescription opioid overdoses in Vermont, the Department shall develop and implement a prevention, intervention, and response strategy, depending on available resources, that shall:

(1) provide educational materials on opioid overdose prevention to the public free of charge, including to substance abuse treatment providers, health care providers, opioid users, and family members of opioid users;

(2) increase community-based prevention programs aimed at reducing risk factors that lead to opioid overdoses;

(3) increase timely access to treatment services for opioid users, including medication-assisted treatment;

(4)(A) educate substance abuse treatment providers on methods to prevent opioid overdoses;

(B) provide education and training on overdose prevention, intervention, and response to individuals living with addiction and participating in opioid treatment programs, syringe exchange programs, residential drug treatment programs, or correctional services;

(5) facilitate overdose prevention, drug treatment, and addiction

recovery services by implementing and expanding hospital referral services for individuals treated for an opioid overdose; and

(6) develop a statewide opioid antagonist pilot program that emphasizes access to opioid antagonists to and for the benefit of individuals with a history of opioid use.

(c)(1) A health care professional acting in good faith may directly or by standing order prescribe, dispense, and distribute an opioid antagonist to the following persons, provided the person has been educated about opioid-related overdose prevention and treatment in a manner approved by the Department:

(A) a person at risk of experiencing an opioid-related overdose; or

(B) a family member, friend, or other person in a position to assist a person at risk of experiencing an opioid-related overdose.

(2) A health care professional who prescribes, dispenses, or distributes an opioid antagonist in accordance with subdivision (1) of this subsection shall be immune from civil or criminal liability with regard to the subsequent use of the opioid antagonist, unless the health professional's actions with regard to prescribing, dispensing, or distributing the opioid antagonist constituted recklessness, gross negligence, or intentional misconduct. The immunity granted in this subdivision shall apply whether or not the opioid antagonist is administered by or to a person other than the person for whom it was prescribed.

(d)(1) A person may administer an opioid antagonist to a victim if he or she believes, in good faith, that the victim is experiencing an opioid-related overdose.

(2) After a person has administered an opioid antagonist pursuant to subdivision (1) of this subsection (d), he or she shall immediately call for emergency medical services if medical assistance has not yet been sought or is not yet present.

(3) A person shall be immune from civil or criminal liability for administering an opioid antagonist to a victim pursuant to subdivision (1) of this subsection unless the person's actions constituted recklessness, gross negligence, or intentional misconduct. The immunity granted in this subdivision shall apply whether or not the opioid antagonist is administered by or to a person other than the person for whom it was prescribed.

(e) A person acting on behalf of a community-based overdose prevention program shall be immune from civil or criminal liability for providing education on opioid-related overdose prevention or for purchasing, acquiring, distributing, or possessing an opioid antagonist unless the person's actions

constituted recklessness, gross negligence, or intentional misconduct.

(f) Any health care professional who treats a victim and who has knowledge that the victim has been administered an opioid antagonist within the preceding 30 days shall refer the victim to professional substance abuse treatment services.

Sec. 18. STATEWIDE OPIOID ANTAGONIST PILOT PROGRAM

(a) The Department of Health shall develop and administer a statewide pilot program for the purpose of distributing opioid antagonists to:

(1) individuals at risk of an opioid overdose;

(2) the family and friends of an individual at risk of experiencing an opioid overdose; and

(3) others who may be in a position to assist individuals experiencing an opioid overdose.

(b) In developing and implementing the pilot program, the Department shall collaborate with community-based substance abuse organizations that have experience delivering opioid-related prevention and treatment services as determined by the Commissioner.

(c) The pilot program shall be in effect from July 1, 2013 through June 30, 2016. During the term of the pilot program, the Department shall purchase, provide for the distribution of, and monitor the use of opioid antagonists distributed in accordance with this section.

(d) On or before January 15, 2016, the Department of Health shall submit a report to the House Committees on Human Services, on Health Care, and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary evaluating the statewide opioid antagonist pilot program. The report shall include findings that pertain to the cost and effectiveness of the program and recommendations as to whether the program should be continued after June 30, 2016.

Sec. 18a. 18 V.S.A. § 5208 is amended to read:

§ 5208. HEALTH DEPARTMENT; REPORT ON STATISTICS

(a) ~~Beginning~~ Notwithstanding the provisions of 2 V.S.A. § 20(d), beginning October 1, 2011 and every two years thereafter, the Vermont ~~department of health~~ Department of Health shall report to the ~~house committee on human services and the senate committee on health and welfare~~ House Committees on Human Services and on Health Care and the Senate Committee on Health and Welfare regarding the number of persons who died during the preceding two calendar years in hospital emergency rooms, other hospital

settings, in their own homes, in a nursing home, in a hospice facility, and in any other setting for which information is available, as well as whether each decedent received hospice care within the last 30 days of his or her life. Beginning with the 2013 report, the ~~department~~ Department shall include information on the number of persons who died in hospital intensive care units, assisted living facilities, or residential care homes during the preceding two calendar years.

(b) In addition to the report required by subsection (a) of this section and notwithstanding the provisions of 2 V.S.A. § 20(d), beginning March 1, 2014 and annually thereafter, the Department shall report to the House Committees on Human Services and on Health Care, the Senate Committee on Health and Welfare, and the House and Senate Committees on Judiciary regarding the number of persons who died during the preceding calendar year from an overdose of a Schedule II, III, or IV controlled substance. The report shall list separately the number of deaths specifically related to opioids, including for each death whether an opioid antagonist was administered and whether it was administered by persons other than emergency medical personnel, firefighters, or law enforcement officers. Beginning in 2015, the report shall include similar data from prior years to allow for comparison.

* * * Protecting Communities from Methamphetamine Abuse * * *

Sec. 19. 18 V.S.A. § 4234b is amended to read:

§ 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

* * *

(b) Sale.

(1) A drug product containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base shall not be distributed at retail to the general public unless it is maintained in a locked display case or behind the counter out of the public's reach.

(2)(A) A retail establishment shall not knowingly ~~sell~~ complete a sale to a person ~~within a calendar day any~~ if the drug product or combination of drug products ~~containing~~ purchased would surpass a total of more than 3.6 grams within a 24-hour period or nine grams within a 30-day period of ephedrine base, pseudoephedrine base, or phenylpropanolamine base or their isomers.

(B) This subdivision shall not apply to drug products dispensed pursuant to a valid prescription.

(3) A person or business which violates this subdivision shall:

(A) for a first violation be assessed a civil penalty of not more than $100.00.; and

(B) for a second and subsequent violation be assessed a civil penalty of not more than $500.00.

(c) Electronic registry system.

(1)(A) Retail establishments shall use an electronic registry system to record the sale of products made pursuant to subsection (b) of this section. The electronic registry system shall have the capacity to block a sale of nonprescription drug products containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base that would result in a purchaser exceeding the lawful daily or monthly amount. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm to his or her person or to another person if the transaction is not completed. The system shall create a record of each use of the override mechanism.

(B) The electronic registry system shall be available free of charge to the State of Vermont, retail establishments, and local law enforcement agencies.

(C) The electronic registry system shall operate in real time to enable communication among in-state users and users of similar systems in neighboring states.

(D) The State shall use the National Precursor Log Exchange (NPLEx) online portal or its equivalent to host Vermont's electronic registry system.

(2)(A) Prior to completing a sale under subsection (b) of this section, a retail establishment shall require the person purchasing the drug product to present a current, valid government-issued identification document. The retail establishment shall record in the electronic registry system:

(i) the name and address of the purchaser;

(ii) the name of the drug product and quantity of ephedrine, pseudoephedrine, and phenylpropanolamine base sold in grams;

(iii) the date and time of purchase;

(iv) the form of identification presented, the issuing government entity, and the corresponding identification number; and

(v) the name of the person selling or furnishing the drug product.

(B)(i) If the retail establishment experiences an electronic or mechanical failure of the electronic registry system and is unable to comply with the electronic recording requirement, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until the retail establishment is able to comply fully with this subsection (c).

(ii) If the region of the State where the retail establishment is located does not have broadband Internet access, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until broadband Internet access becomes accessible to that region. At that time, the retail establishment shall come into compliance with this subsection (c).

(C) A retail establishment shall maintain all records of drug product purchases made pursuant to this subsection (c) for a minimum of two years.

(3) A retail establishment shall display a sign at the register provided by NPLEx or its equivalent to notify purchasers of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine base that:

(A) the purchase of the drug product or products shall result in the purchaser's identity being listed on a national database; and

(B) the purchaser has the right to request the transaction number for any purchase that was denied pursuant to this subsection (c).

(4) Except as provided in subdivision (5) of this subsection (c), a person or retail establishment that violates this subsection shall:

(A) for a first violation be assessed a civil penalty of not more than $100.00; and

(B) for a second or subsequent violation be assessed a civil penalty of not more than $500.00.

(d) This section shall not apply to a manufacturer ~~which~~ that has obtained an exemption from the Attorney General of the United States under Section 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

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

(1) "Distributor" means a person, other than a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product.

(2) "Knowingly" means having actual knowledge of the relevant facts.

(3) "Manufacturer" means a person who produces, compounds, packages, or in any manner initially prepares a drug product for sale or use.

(4) "Wholesaler" means a person, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product to any other person for the purpose of being resold.

Sec. 19a. 18 V.S.A. § 4234b is amended to read:

§ 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

* * *

(c) ~~Electronic registry system.~~

~~(1)(A) Retail establishments shall use an electronic registry system to record the sale of products made pursuant to subsection (b) of this section. The electronic registry system shall have the capacity to block a sale of nonprescription drug products containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base that would result in a purchaser exceeding the lawful daily or monthly amount. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm to his or her person or to a co-worker if the transaction is not completed. The system shall create a record of each use of the override mechanism.~~

~~(B) The electronic registry system shall be available free of charge to the State of Vermont, retail establishments, and local law enforcement agencies.~~

~~(C) The electronic registry system shall operate in real time to enable communication among in-state users and users of similar systems in neighboring states.~~

~~(D) The State shall use the National Precursor Log Exchange (NPLEx) online portal or its equivalent to host Vermont's electronic registry system.~~

~~(2)(A) Prior to completing a sale under subsection (b) of this section, a retail establishment shall require the person purchasing the drug product to present a current, valid government-issued identification document. The retail establishment shall record in the electronic registry system:~~

~~(i) the name and address of the purchaser;~~

~~(ii) the name of the drug product and quantity of ephedrine, pseudoephedrine, and phenylpropanolamine base sold in grams;~~

~~(iii) the date and time of purchase;~~

~~(iv) the form of identification presented, the issuing government entity, and the corresponding identification number; and~~

~~(v) the name of the person selling or furnishing the drug product.~~

~~(B)(i) If the retail establishment experiences an electronic or mechanical failure of the electronic registry system and is unable to comply with the electronic recording requirement, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until the retail establishment is able to comply fully with this subsection (c).~~

~~(ii) If the region of the State where the retail establishment is located does not have broadband Internet access, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until broadband Internet access becomes accessible to that region. At that time, the retail establishment shall come into compliance with this subsection (c).~~

~~(C) A retail establishment shall maintain all records of drug product purchases made pursuant to this subsection (c) for a minimum of two years.~~

~~(3) A retail establishment shall display a sign at the register provided by NPLEx or its equivalent to notify purchasers of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine base that:~~

~~(A) the purchase of the drug product or products shall result in the purchaser's identity being listed on a national database; and~~

~~(B) the purchaser has the right to request the transaction number for any purchase that was denied pursuant to this subsection (c).~~

~~(4) Except as provided in subdivision (5) of this subsection (c), a person or retail establishment that violates this subsection shall:~~

~~(A) for a first violation be assessed a civil penalty of not more than $100.00; and~~

~~(B) for a second or subsequent violation be assessed a civil penalty of not more than $500.00.~~ [Repealed]

(d) This section shall not apply to a manufacturer that has obtained an exemption from the Attorney General of the United States under Section 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

(e) As used in this section:

(1) "Distributor" means a person, other than a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product.

(2) "Knowingly" means having actual knowledge of the relevant facts.

(3) "Manufacturer" means a person who produces, compounds,

packages, or in any manner initially prepares a drug product for sale or use.

(4) "Wholesaler" means a person, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product to any other person for the purpose of being resold.

Sec. 20. THE EFFECT OF METHAMPHETAMINE PRODUCTION ON HOUSING

(a) The Commissioner of Health shall recommend guidance for reoccupancy of a structure that was used in the production of methamphetamine.

(b) The Commissioner shall examine:

(1) Approaches for identifying housing that is or has been used for methamphetamine production and methods for making such housing safe, including:

(A) standards for reoccupancy;

(B) whether purchasers or tenants of housing that has been affected by methamphetamine production should be provided with notification of such, and if so, how; and

(C) methods taken by other states in identifying, quarantining, and cleaning such housing as well as methods used by other states to notify affected parties.

(2) The public health effects of long-term exposure to housing that is or has been contaminated by by-products resulting from production of methamphetamine.

(c) The Commissioner shall report his or her findings, including any recommendations or proposed legislation to the House Committees on General, Housing and Military Affairs, on Judiciary, on Health Care, and on Human Services and the Senate Committees on Economic Development, Housing and General Affairs, on Judiciary, and on Health and Welfare on or before June 15, 2014.

* * * Community Safety * * *

Sec. 21. 13 V.S.A. § 3705 is amended to read:

§ 3705. UNLAWFUL TRESPASS

(a)(1) A person shall be imprisoned for not more than three months or fined not more than $500.00, or both, if, without legal authority or the consent of the person in lawful possession, he or she enters or remains on any land or in any place as to which notice against trespass is given by:

~~(1)~~(A) ~~Actual~~ actual communication by the person in lawful possession or his or her agent or by a law enforcement officer acting on behalf of such person or his or her agent; ~~or~~

~~(2)~~(B) ~~Signs~~ signs or placards so designed and situated as to give reasonable notice; or

(C) in the case of abandoned property:

(i) signs or placards, posted by the owner, the owner's agent, or a law enforcement officer, and so designed and situated as to give reasonable notice; or

(ii) actual communication by a law enforcement officer.

(2) As used in this subsection, "abandoned property" means:

(A) Real property on which there is a vacant structure that for the previous 60 days has been continuously unoccupied by a person with the legal right to occupy it and with respect to which the municipality has by first class mail to the owner's last known address provided the owner with notice and an opportunity to be heard; and

(i) property taxes have been delinquent for six months or more; or

(ii) one or more utility services have been disconnected.

(B) A railroad car that for the previous 60 days has been unmoved and unoccupied by a person with the legal right to occupy it.

(b) Prosecutions for offenses under subsection (a) of this section shall be commenced within 60 days following the commission of the offense and not thereafter.

(c) A person who enters a building other than a residence, whose ~~normal~~ access is normally locked, whether or not the access is actually locked, or a residence in violation of an order of any court of competent jurisdiction in this ~~state~~ State shall be imprisoned for not more than one year or fined not more than $500.00, or both.

(d) A person who enters a dwelling house, whether or not a person is actually present, knowing that he or she is not licensed or privileged to do so shall be imprisoned for not more than three years or fined not more than $2,000.00, or both.

Sec. 22. [DELETED]

Sec. 22a. 9 V.S.A. chapter 97 is amended to read:

CHAPTER 97. PAWNBROKERS

* * *

§ 3865. RECORDS OF A PAWNBROKER OR SECONDHAND DEALER

(a) In each year a pawnbroker or secondhand dealer resells over ~~$500.00~~ $2,500.00 of items pawned, pledged, or sold to the pawnbroker or secondhand dealer, he or she shall maintain the following records for each transaction in that year:

(1) a legible statement written at the time of the transaction stating the amount of money lent or paid for the items pawned, pledged, or sold, the time of the transaction, and the rate of interest to be paid on the loan, as applicable;

(2) a legible statement of the name, current address, telephone number, and vehicle license number of the person pawning, pledging, or selling the items;

(3) a legible written description and photograph, or alternatively a video, of the items pawned, pledged, or sold;

(4) a photocopy of a government-issued identification card issued to the person pawning, pledging, or selling the items, if available.

(b) At all reasonable times, the records required under subsection (a) of this section shall be open to the inspection of law enforcement. A law enforcement agency shall make a reasonable effort to notify a dealer before conducting an inspection pursuant to this section unless providing notice would interfere with a criminal investigation or any other legitimate law enforcement purpose.

(c) In this section:

(1) "Precious metal" means gold, silver, platinum, or palladium.

(2) "Secondhand dealer" means a person engaged in the business of purchasing used or estate precious metal, coins, ~~antiques, furniture,~~ jewelry, or similar items for the purpose of resale.

* * *

§ 3871. PENALTIES

(a) A licensee who violates a provision of sections ~~3863-3870~~ 3863–3864 or 3866–3870 of this title~~,~~ shall be fined not more than $100.00 nor less than $10.00 for each offense.

(b) A pawnbroker or precious metal dealer who violates a provision of section 3865 or 3872 of this chapter:

(1) may be assessed a civil penalty not to exceed $1,000.00 for a first violation; and

(2) shall be fined not more than $25,000.00 for a second or subsequent violation.

* * *

Sec. 22b. PUBLIC OUTREACH TO VERMONT PRECIOUS METAL DEALERS

The Department of Public Safety shall design and implement a public outreach campaign to inform and educate pawnbrokers, precious metal dealers, and others affected by 9 V.S.A. chapter 97 of the current statutory provisions governing the purchase and sale of precious metals, including:

(1) the items that should be regulated as "precious metal" or other secondhand goods;

(2) the type of transactions governed by the chapter;

(3) the recordkeeping requirements of the chapter;

(4) the 10-day holding period requirement;

(5) methods for increasing communication with the Department of Public Safety regarding possible suspicious activity within their business transactions; and

(6) other information supporting the purpose of the campaign.

Sec. 22c. INTERIM STUDY COMMITTEE ON THE REGULATION OF PRECIOUS METAL DEALERS

(a) Creation of committee. There is created an Interim Study Committee on the Regulation of Precious Metal Dealers, the purpose of which shall be to examine the current practices in the trade of precious metals in Vermont, the nexus of that trade to drug-related and other illegal activity, and to provide recommendations to the General Assembly on the most effective means of regulating the trade to decrease the amount of related illegal activity and promote the recovery of stolen property.

(b) Membership. The Committee shall be composed of the following members:

(1) a Vermont-based representative from the New England Jewelers Association;

(2) a representative from the Vermont Antique Dealers Association;

(3) a Vermont-based coin dealer appointed by the Governor;

(4) a representative of local law enforcement from the Vermont Police Association;

(5) a Vermont-based auctioneer appointed by the Governor;

(6) a private citizen who has been affected by the theft of precious metals appointed by the Governor;

(7) a representative from a Vermont-based business that uses precious metal for manufacturing or industrial purposes appointed by the Governor;

(8) a representative from the jewelry manufacturing industry appointed by the Governor;

(9) a representative from the Vermont State's Attorneys and Sheriffs' Association;

(10) the Commissioner of Public Safety or designee, who shall serve as Chair of the Committee, and

(11) the Vermont Attorney General or designee.

(c) Powers and duties.

(1) The Committee shall study methods for increasing cooperation between law enforcement and precious metal dealers in an effort to prevent the theft of these items and retrieve stolen goods, including the following:

(A) the advisability, cost, and effectiveness of creating and maintaining a stolen property database and website for the purpose of posting pictures and information about stolen items;

(B) the creation of a licensing system for precious metal dealers, including what information would be required of applicants, who would be eligible for a license, and how the licensing program would be implemented;

(C) refinement of the recordkeeping requirements for precious metal dealers, including the possibility of requiring sales of a certain amount to be recorded electronically; and

(D) any other issues related to precious metal as the Committee deems appropriate.

(2) For purposes of its study of these issues, the Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal Office.

(d) Report. On or before January 1, 2014, the Committee shall report to the Senate Committees on Economic Development, Housing and General Affairs and on Judiciary, and the House Committees on Commerce and Economic Development and on Judiciary its findings and any recommendations for legislative action.

(e) Meetings.

(1) Seven members of the Committee shall be physically present at the

same location to constitute a quorum.

(2) Action shall be taken only if there is both a quorum and an affirmative vote of the members physically present and voting.

(3) The Committee may meet no more than five times, and shall cease to exist on January 2, 2014.

(4) Members of the Committee who are not state employees and who are not otherwise compensated for their participation by their employer or association shall be entitled to per diem compensation as provided in 32 V.S.A. § 1010(b).

* * * Effective Dates * * *

Sec. 23. EFFECTIVE DATES; SUNSET

(a) This section and Secs. 2a (emergency rules), 3a (board of pharmacy; rulemaking), 11(e) (Health Department rules), 11(f) (licensing authority standards), 13 (VPMS Advisory Committee), 13b (prevention report), 20 (study committee on the effects of the production of methamphetamine and other illegal drugs on housing), 22a (9 V.S.A. chapter 97A; secondhand dealers), 22b (public outreach; precious metal dealers), and 22c (interim study; precious metal dealers) of this act shall take effect on passage.

(b) Secs. 10 (18 V.S.A. § 4288; reciprocal agreements), 12 (18 V.S.A. § 4290; replacement prescriptions), and 19 (18 V.S.A. § 4234b; ephedrine and pseudoephedrine), and Sec. 8(b)(2)(G) (18 V.S.A. § 4284(b)(2)(G); interstate data sharing) of this act shall take effect on October 1, 2013.

(c) Sec. 11(d) (VPMS query requirements) of this act shall take effect on November 15, 2013.

(d) Sec. 19a (18 V.S.A. § 4234b; ephedrine and pseudoephedrine) of this act shall take effect on September 30, 2016.

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

(For text see House Journal 3/21/2013 and 3/22/2013)

NOTICE CALENDAR

Favorable with Amendment

S. 37

An act relating to tax increment financing districts

Rep. Condon of Colchester, for the Committee on **Ways and Means,** recommends that the House propose to the Senate that the bill be amended as follows:

First: By striking out Sec. 1 (resolution of tax increment financing district audit report issues) in its entirety and inserting in lieu thereof the following:

Sec. 1. RESOLUTION OF TAX INCREMENT FINANCING DISTRICT AUDIT REPORT ISSUES

(a) In 2011 and 2012, the State Auditor of Accounts performed and reported on required reviews and audits of all active tax increment financing districts. However, the tax increment financing laws currently lack a specific remedy to recover amounts identified in the Auditor's Reports or an enforcement mechanism to address issues identified in the Reports. The General Assembly seeks to address issues identified in the 2011 and 2012 Auditor's Reports by clarifying tax increment financing laws and specifying a process for future oversight and enforcement. Accordingly, it is the intent of the General Assembly not to address ongoing issues identified in the 2011 and 2012 Auditor's Reports but to leave those issues to be addressed through the rulemaking process, as described in Sec. 14 of this act. If the rule identifies issues that require corrective action on the part of one or more municipalities, then any identified underpayments to the Education Fund resulting from issues shall begin to accumulate upon the adoption date of the rule and be subject to the enforcement provisions in Sec. 14 of this act.

(b) In order to resolve any disputes over the amounts identified in the Auditor's Reports as owed to the Education Fund, the City of Burlington, the Town of Milton, and the City of Winooski shall, subject to the approval of their respective legislative bodies, pay the State according to the schedule set out in subsection (c) of this section. The General Assembly considers these payments as final settlement of outstanding sums identified as owed to the Education Fund during the period covered by the 2012 Auditor's Reports.

(c) The municipalities with active tax increment financing districts that were audited by the State Auditor in 2012 have entered into the following agreements with the State:

(1) The City of Burlington shall remit the amount of $200,000.00 to the Education Fund in equal installments over a five-year period beginning

December 15, 2013 from incremental tax revenues not otherwise dedicated to the repayment of the district's debt obligations.

(2) The Town of Milton shall remit funds as follows:

(A) $22,000.00 to the Education Fund in equal installments over a two-year period beginning December 15, 2013 from municipal revenues other than municipal tax increment dedicated to the repayment of tax increment financing debt;

(B) $160,000.00 to the Catamount Husky Tax Increment Fund in equal installments over a five-year period beginning December 15, 2013 from municipal nonincrement revenues; and

(C) $17,000.00 to the Catamount Husky Tax Increment Fund for the repayment of debt from the Town Core Tax Increment Financing Fund by no later than December 15, 2013.

(3) The City of Winooski shall remit funds as follows:

(A) the amount of $1,300.00 to the Education Fund from municipal nonincrement revenues by July 1, 2013; and

(B) $62,000.00 to the Tax Increment Financing Fund from municipal nonincremental revenues in equal installments over a five-year period beginning December 15, 2013.

(d) If the legislative body of a municipality with an active tax increment financing district that was audited by the State Auditor in 2012 does not approve the payments described in subsection (c) of this section, then the General Assembly shall consider any amounts identified as owed to the Education Fund during the period covered by the 2012 Auditor's Reports to remain outstanding.

(e) If a municipality does not begin payment of the amounts identified in subsection (c) of this section within 60 days of the scheduled payment date or owes outstanding amounts to the Education Fund, as described in subsection (d) of this section, amounts identified as owed to the State may be withheld from any funds otherwise payable by the State to the municipality or a school district in the municipality or of which the municipality is a member.

Second: In Sec. 3, 24 V.S.A. § 1892, by striking subdivisions (d)(8) and (9) and inserting in lieu thereof the following:

(8) the City of St. Albans;

(9) the City of Barre; and

(10) the Town of Milton, Town Core.

Third: In Sec. 4, 24 V.S.A. § 1894, by striking subsection (a) in its entirety and inserting in lieu thereof the following:

(a) Incurring indebtedness.

(1) A municipality ~~may incur indebtedness against revenues of the tax increment financing district at any time during a period of up to 20 years following the creation of the district, if approved as required under 32 V.S.A. § 5404a(h). The creation of the district shall occur at 12:01 a.m. on April 1 of the year so voted. Any indebtedness incurred during this 20-year period may be retired over any period authorized by the legislative body of the municipality under section 1898 of this title.~~

~~(2) If no indebtedness is incurred within the first five years after creation of the district, no indebtedness may be incurred unless the municipality obtains reapproval from the Vermont economic progress council under 32 V.S.A. § 5404a(h). When considering reapproval, the Vermont economic progress council shall consider only material changes in the application under 32 V.S.A. § 5404a(h). The Vermont economic progress council shall presume that an applicant qualifies for reapproval upon a showing that the inability of the district to incur indebtedness was the result of the macro-economic conditions in the first five years after the creation of the district. Upon reapproval, the Vermont economic progress council shall grant a five-year extension of the period to incur indebtedness.~~

~~(3) The district shall continue until the date and hour the indebtedness is retired.~~ approved under 32 V.S.A. § 5404a(h) may incur indebtedness against revenues of the tax increment financing district at any time during a period of up to five years following the creation of the district. If no debt is incurred during this five-year period, the district shall terminate, unless the Vermont Economic Progress Council grants an extension to a municipality pursuant to subsection (d) of this section. However, if any indebtedness is incurred within the first five years after the creation of the district, then the district has a total of ten years after the creation of the district to incur any additional debt.

(2) Any indebtedness incurred under subdivision (1) of this subsection may be retired over any period authorized by the legislative body of the municipality.

(3) The district shall continue until the date and hour the indebtedness is retired or, if no debt is incurred, five years following the creation of the district.

Fourth: In Sec. 4, 24 V.S.A. § 1894, in subsection (b), by striking the words "first ten years" and inserting in lieu thereof "period permitted under subdivision (a)(1) of this section"

Fifth: In Sec. 4, 24 V.S.A. § 1894, in subsection (c), by striking the words "first ten years" and inserting in lieu thereof "period permitted under subdivision (a)(1) of this section"

Sixth: In Sec. 4, 24 V.S.A. § 1894, in subsection (d), by adding a sentence after the final sentence to read as follows:

If no indebtedness is incurred within five years after the creation of the district, the municipality may submit an updated executive summary of the tax increment financing district plan and an updated tax increment financing plan to the Council to obtain approval for a five-year extension of the period to incur indebtedness; provided, however, that the updated plan is submitted prior to the five-year termination date of the district. The Council shall review the updated tax increment financing plan to determine whether the plan has continued viability and consistency with the approved tax increment financing plan. Upon approval of the updated tax increment financing plan, the Council shall grant an extension of the period to incur indebtedness of no more than five years. The submission of an updated tax increment financing plan as provided in this subsection shall operate as a stay of the termination of the district until the Council has determined whether to approve the plan.

Seventh: By adding a new Sec. 12a, after Sec. 12, to read as follows:

Sec. 12a. 32 V.S.A. § 5404a is amended to read:

§ 5404a. TAX STABILIZATION AGREEMENTS; TAX INCREMENT FINANCING DISTRICTS

* * *

(h) Criteria for approval. To approve utilization of incremental revenues pursuant to subsection (f) of this section, the Vermont ~~economic progress council~~ Economic Progress Council shall do all the following:

(1) Review each application to determine that the new real property development would not have occurred or would have occurred in a significantly different and less desirable manner but for the proposed utilization of the incremental tax revenues. ~~A district created in a designated growth center under 24 V.S.A. § 2793c shall be deemed to have complied with this subdivision.~~ The review shall take into account:

* * *

Eighth: In Sec. 14, 32 V.S.A. § 5404a(j), by inserting in subdivision (4) before the words "In lieu of" the words "Referral; Attorney General." and by striking out subdivision (5) in its entirety and inserting a new subdivision (5) in lieu thereof to read as follows:

(5) Appeal; hearing officer.

A hearing that is held pursuant to this subsection shall be subject to the provisions of 3 V.S.A. chapter 25 relating to contested cases. The hearing shall be conducted by the Secretary or by a hearing officer appointed by the Secretary. If a hearing is conducted by a hearing officer, the hearing officer shall have all authority to conduct the hearing that is provided for in the applicable contested case provisions of 3 V.S.A. chapter 25, including issuing findings of fact, hearing evidence, and compelling, by subpoena, the attendance and testimony of witnesses.

Ninth: By striking Sec. 19, amending 3 V.S.A. § 816(a), in its entirety and inserting in lieu thereof the following:

Sec. 19. 23 V.S.A. § 3106(a)(2) is amended to read:

(2) For the purposes of subdivision (1)(B) of this subsection, the tax-adjusted retail price applicable for a quarter shall be the average of the ~~monthly~~ retail ~~prices~~ price for regular gasoline determined and published by the Department of Public Service for each of the three months of the preceding quarter~~. The tax-adjusted retail price applicable for a quarter shall be the retail price exclusive of all~~ after all federal and state taxes and assessments, and after the petroleum distributor licensing fee established by 10 V.S.A. § 1942, ~~at the rates~~ applicable in ~~the preceding quarter~~ each month have been subtracted from that month's retail price.

Tenth: By striking Sec. 20, 2011 and 2012 Auditor's Reports; Payment, in its entirety and inserting in lieu thereof the following:

Sec. 20. 2013 Acts and Resolves No. 12, Sec. 24 is amended to read:

Sec. 24. ~~MOTOR~~ FUEL ~~ASSESSMENTS~~ TAX ASSESSMENT: MAY 1, 2013–SEPTEMBER 30, 2013

Notwithstanding the provisions of 23 V.S.A. § ~~3106(a)(1)(B)~~ 3106(a)(1)(B)(ii) and 3106(a)(2), from May 1, 2013 through September 30, 2013, the ~~motor fuel transportation infrastructure assessment required under 23 V.S.A. § 3106(a)(1)(B)(i) shall be $0.0656 per gallon, and the~~ fuel tax assessment required under 23 V.S.A. § 3106(a)(1)(B)(ii) shall be $0.067 per gallon.

Eleventh: By striking Sec. 22 in its entirety and inserting in lieu thereof the following:

Sec. 22. 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~~

(a)(1) The ~~commissioner~~ Commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

~~(1)~~(A) The individual's employment with that employer was terminated under disqualifying circumstances.

~~(2)~~(B) The individual's employment or right to reemployment with that employer was terminated by retirement of the individual pursuant to a retirement or lump-sum retirement pay plan under which the age of mandatory retirement was agreed upon by the employer and its employees or by the bargaining agent representing those employees.

~~(3)~~(C) As of the date on which the individual filed an initial claim for benefits, the individual's employment with that employer had not been terminated or reduced in hours.

~~(4)~~(D) The individual was employed by that employer as a result of another employee taking leave under subchapter 4A of chapter 5 of this title, and the individual's employment was terminated as a result of the reinstatement of the other employee under subchapter 4A of chapter 5 of this title.

~~(5)~~(E) [Repealed.]

(2) If an individual's unemployment is directly caused by a major natural disaster declared by the President of the United States pursuant to 42 U.S.C. § 5122 and the individual would have been eligible for federal disaster unemployment assistance benefits but for the receipt of regular benefits, an employer shall be relieved of charges for benefits paid to the individual with respect to any week of unemployment occurring due to the natural disaster up to a maximum amount of four weeks.

* * *

Twelfth: By adding a new Sec. 23, after Sec. 22, to read as follows:

Sec. 23. UNEMPLOYMENT COMPENSATION; EMPLOYERS AFFECTED BY NATURAL DISASTERS OCCURRING IN 2011

(a) The Department of Labor shall establish a system to provide unemployment compensation tax relief to employers paying a higher rate of contributions due to layoffs directly caused by federally declared natural disasters occurring in 2011.

(b) Unemployment compensation tax relief shall be available to an employer provided that the employer's employees were separated from employment as a direct result of the disaster. Benefits paid beyond eight weeks shall remain chargeable to the employer.

(c) The relief described in subsection (b) of this section shall not be available to employers electing to make payments in lieu of contributions pursuant to 21 V.S.A. § 1321.

(d) Benefit charge relief provided under subsections (a) and (b) of this section shall not result in the recalculation of previously assigned rate classes for nondisaster-impacted employers.

(e) The Department shall notify employers in the counties covered by the federal disaster relief declaration of the provisions of this section. An employer seeking relief shall apply to the Department within 20 days of notification by the Department. The application shall be made in a manner prescribed and approved by the Commissioner and shall be accompanied by a certified statement of the employer that the employees were separated from employment as a direct result of the disaster and would have not been otherwise. False statements made in connection with the certification shall subject the employer to the provisions of 21 V.S.A. § 1369. The employer shall provide the Department with the name, address, last known phone number, and social security number of each employee alleged to have been separated from employment as a result of the disaster.

(f) If an employer's application for relief is denied, the employer may appeal the decision pursuant to 21 V.S.A. §§ 1348 and 1349.

Thirteenth: By adding a new Sec. 24, after Sec. 23, to read as follows:

Sec. 24. APPROPRIATION

Of the appropriations made to the Department of Labor in Sec. B.400 of House Bill 530 (An act relating to making appropriations for the support of government), the amount of $60,000.00 is appropriated for the costs of postage and for hiring temporary positions necessary to implement the unemployment compensation tax relief program described in Sec. 23 of this act.

Fourteenth: By adding a new Sec. 25, after Sec. 24, to read as follows:

Sec. 25. EFFECTIVE DATES

(a) Secs. 1, 6(b), 10, 12a–24, and this section shall take effect on passage. Sec. 6(b) (repeal of adjustment upon reappraisal) shall be effective retroactive to July 2006.

(b) Secs. 2 through 9 (except Sec. 6(b)), 11, and 12 (clarification of ambiguous statutes) of this act shall apply to any tax increment retained for all taxes assessed on the April 1, 2013 grand list.

(c) Sec. 6(c) (creation of taxes for special purposes) shall take effect on July 1, 2013.

(Committee vote: 10-0-1)

(For text see Senate Journal 4/30/2013)

S. 41

An act relating to water and sewer service

Rep. Hubert of Milton, for the Committee on **Government Operations,** 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. 24 V.S.A. § 5143 is amended to read:

§ 5143. DISCONNECTION OF SERVICE

* * *

(c) A municipality shall accept payment from any person for any bill or delinquent charge.

Sec. 2. INTENT

It is the intent of the General Assembly that the Vermont League of Cities and Towns, Vermont Legal Aid, and the Vermont Apartment Owners Association work collaboratively on a proposal to present to the House and Senate Committees on Government Operations by January 15, 2014 which addresses the issue of the disconnection of municipal water and sewer service due to delinquent payments.

Sec. 3. REPEAL

Sec. 1 of this act shall be repealed on February 1, 2014.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 11-0-0)

(For text see Senate Journal 3/19/2013 and 3/22/2013)

Senate Proposal of Amendment

H. 65

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

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 2, 18 V.S.A. § 4254(b), after "faith" by adding and in a timely manner

Second: By adding a 2a to read as follows:

Sec. 2a. REPORT

The Executive Director of the Department of State's Attorneys and Sheriffs and the Defender General shall each report to the Senate and House Committees on Judiciary on the implementation and effect of Sec. 2 of this act no later than November 2015.

(For text see House Journal 3/21/2013)

H. 200

An act relating to civil penalties for possession of marijuana

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

* * * Criminal Penalties and Civil Penalties for Marijuana Possession * * *

Sec. 1. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1)(A) ~~A~~ No person shall knowingly and unlawfully ~~possessing~~ possess more than one ounce of marijuana or more than five grams of hashish or cultivate marijuana. For a first offense under this subdivision (A), a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice. A person convicted of a first offense under this subdivision shall be imprisoned not more than six months or fined not more than $500.00, or both.

(B) A person convicted of a second or subsequent offense ~~under this subdivision~~ of knowingly and unlawfully possessing more than one ounce of marijuana or more than five grams of hashish or cultivating marijuana shall be imprisoned not more than two years or fined not more than $2,000.00, or both.

(C) Upon an adjudication of guilt for a first or second offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041 except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may, prior to sentencing, order that the defendant submit to a drug assessment screening which may be considered at sentencing in the same manner as a presentence report.

(2) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of~~ two ounces or more ~~containing any~~ of marijuana or knowingly and unlawfully cultivating more than three plants of marijuana shall be imprisoned not more than three years or fined not more than $10,000.00, or both.

(3) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of~~ one pound or more ~~containing any~~ of marijuana or knowingly and unlawfully cultivating more than 10 plants of marijuana shall be imprisoned not more than five years or fined not more than $100,000.00, or both.

(4) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of~~ 10 pounds or more of marijuana or knowingly and unlawfully cultivating more than 25 plants of marijuana shall be imprisoned not more than 15 years or fined not more than $500,000.00, or both.

(5) Prior to accepting a plea of guilty or a plea of nolo contendere from a defendant charged with a violation of this subsection, the court shall address the defendant personally in open court, informing the defendant and determining that the defendant understands that admitting to facts sufficient to warrant a finding of guilt or pleading guilty or nolo contendere to the charge may have collateral consequences such as loss of education financial aid, suspension or revocation of professional licenses, and restricted access to public benefits such as housing. If the court fails to provide the defendant with notice of collateral consequences in accordance with this subdivision and the defendant later at any time shows that the plea and conviction may have or has had a negative consequence, the court, upon the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to

vacate.

* * *

(d) Only the portion of a marijuana-infused product that is attributable to marijuana shall count toward the possession limits of this section. The weight of marijuana that is attributable to marijuana-infused products shall be determined according to methods set forth in rule by the Department of Public Safety in accordance with chapter 86 of this title (therapeutic use of cannabis).

Sec. 2. 18 V.S.A. § 4230a–d are added to read:

§ 4230a. MARIJUANA POSSESSION BY A PERSON OVER 21 YEARS OF AGE; CIVIL VIOLATION

(a) A person 21 years of age or older who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows:

(1) Not more than $200.00 for a first offense.

(2) Not more than $300.00 for a second offense.

(3) Not more than $500.00 for a third or subsequent offense.

(b)(1) Except as otherwise provided in this section, a person 21 years of age or older who possesses one ounce or less of marijuana or five grams or less of hashish or who possesses paraphernalia for marijuana use shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under state law.

(2) A violation of this section shall not result in the creation of a criminal history record of any kind.

(c)(1) This section does not exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle of any kind and shall not be construed to repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana.

(2) This section is not intended to affect the search and seizure laws afforded to duly authorized law enforcement officers under the laws of this State. Marijuana is contraband pursuant to section 4242 of this title and subject to seizure and forfeiture unless possessed in compliance with chapter 86 of this title (therapeutic use of cannabis).

(3) This section shall not be construed to prohibit a municipality from regulating, prohibiting, or providing additional penalties for the use of marijuana in public places.

(d) If a person suspected of violating this section contests the presence of cannabinoids within 10 days of receiving a civil citation, the person may request that the State Crime Laboratory test the substance at the person's expense. If the substance tests negative for the presence of cannabinoids, the State shall reimburse the person at state expense.

(e)(1) Upon request by a law enforcement officer who reasonably suspects that a person has committed or is committing a violation of this section, the person shall give his or her name and address to the law enforcement officer and shall produce a motor vehicle operator's license, an identification card, a passport, or another suitable form of identification.

(2) A law enforcement officer is authorized to detain a person if:

(A) the officer has reasonable grounds to believe the person has violated this section; and

(B) the person refuses to identify himself or herself satisfactorily to the officer when requested by the officer.

(3) The person may be detained only until the person identifies himself or herself satisfactorily to the officer. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a judge in the Criminal Division of the Superior Court for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

(f) Fifty percent of the civil penalties imposed by the Judicial Bureau for violations of this section shall be retained by the State for the funding of law enforcement officers on the Drug Task Force, except for a $12.50 administrative charge for each violation which shall be retained by the State. The remaining 50 percent shall be paid to the Court Diversion Program for funding of the Youth Substance Abuse Safety Program as required by section 4230b of this title.

§ 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS OF AGE; FIRST OR SECOND OFFENSE; CIVIL VIOLATION

(a) Offense. Except as otherwise provided in section 4230c of this title, a person under 21 years of age who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:

(1) a civil penalty of $300.00 and suspension of the person's operator's

license and privilege to operate a motor vehicle for a period of 90 days, for a first offense; and

(2) a civil penalty of not more than $600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 180 days, for a second offense.

(b) Issuance of Notice of Violation. A law enforcement officer shall issue a person under 21 years of age who violates this section with a notice of violation, in a form approved by the Court Administrator. The notice of violation shall require the person to provide his or her name and address and shall explain procedures under this section, including that:

(1) the person shall contact the Diversion Program in the county where the offense occurred within 15 days;

(2) failure to contact the Diversion Program within 15 days will result in the case being referred to the Judicial Bureau, where the person, if found liable for the violation, will be subject to a civil penalty and a suspension of the person's operator's license and may face substantially increased insurance rates;

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

(c) Summons and Complaint. When a person is issued a notice of violation under this section, the law enforcement officer shall complete a summons and complaint for the offense and send it to the Diversion Program in the county where the offense occurred. The summons and complaint shall not be filed with the Judicial Bureau at that time.

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for the Youth Substance Abuse Safety Program. If the person fails to do so, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(e) Notice to Report to Diversion. Upon receipt from a law enforcement officer of a summons and complaint completed under this section, the Diversion Program shall send the person a notice to report to the Diversion

Program. The notice to report shall provide that:

(1) The person is required to complete all conditions related to the offense imposed by the Diversion Program, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.

(2) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program, the case will be referred to the Judicial Bureau, where the person, if found liable for the violation, shall be assessed a civil penalty, the person's driver's license will be suspended, and the person's automobile insurance rates may increase substantially.

(3) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense imposed by the Diversion Program, no penalty shall be imposed and the person's operator's license shall not be suspended.

(f)(1) Diversion Program Requirements. Upon being contacted by a person who has been issued a notice of violation, the Diversion Program shall register the person in the Youth Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse Safety Program, the Diversion Program shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense and in every case shall include a condition requiring satisfactory completion of substance abuse screening using an evidence-based tool and, if deemed appropriate following the screening, substance abuse assessment and substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a state-certified or state-licensed substance abuse counselor or substance abuse treatment provider to provide the services.

(2) Substance abuse screening required under this subsection shall be completed within 60 days after the Diversion Program receives a summons and complaint. The person shall complete all conditions at his or her own expense.

(3) When a person has satisfactorily completed substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense which the Diversion Program has imposed, the Diversion Program shall:

(A) void the summons and complaint with no penalty due; and

(B) send copies of the voided summons and complaint to the Judicial

Bureau and to the law enforcement officer who completed them. Before sending copies of the voided summons and complaint to the Judicial Bureau under this subdivision, the Diversion Program shall redact all language containing the person's name, address, Social Security number, and any other information which identifies the person.

(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program or if the person fails to pay the Diversion Program any required Program fees, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(5) A person aggrieved by a decision of the Diversion Program or alcohol counselor may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(g) Failure to Pay Penalty. If a person fails to pay a penalty imposed under this section by the time ordered, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.

(h) Record of Adjudications. Upon adjudicating a person in violation of this section, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall maintain a record of all such adjudications which shall be separate from the registry maintained by the Department for motor vehicle driving records. The identity of a person in the registry shall be revealed only to a law enforcement officer determining whether the person has previously violated this section.

§ 4230c. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS OF AGE; THIRD OR SUBSEQUENT OFFENSE; CRIME

No person shall knowingly and unlawfully possess marijuana. A person under 21 years of age who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a crime if the person has been adjudicated at least twice previously in violation of section 4230b of this title and shall be imprisoned not more than 30 days or fined not more than $600.00, or both.

§ 4230d. MARIJUANA POSSESSION BY A PERSON UNDER 16 YEARS OF AGE; DELINQUENCY

No person shall knowingly and unlawfully possess marijuana. A person under the age of 16 years who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a delinquent act and shall be subject to 33 V.S.A. chapter 52. The person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice.

Sec. 3. 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:

* * *

(24) Violations of 18 V.S.A. §§ 4230a and 4230b, relating to possession of marijuana.

* * *

Sec. 4. 23 V.S.A. § 1134 is amended to read:

§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR POSSESSION OF ALCOHOL OR MARIJUANA

(a) A person shall not consume alcoholic beverages or marijuana while operating a motor vehicle on a public highway. As used in this section, "alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.

* * *

(d) A person who violates subsection (a) of this section shall be ~~fined~~ assessed a civil penalty of not more than $500.00. A person who violates subsection (b) of this section shall be ~~fined~~ assessed a civil penalty of not more than $25.00. A person ~~convicted and fined~~ adjudicated and assessed a civil penalty for an offense under subsection (a) of this section shall not be subject to ~~prosecution~~ a civil violation for the same actions under subsection (b) of this section.

Sec. 5. 23 V.S.A. § 1134 is amended to read:

§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR POSSESSION OF ALCOHOL ~~OR MARIJUANA~~

(a) A person shall not consume alcoholic beverages ~~or marijuana~~ while

operating a motor vehicle on a public highway. As used in this section, "alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.

* * *

* * * Enhanced Penalties for Tax Offenses Based on Income Derived from Illegal Activity * * *

Sec. 6. 32 V.S.A. § 3202 is amended to read:

§ 3202. INTEREST AND PENALTIES

(a) Failure to pay; interest. When a taxpayer fails to pay a tax liability imposed by this title (except the motor vehicle purchase and use tax) on the date prescribed therefor, the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay~~,~~ a sum of interest computed at the rate per annum established by the ~~commissioner~~ Commissioner pursuant to section 3108 of this title on the unpaid amount of that tax liability for the period from the prescribed date to the date of full payment of the liability.

(b) Penalties.

(1) Failure to file. When a taxpayer fails to file a tax return required by this title (other than a return required by subchapter 5 of chapter 151 of this title for estimation of nonwithheld income tax), on the date prescribed therefor or the date as extended pursuant to section 5868 of this title, unless the taxpayer affirmatively shows that such failure is due to reasonable cause and not due to willful neglect, then in addition to any interest payable pursuant to subsection (a) of this section, the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay~~,~~ a penalty which shall be equal to five percent of the outstanding tax liability for each month, or portion thereof, that the tax return is not filed; provided, however, that in no event shall the amount of any penalty imposed under this subdivision exceed 25 percent of the tax liability unpaid on the prescribed date of payment. If the return is not filed within 60 days after the date prescribed therefor, there shall be assessed a minimum penalty of $50.00 regardless of whether there is a tax liability.

(2) Failure to pay estimated tax. When a taxpayer fails to make payments as required by subchapter 5 of chapter 151 of this title (estimations of nonwithheld income tax), the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay a penalty which shall be equal to one percent of the outstanding tax liability for each month, or portion thereof, that the tax liability is not paid in full; provided, however, that in no event shall the amount of any penalty assessed under this subdivision exceed 25 percent of the tax liability unpaid on the prescribed date of payment.

(3) Failure to pay. When a taxpayer fails to pay a tax liability imposed by this title (other than a return required by subchapter 5 of chapter 151 of this title for estimation of nonwithheld income tax)~~,~~ on the date prescribed therefor, then in addition to any interest payable pursuant to subsection (a) of this section, the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay a penalty which shall be equal to for income tax under subchapters 2 and 3 of chapter 151 of this title, one percent, and for all other taxes five percent, of the outstanding tax liability for each month, or portion thereof, that the tax liability is not paid in full; provided, however, that in no event shall the amount of any penalty assessed under this subdivision exceed 25 percent of the tax liability unpaid on the prescribed date of payment.

(4) Negligent failure to pay. When a taxpayer fails to pay a tax liability imposed by this title and the failure is due to negligence or constitutes a substantial understatement of tax, in addition to any interest payable pursuant to subsection (a) of this section, the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay a penalty which shall be equal to 25 percent of that portion of the underpayment. For purposes of this subdivision, "negligence" means any failure to make a reasonable attempt to comply with the provisions of the tax code and "substantial understatement" means an understatement of 20 percent or more of the tax.

(5) Fraudulent failure to pay. When a taxpayer fraudulently or with willful intent to defeat or evade a tax liability imposed by this title, either fails to pay a tax liability on the date prescribed therefor or requests and receives a refund of a tax liability, in addition to any interest payable pursuant to subsection (a) of this section, the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay~~,~~ a penalty equal to the amount of the tax liability unpaid on the prescribed date of payment or received as a refund subsequent to that date.

(6) Violation based on income from illegal activity. The penalties provided in subdivisions (1)–(5) of this subsection shall be doubled if the violation is based on income derived from illegal activity. The penalty provided in this subdivision (6) shall be in addition to any other civil or criminal penalties provided by law.

(7) A failure to pay shall not be subject to more than one of the penalties set forth in subdivisions (3), (4)~~,~~ and (5) of this subsection.

Sec. 7. 32 V.S.A. § 5894 is amended to read:

§ 5894. LIABILITY FOR FAILURE OR DELINQUENCY

(a) Failure to supply information. An individual, fiduciary, or officer or employee of any corporation or partner or employee of any partnership~~,~~ who,

with intent to evade any requirement of this chapter or any lawful requirement of the ~~commissioner~~ Commissioner hereunder, fails to supply any information required by or under this chapter shall be fined not more than $1,000.00 or be imprisoned not more than one year, or both.

(b) Failure to file. An individual, fiduciary, or officer or employee of any corporation or partner or employee of any partnership who knowingly fails to file a tax return when due shall be imprisoned not more than one year or fined not more than $1,000.00, or both.

(c) Failure to pay. An individual, fiduciary, or officer or employee of any corporation or partner or employee of any partnership, who with intent to evade a tax liability fails to pay a tax when due shall, if the amount of tax evaded is $500.00 or less in a single calendar year, be imprisoned not more than one year or fined not more than $1,000.00, or both.

(d) Failure to file or failure to pay; in excess of $500.00. An individual, fiduciary, or officer or employee of a corporation or partner or employee of a partnership, who with intent to evade a tax liability fails to file a tax return when required to do so or fails to pay a tax when due shall, if the amount of tax evaded is in excess of $500.00 in a single calendar year, be imprisoned not more than three years or fined not more than $10,000.00, or both.

(e) False or fraudulent return. An individual, fiduciary, or officer or employee of a corporation or partner or employee of a partnership who knowingly makes, signs, verifies or files with the ~~commissioner~~ Commissioner a false or fraudulent tax return shall be imprisoned not more than one year or fined not more than $1,000.00, or both. An individual, fiduciary, or officer or employee of a corporation or partner or employee of a partnership, who with intent to evade a tax liability makes, signs, verifies or files with the ~~commissioner~~ Commissioner a false or fraudulent tax return shall, if the amount of tax evaded is more than $500.00, be imprisoned not more than three years or fined not more than $10,000.00, or both.

(f) An individual, fiduciary, officer, or employee of any corporation or a partner or employee of any partnership who violates subsections (a)–(e) of this section based on income derived from illegal activity shall be imprisoned not more than three years or fined not more than $10,000.00, or both. The penalty provided in this subsection shall be in addition to any other civil or criminal penalties provided by law.

* * * Expungement of a Misdemeanor Possession of Marijuana Criminal Record * * *

Sec. 8. 13 V.S.A. § 7601(3) is amended to read:

(3) "Predicate offense" means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of intoxicating liquor or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title. "Predicate offense" shall not include misdemeanor possession of marijuana.

* * * Alcoholic Beverage Offenses by a Person Under 21 Years of Age * * *

Sec. 9. 7 V.S.A. § 656 and 657 are amended to read:

§ 656. ~~MINORS~~ PERSON UNDER 21 YEARS OF AGE MISREPRESENTING AGE, PROCURING, POSSESSING, OR CONSUMING ~~LIQUORS~~ ALCOHOLIC BEVERAGES; FIRST OR SECOND OFFENSE; CIVIL VIOLATION

(a)(1) Prohibited conduct. A ~~minor 16~~ person under 21 years of age ~~or older~~ shall not:

~~(1)~~(A) falsely represent his or her age for the purpose of procuring or attempting to procure malt or vinous beverages or spirituous liquor from any licensee, state liquor agency, or other person or persons;

~~(2)~~(B) possess malt or vinous beverages or spirituous liquor for the purpose of consumption by himself or herself or other minors, except in the regular performance of duties as an employee of a licensee licensed to sell alcoholic liquor; or

~~(3)~~(C) consume malt or vinous beverages or spirituous liquors. A violation of this subdivision may be prosecuted in a jurisdiction where the minor has consumed malt or vinous beverages or spirituous liquors~~,~~ or in a jurisdiction where the indicators of consumption are observed.

(2) Offense. Except as otherwise provided in section 657 of this title, a person under 21 years of age who knowingly and unlawfully violates subdivision (1) of this subsection commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:

(A) a civil penalty of $300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, for a first offense; and

(B) a civil penalty of not more than $600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 180 days, for a second offense.

~~(b)(1) A law enforcement officer shall issue a notice of violation, in a form approved by the court administrator, to a person who violates this section if the person has not previously been adjudicated in violation of this section or convicted of violating section 657 of this title. The notice of violation shall require the person to provide his or her name and address, and shall explain procedure under this section, including that:~~

~~(A) the person must contact the diversion board in the county where the offense occurred within 15 days;~~

~~(B) failure to contact the diversion board within 15 days will result in the case being referred to the judicial bureau, where the person, if found liable for the violation, will be subject to a penalty of $300.00 and a 90-day suspension of the person's operator's license, and may face substantially increased insurance rates;~~

~~(C) no money should be submitted to pay any penalty until after adjudication; and~~

~~(D) the person shall notify the diversion board if the person's address changes.~~

~~(2) When a person is issued a notice of violation under subdivision (1) of this subsection, the law enforcement officer shall complete a summons and complaint for the offense and send it to the diversion board in the county where the offense occurred. The summons and complaint shall not be filed with the judicial bureau at that time.~~

~~(3) Within 15 days after receiving a notice of violation issued under subdivision (1) of this subsection, the person shall contact the diversion board in the county where the offense occurred and register for the teen alcohol safety program. If the person fails to do so, the diversion board shall file the summons and complaint with the judicial bureau for adjudication under chapter 29 of Title 4. The diversion board shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation, and shall provide two copies to the person charged with the violation.~~

~~(c) A person who violates this section commits a civil violation and shall be subject to a civil penalty of $300.00, and the person's operator's license and privilege to operate a motor vehicle shall be suspended for a period of 90 days. The state may obtain a violation under this section or a conviction under section 657 of this title, but not both.~~

~~(d) If a person fails to pay a penalty imposed under this section by the time ordered, the judicial bureau shall notify the commissioner of motor vehicles,~~

~~who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.~~

~~(e) Upon adjudicating a person in violation of this section, the judicial bureau shall notify the commissioner of motor vehicles, who shall maintain a record of all such adjudications which shall be separate from the registry maintained by the department for motor vehicle driving records. The identities of persons in the registry shall only be revealed to a law enforcement officer determining whether the person has previously violated this section.~~

~~(f)(1) Upon receipt from a law enforcement officer of a summons and complaint completed under subdivision (b)(2) of this section, the diversion board shall send the person a notice to report to the diversion board. The notice to report shall provide that:~~

~~(A) The person is required to complete all conditions related to the offense imposed by the diversion board, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.~~

~~(B) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other conditions related to the offense imposed by the diversion board, the case will be referred to the judicial bureau, where the person, if found liable for the violation, shall be assessed a penalty of $300.00, the person's driver's license will be suspended for 90 days, and the person's automobile insurance rates may increase substantially.~~

~~(C) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any other conditions related to the offense imposed by the diversion board, no penalty shall be imposed and the person's operator's license will not be suspended.~~

~~(2)(A) Upon being contacted by a person who has been issued a notice of violation under subdivision (b)(1) of this section, the diversion board shall register the person in the teen alcohol safety program. Pursuant to the teen alcohol safety program, the diversion board shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense, and in every case shall include a condition requiring satisfactory completion of substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a state-certified or state-licensed substance abuse counselor or substance abuse treatment provider to provide the services.~~

~~(B) Substance abuse screening required under this subsection shall be completed within 60 days after the diversion board receives a summons and complaint completed under subdivision (b)(2) of this section. The person shall complete all conditions at his or her own expense.~~

~~(3) When a person has satisfactorily completed substance abuse screening, any required substance abuse education or substance abuse counseling, and any other conditions related to the offense which the diversion board has imposed, the diversion board shall:~~

~~(A) void the summons and complaint with no penalty due; and~~

~~(B) send copies of the voided summons and complaint to the judicial bureau and to the law enforcement officer who completed them. Before sending copies of the voided summons and complaint to the judicial bureau under this subdivision, the diversion board shall redact all language containing the person's name, address, social security number or any other information which identifies the person.~~

~~(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other conditions related to the offense imposed by the diversion board, or if the person fails to pay the diversion board any required program fees, the diversion board shall file the summons and complaint with the judicial bureau for adjudication under chapter 29 of Title 4. The diversion board shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation, and shall provide two copies to the person charged with the violation.~~

~~(5) A person aggrieved by a decision of the diversion board or alcohol counselor may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.~~

~~(g) The state's attorney may dismiss without prejudice a violation brought under this section.~~

(b) Issuance of Notice of Violation. A law enforcement officer shall issue a person under 21 years of age who violates this section a notice of violation, in a form approved by the Court Administrator. The notice of violation shall require the person to provide his or her name and address and shall explain procedures under this section, including that:

(1) the person shall contact the Diversion Program in the county where the offense occurred within 15 days;

(2) failure to contact the Diversion Program within 15 days will result in the case being referred to the Judicial Bureau, where the person, if found liable

for the violation, will be subject to a civil penalty and a suspension of the person's operator's license and may face substantially increased insurance rates;

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

(c) Summons and Complaint. When a person is issued a notice of violation under this section, the law enforcement officer shall complete a summons and complaint for the offense and send it to the Diversion Program in the county where the offense occurred. The summons and complaint shall not be filed with the Judicial Bureau at that time.

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for the Youth Substance Abuse Safety Program. If the person fails to do so, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(e) Notice to Report to Diversion. Upon receipt from a law enforcement officer of a summons and complaint completed under this section, the Diversion Program shall send the person a notice to report to the Diversion Program. The notice to report shall provide that:

(1) The person is required to complete all conditions related to the offense imposed by the Diversion Program, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.

(2) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program, the case will be referred to the Judicial Bureau, where the person, if found liable for the violation, shall be assessed a civil penalty, the person's driver's license will be suspended, and the person's automobile insurance rates may increase substantially.

(3) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any

other condition related to the offense imposed by the Diversion Program, no penalty shall be imposed and the person's operator's license shall not be suspended.

(f)(1) Diversion Program Requirements. Upon being contacted by a person who has been issued a notice of violation, the Diversion Program shall register the person in the Youth Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse Safety Program, the Diversion Program shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense and in every case shall include a condition requiring satisfactory completion of substance abuse screening using an evidence-based tool and, if deemed appropriate following the screening, substance abuse assessment and substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a state-certified or state-licensed substance abuse counselor or substance abuse treatment provider to provide the services.

(2) Substance abuse screening required under this subsection shall be completed within 60 days after the Diversion Program receives a summons and complaint. The person shall complete all conditions at his or her own expense.

(3) When a person has satisfactorily completed substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense which the diversion program has imposed, the diversion program shall:

(A) void the summons and complaint with no penalty due; and

(B) send copies of the voided summons and complaint to the Judicial Bureau and to the law enforcement officer who completed them. Before sending copies of the voided summons and complaint to the Judicial Bureau under this subdivision, the Diversion Program shall redact all language containing the person's name, address, Social Security number, and any other information which identifies the person.

(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program or if the person fails to pay the Diversion Program any required program fees, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(5) A person aggrieved by a decision of the Diversion Program or

alcohol counselor may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(g) Failure to Pay Penalty. If a person fails to pay a penalty imposed under this section by the time ordered, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.

(h) Record of Adjudications. Upon adjudicating a person in violation of this section, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall maintain a record of all such adjudications which shall be separate from the registry maintained by the Department for motor vehicle driving records. The identity of a person in the registry shall be revealed only to a law enforcement officer determining whether the person has previously violated this section.

§ 657. ~~MINORS~~ PERSON UNDER 21 YEARS OF AGE MISREPRESENTING AGE~~,~~ ~~OR~~ PROCURING ~~OR,~~ POSSESSING ~~LIQUORS~~ ALCOHOL AND DRIVING EDUCATION~~;~~, OR CONSUMING ALCOHOLIC BEVERAGES; THIRD OR SUBSEQUENT OFFENSE; CRIME

~~(a) A minor shall not:~~

~~(1) falsely represent his or her age for the purpose of procuring or attempting to procure malt or vinous beverages or spirituous liquor from any licensee, state liquor agency, or other person or persons; or~~

~~(2) possess malt or vinous beverages or spirituous liquor for the purpose of consumption by himself or herself or other minors, except in the regular performance of duties as an employee of a licensee licensed to sell alcoholic liquor; or~~

~~(3) consume malt or vinous beverages or spirituous liquors. A violation of this subdivision may be prosecuted in a jurisdiction where the minor has consumed malt or vinous beverages or spirituous liquors, or in a jurisdiction where the indicators of consumption are observed.~~

~~(b) A law enforcement officer shall issue a citation for a violation of this section if a person has been previously adjudicated in violation of this section or section 656 of this title.~~

~~(c) After the issuing officer issues a summons and complaint to the judicial bureau for a first offense pursuant to section 656 of this title, the state's attorney may withdraw the complaint filed with the judicial bureau and file an information charging a violation of this section in the criminal division of the superior court. The state may obtain a conviction under either this section or~~

~~section 656 of this title, but not both.~~

~~(d) A person who violates this section:~~

~~(1) shall be fined not more than $600.00 or imprisoned not more than 30 days, or both; and~~

~~(2) if the person has previously been convicted of violating this section or adjudicated in violation of section 656 of this title, the person's operating license, nonresident operating privilege or the privilege of an unlicensed person to operate a motor vehicle shall be suspended for 120 days.~~

~~(e) The state's attorney shall require as a condition of diversion that:~~

~~(1) a person who is charged with a violation of this section who holds a license to operate a motor vehicle, and who has previously been convicted of violating this section or adjudicated in violation of section 656 of this title, relinquish the license for a period of 60 days; and~~

~~(2) attend an alcohol and driving program at the person's own expense.~~

~~(f) A person who is convicted of violating this section who holds a license to operate a motor vehicle shall, as a condition of probation, be required to complete an alcohol and driving program at the person's own expense.~~

~~(g) The alcohol and driving program shall be administered by the office of alcohol and drug abuse programs and shall take into consideration the needs of minors.~~

~~(h) The state's attorney may dismiss without prejudice an action brought under this section, and may file a civil violation in the judicial bureau.~~ A person under 21 years of age who engages in conduct in violation of subdivision 656(a)(1) of this title commits a crime if the person has been adjudicated at least twice previously in violation of subdivision 656(a)(1) of this title and shall be imprisoned not more than 30 days or fined not more than $600.00, or both.

Sec. 10. 7 V.S.A. § 657a is added to read:

§ 657a. PERSON UNDER 16 YEARS OF AGE MISREPRESENTING AGE OR PROCURING OR POSSESSING ALCOHOLIC BEVERAGES; DELINQUENCY

A person under 16 years of age who engages in conduct in violation of subdivision 656(a)(1) of this title commits a delinquent act and shall be subject to 33 V.S.A. chapter 52. The person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice.

* * * Task Force * * *

Sec. 11. TASK FORCE

(a) Creation of task force. There is created a Task Force for the purpose of developing recommendations to the General Assembly to address drugged driving in Vermont and to address appropriate penalties for possession of alcohol and possession of an ounce or less of marijuana by a person under 21 years of age as provided in this act.

(b) Membership. The Task Force shall be composed of seven members as follows:

(1) the Commissioner of Public Safety or designee;

(2) the Commissioner of Health or designee;

(3) the Executive Director of State's Attorneys and Sheriffs or designee;

(4) the Defender General or designee;

(5) the Commissioner of Motor Vehicles or designee;

(6) the Court Diversion Director or designee; and

(7) a student assistance professional appointed by the Governor.

(c) Report. On or before November 1, 2013, the Task Force shall report to the House and Senate Committees on Judiciary its findings and any recommendations for legislative action.

* * * Application and Effective Dates * * *

Sec. 12. APPLICATION

An offense in which the prohibited conduct occurred prior to July 1, 2013 shall not be deemed a prior offense for the purpose of determining increased penalties for second and subsequent offenses as provided in this act.

Sec. 13. EFFECTIVE DATES

(a) This section and Secs. 12 and 13 of this act shall take effect on passage.

(b) Sec. 6 of this act shall take effect on July 1, 2014.

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

(For text see House Journal 4/12/2013 and 4/16/2013)

H. 240

An act relating to Executive Branch fees

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 26, 7 V.S.A. § 231, in subsection (a) subdivision (5), by striking out the following "$130.00" and inserting in lieu thereof the following: $140.00

Second: By striking out Secs. 27 and 28 in their entirety.

Third: By striking out Sec. 30 in its entirety and inserting in lieu thereof a new Sec. 30 to read as follows:

Sec. 30. 7 V.S.A. § 1002 is amended to read:

§ 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

* * *

(d) A person applying simultaneously for a tobacco license and a liquor license shall apply to the legislative body of the municipality and shall pay to the ~~department~~ Department only the fee required to obtain the liquor license. A person applying ~~only~~ for a tobacco license shall submit a fee of ~~$10.00~~ $100.00 to the legislative body of the municipality for each tobacco license or renewal. The municipal clerk shall forward the application to the ~~department~~ Department, and the ~~department~~ Department shall issue the tobacco license. ~~The municipal clerk shall retain $5.00 of this fee, and the remainder shall be deposited in the treasury of the municipality~~ The tobacco license fee shall be forwarded to the Commissioner for deposit in the Liquor Control Enterprise Fund.

* * *

Fourth: By adding internal captions and new Secs. 35, 36, and 37, to read as follows:

* * * State Police Dispatch Fees * * *

Sec. 35. UNIFORM DISPATCH FEES

The Commissioner of Public Safety shall adopt rules establishing uniform statewide fees for dispatch services provided by or under the direction of the Department of Public Safety. In setting the fees, the Commissioner shall consult with sheriffs and other entities that provide dispatch services.

* * * Break-Open Tickets * * *

Sec. 36. REPEAL

32 V.S.A. chapter 239 (game of chance) is repealed.

Sec. 37. 7 V.S.A. chapter 26 is added to read:

CHAPTER 26. BREAK-OPEN TICKETS

§ 901. DEFINITIONS

As used in this chapter:

(1) "Break-open ticket" means a lottery using a card or ticket of the so-called pickle card, jar ticket, or break-open variety commonly bearing the name "Lucky 7," "Nevada Club," "Victory Bar," "Texas Poker," "Triple Bingo," or any other name.

(2) "Commissioner" means the Commissioner of Liquor Control.

(3) "Distributor" means a person who purchases break-open tickets from a manufacturer and sells or distributes break-open tickets at wholesale in Vermont. "Distributor" shall include any officer, employee, or agent of a corporation or dissolved corporation who has a duty to act for the corporation in complying with the requirements of this chapter. "Distributor" shall not include a person who distributes only jar tickets which are used only for merchandise prizes.

(4) "Manufacturer" means a person who designs, assembles, fabricates, produces, constructs, or otherwise prepares a break-open ticket for sale to a distributor.

(5) "Nonprofit organization" means a nonprofit corporation which is qualified for tax exempt status under the provisions of 26 U.S.C. § 501(c) and which has engaged, in good faith, in charitable, religious, educational, or civic activities in this State on a regular basis during the preceding year. "Nonprofit organization" also includes churches, schools, fire departments, municipalities, fraternal organizations, and organizations that operate agricultural fairs or field days and which have engaged, in good faith, in charitable, religious, educational, or civic activities in this State on a regular basis during the preceding year.

(6) "Seller" means a nonprofit organization that sells break-open tickets at retail.

(7) "Seller's agent" means the owner of a premises where alcohol is served who has entered into a written agreement with a nonprofit organization to sell tickets at retail on behalf of the nonprofit organization.

§ 902. LICENSE REQUIRED

(a) Any manufacturer, distributor, seller, or seller's agent shall be licensed

by the Commissioner.

(b) Upon application and payment of the fee, the Commissioner may issue the following licenses to qualified applicants:

(1) Manufacturer annual license	$7,500.00
(2) Distributor annual license	$7,500.00
(3) Seller's annual license	$ 50.00
(4) Seller's agent annual license	$ 50.00

(c) A license shall not be granted to an individual who has been convicted of a felony within five years of the license application nor to an entity in which any partner, officer, or director has been convicted of a felony within five years of the application.

(d) Licenses issued under this section may be renewed annually from the date of issue or last renewal, upon reapplication and payment of the licensing fee.

(e) A seller or a seller's agent must display his or her license in a conspicuous public place or in an area near where the break-open tickets are sold.

(f) All fees collected pursuant to this section shall be deposited into the Liquor Control Fund.

§ 903. DISTRIBUTION

(a) Only a licensed seller or licensed seller's agent may sell tickets at retail. A seller or seller's agent shall buy tickets for resale only from a licensed distributor. A distributor shall buy tickets only from a licensed manufacturer, and shall only sell tickets to a licensed seller or seller's agent.

(b) A distributor shall not distribute a box of break-open tickets unless the box bears indicia as required by the Commissioner. A distributor shall not distribute a box of break-open tickets in this State with a prize payout of less than 60 percent. A person shall not distribute or sell a break-open ticket at retail unless the ticket bears a unique serial number.

(c) When making a sale of break-open tickets, a distributor shall require a seller or seller's agent to present evidence of a valid license under this chapter.

(d) A seller may sell break-open tickets on the premises of a club as defined in subdivision 2(7) of this title. All proceeds from the sale of break-open tickets shall be used by the seller exclusively for charitable, religious, educational, and civic undertakings, with only the following costs deducted from the proceeds:

(1) the actual cost of the break-open tickets;

(2) the prizes awarded;

(3) reasonable legal fees necessary to organize the nonprofit organization and to assure compliance with all legal requirements; and

(4) reasonable accounting fees necessary to account for the proceeds from the sale of break-open tickets by the seller.

(e) Notwithstanding 13 V.S.A. § 2143, a seller's agent may sell break-open tickets at premises licensed to sell alcoholic beverages if the seller's agent meets the requirements of section 904 of this title. All proceeds from the sale of break-open tickets by a seller's agent shall be remitted to the seller, except for:

(1) the actual cost of the break-open tickets;

(2) the prizes awarded; and

(3) any taxes due on the sale of break-open tickets under 32 V.S.A. chapter 245.

§ 904. REQUIREMENTS FOR A SELLER'S AGENT

(a) In order to sell break-open tickets, a seller's agent shall enter into a written agreement with the seller. The written agreement shall include the terms required by the Commissioner but at a minimum shall be filed with the Commissioner and include the names of individuals representing the seller and the seller's agent, contact information for those individuals, and the responsibility and duties of each party. The seller's agent shall file a copy of the written agreement with the Commissioner.

(b) The seller's agent must remit to the seller at least quarterly the proceeds owed to the seller under the written agreement, along with a copy of the report due under section 905 of this title.

§ 905. RECORDS; REPORT

(a) Each distributor, manufacturer, seller, and seller's agent licensed under this chapter shall maintain records and books relating to the distribution and sale of break-open tickets and to any other expenditure required by the Commissioner. A licensee shall make its records and books available to the Commissioner for auditing.

(b) Each licensed distributor shall file with the Commissioner on the same schedule as the distributor files sales tax returns the following information for the preceding reporting period:

(1) the names of organizations to which break-open tickets were sold;

(2) the number of break-open tickets sold to each organization; and

(3) the ticket denomination and serial numbers of tickets sold.

(c) Each licensed manufacturer shall file with the Commissioner quarterly reports on or before April 25, July 25, October 25, and January 25 for the quarter ending prior to the month in which the report is due. The reports shall contain the following information for the reporting period:

(1) the names of distributors to which deals of break-open ticket were sold;

(2) the number of deals of break-open tickets sold to each distributor; and

(3) the ticket denomination and serial numbers for each deal.

(d) Each licensed seller that sells tickets shall file with the Commissioner quarterly reports on or before April 25, July 25, October 25, and January 25 for the quarter ending prior to the month in which the report is due. The reports shall contain any information required by the Commissioner, but shall include:

(1) the number of boxes purchased and the actual cost of the break-open tickets;

(2) the prizes awarded;

(3) any reasonable legal fees necessary to organize the nonprofit organization and to assure compliance with all legal requirements;

(4) any reasonable accounting fees necessary to account for the proceeds from the sale of break-open tickets by the seller; and

(5) the amount of proceeds dedicated to the charitable purpose of the organization.

(e) Each licensed seller's agent that sells tickets shall file with the Commissioner quarterly reports on or before April 25, July 25, October 25, and January 25 for the quarter ending prior to the month in which the report is due. The reports shall contain any information required by the Commissioner, but shall include:

(1) the number of boxes purchased, the number of tickets in each box, and the retail sale value of the tickets;

(2) the actual cost of the break-open tickets;

(3) the prizes awarded;

(4) the amount of funds remitted to the seller; and

(5) evidence of taxes paid under 32 V.S.A. chapter 245 on the boxes purchased by the seller's agent.

(f) Records and reports filed under this section shall be subject to the provisions of 32 V.S.A. § 3102, except as necessary for the administration of this chapter.

(g) The Commissioner of Liquor Control shall provide the records and reports filed under this section to the Attorney General and Commissioner of Taxes upon request.

§ 906. RULES

The Department of Liquor Control shall regulate the sale of break-open tickets in this State. The Commissioner may adopt regulations for the licensure and reporting requirements under this chapter to establish indicia for boxes of break-open tickets and to establish reasonable reporting and accounting requirements on manufacturers, distributors, sellers, and seller's agents of break-open tickets to ensure the requirements of this chapter are met.

§ 907. ENFORCEMENT

(a) Any person who intentionally violates section 903 of this title shall be fined not more than $500.00 for each violation.

(b) Any person who intentionally violates section 902, 904, or 905 of this title shall be fined not more than $10,000.00 for the first offense and fined not more than $20,000.00 or imprisoned not more than one year, or both, for each subsequent offense.

(c) In addition to the criminal penalties provided under subsections (a) and (b) of this section, any person who violates a provision of this chapter shall be subject to one or both of the following penalties:

(1) revocation or suspension by the Commissioner of a license granted pursuant to this chapter; or

(2) confiscation of break-open tickets or confiscation of the revenues derived from the sale of those tickets, or both.

§ 908. APPEALS

Any licensee aggrieved by an action taken under this chapter and any person aggrieved by the Commissioner's refusal to issue or renew a license under this chapter may appeal in writing within 30 days of the Commissioner's decision to the Liquor Control Board for review of such action. The Board shall thereafter grant a hearing subject to the provisions of 3 V.S.A. chapter 25 upon the matter and notify the aggrieved person in writing of its determination. The Board's determination may be appealed within 30 days to the Vermont

Supreme Court. Appeal pursuant to this section shall be the exclusive remedy for contesting the Commissioner's action under this chapter.

And by renumbering the remaining sections to be numerically correct.

(No House Amendments)

H. 450

An act relating to expanding the powers of regional planning commissions

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 1, 24 V.S.A. § 4345, in subdivision (16)(B), by striking out the first sentence and inserting in lieu thereof the following:

borrow money and incur indebtedness for the purposes of purchasing or leasing property for office space, establish and administer a revolving loan fund, or establish a line of credit, if approved by a two-thirds vote of those representatives to the regional planning commission present and voting at a meeting to approve such action.

Second: After Sec. 2, by inserting a new Sec. 3 as follows:

Sec. 3. 24 V.S.A. § 4341 is amended to read:

§ 4341. CREATION OF REGIONAL PLANNING COMMISSIONS

(a) A regional planning commission may be created at any time by the act of the voters or the legislative body of each of a number of contiguous municipalities, upon the written approval of the ~~agency of commerce and community development~~ Agency of Commerce and Community Development. Approval of a designated region shall be based on whether the municipalities involved constitute a logical geographic and a coherent ~~socio-economic~~ socioeconomic planning area. All municipalities within a designated region shall be considered members of the regional planning commission. For the purpose of a regional planning commission's carrying out its duties and functions under state law, such a designated region shall be considered a political subdivision of the State.

* * *

And by renumbering the remaining section to be numerically correct.

(For text see House Journal 4/24/2013)

H. 520

An act relating to reducing energy costs and greenhouse gas emissions

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 1 (findings), by striking out subdivision (1) in its entirety, and in subdivision (9), by striking out the second sentence and inserting in lieu thereof the following:

The State must encourage the efficient use of energy to heat buildings and water in order to reduce Vermont's carbon footprint and fuel costs and make heating more affordable for all Vermonters.

And by renumbering the subdivisions of Sec. 1 to be numerically correct

Second: In Sec. 2, 30 V.S.A. § 209, in subdivision (g)(2), in the second sentence, after the word "appropriate" by inserting to service providers and to entities having information on associated environmental issues such as the presence of asbestos in existing insulation and, in subdivision (g)(4), in the second sentence, after the word "performed" by inserting according to a standard methodology and

Third: In Sec. 3 (appointed entities; initial plan; statutory revision), in subsection (b), in the first sentence, by striking out the word "September" and inserting in lieu thereof November and by striking out the word "annual" and, in the third sentence, by striking out "December 15, 2013" and inserting in lieu thereof February 15, 2014 and by striking out the word "annual" and, in subsection (c), by striking out "December 15, 2013" and inserting in lieu thereof February 15, 2014

Fourth: By striking out Sec. 6 in its entirety and inserting in lieu thereof a new Sec. 6 as follows:

Sec. 6. 21 V.S.A. § 266 is amended to read:

§ 266. RESIDENTIAL BUILDING ENERGY STANDARDS; STRETCH CODE

(a) Definitions. ~~For purposes of~~ In this subchapter, the following definitions apply:

* * *

(2) "Residential buildings" means one family dwellings, two family dwellings, and multi-family housing three stories or less in height.

(A) With respect to a structure that is three stories or less in height and is a mixed-use building that shares residential and commercial users, the term "residential building" shall include the living spaces in the structure and

the nonliving spaces in the structure that serve only the residential users such as common hallways, laundry facilities, residential management offices, community rooms, storage rooms, and foyers.

(B) "Residential buildings" shall not include hunting camps.

* * *

(5) "Stretch code" means a building energy code for residential buildings that achieves greater energy savings than the RBES and is adopted in accordance with subsection (d) of this section.

* * *

(d) Stretch code. The Commissioner may adopt a stretch code by rule. This stretch code shall meet the requirements of subdivision (c)(1) of this section. The stretch code shall be available for adoption by municipalities under 24 V.S.A. chapter 117 and, on final adoption by the Commissioner, shall apply in proceedings under 10 V.S.A. chapter 151 (Act 250) in accordance with subsection (e) of this section.

(e) Role of RBES and Stretch Code in Act 250. Substantial and reliable evidence of compliance with the RBES and, when adopted, the stretch code established and updated ~~as required~~ under this section shall serve as a presumption of compliance with 10 V.S.A. § 6086(a)(9)(F), except no presumption shall be created insofar as compliance with subdivision (a)(9)(F) involves the role of electric resistance space heating. In attempting to rebut a presumption of compliance created under this subsection, a challenge may only focus on the question of whether or not there will be compliance with the RBES and stretch code established and updated ~~as required~~ under this subsection. A presumption under this subsection may not be overcome by evidence that the RBES and stretch code adopted and updated ~~as required~~ under this section fail to comply with 10 V.S.A. § 6086(a)(9)(F).

~~(e)~~(f) Certification.

(1) Issuance; recording. A certification may be issued by a builder, a licensed professional engineer, a licensed architect or an accredited home energy rating organization. If certification is not issued by a licensed professional engineer, a licensed architect or an accredited home energy rating organization, it shall be issued by the builder. Any certification shall certify that residential construction meets the RBES. The ~~department of public service~~ Department of Public Service will develop and make available to the public a certificate that lists key features of the RBES. Any person certifying shall use this certificate or one substantially like it to certify compliance with RBES. Certification shall be issued by completing and signing a certificate

and permanently affixing it to the outside of the heating or cooling equipment, to the electrical service panel located inside the building, or in a visible location in the vicinity of one of these three areas. The certificate shall certify that the residential building has been constructed in compliance with the requirements of the RBES. The person certifying under this subsection shall provide a copy of each certificate to the ~~department of public service~~ Department of Public Service and shall assure that a certificate is recorded and indexed in the town land records. A builder may contract with a licensed professional engineer, a licensed architect or an accredited home energy rating organization to issue certification and to indemnify the builder from any liability to the owner of the residential construction caused by noncompliance with the RBES.

(2) Condition precedent. Provision of a certificate as required by subdivision (1) of this subsection shall be a condition precedent to:

(A) issuance by the Commissioner of Public Safety or a municipal official acting under 20 V.S.A. § 2736 of any final occupancy permit required by the rules of the Commissioner of Public Safety for use or occupancy of residential construction commencing on or after July 1, 2013 that is also a public building as defined in 20 V.S.A. § 2730(a); and

(B) issuance by a municipality of a certificate of occupancy for residential construction commencing on or after July 1, 2013, if the municipality requires such a certificate under 24 V.S.A. chapter 117.

~~(f)~~(g) Action for damages.

(1) Except as otherwise provided in this subsection, a person aggrieved by noncompliance with this section may bring a civil action against a person who has the obligation of certifying compliance under subsection (e) of this section. This action may seek injunctive relief, damages, court costs, and attorney's fees. As used in this subdivision, "damages" means:

(A) costs incidental to increased energy consumption; and

(B) labor, materials, and other expenses associated with bringing the structure into compliance with RBES in effect on the date construction was commenced.

(2) A person's failure to affix the certification as required by this section shall not be an affirmative defense in such an action against the person.

(3) The rights and remedies created by this section shall not be construed to limit any rights and remedies otherwise provided by law.

~~(g)~~(h) Applicability and exemptions. The construction of a residential addition to a building shall not create a requirement that the entire building

comply with this subchapter. The following residential construction shall not be subject to the requirements of this subchapter:

(1) Buildings or additions whose peak energy use design rate for all purposes is less than 3.4 BTUs per hour, per square foot, or less than one watt per square foot of floor area.

(2) Homes subject to Title VI of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401-5426).

(3) Buildings or additions that are neither heated nor cooled.

(4) Residential construction by an owner, if all of the following apply:

(A) The owner of the residential construction is the builder, as defined under this section.

(B) The residential construction is used as a dwelling by the owner.

(C) The owner in fact directs the details of construction with regard to the installation of materials not in compliance with RBES.

(D) The owner discloses in writing to a prospective buyer, before entering into a binding purchase and sales agreement, with respect to the nature and extent of any noncompliance with RBES. Any statement or certificate given to a prospective buyer shall itemize how the home does not comply with RBES, and shall itemize which measures do not meet the RBES standards in effect at the time construction commenced. Any certificate given under this subsection shall be recorded in the land records where the property is located, and sent to the department of public service, within 30 days following sale of the property by the owner.

~~(h)~~(i) Title validity not affected. A defect in marketable title shall not be created by a failure to issue certification or a certificate, as required under subsection (e) or subdivision (g)(4) of this section, or by a failure under that subsection to: affix a certificate; to provide a copy of a certificate to the department of public service; or to record and index a certificate in the town records.

Fifth: In Sec. 9, 24 V.S.A. § 4449, in subdivision (a)(1), in the third sentence, before the words "building energy standards" by inserting the word applicable and, after the fourth sentence, by inserting the following:

In addition, the administrative officer may provide a copy of the Vermont Residential Building Energy Code Book published by the Department of Public Service in lieu of the full text of the residential building energy standards.

Sixth: By striking out Sec. 10 in its entirety and inserting in lieu thereof a

new Sec. 10 as follows:

Sec. 10. 10 V.S.A. § 6086(a)(9)(F) is amended to read:

(F) Energy conservation. A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation, including reduction of greenhouse gas emissions from the use of energy, and incorporate the best available technology for efficient use or recovery of energy. An applicant seeking an affirmative finding under this criterion shall provide evidence that the subdivision or development complies with the applicable building energy standards under 21 V.S.A. § 266 or 268.

Seventh: In Sec. 12 (disclosure tool working group; reports), by striking out subsection (d) and inserting in lieu thereof a new subsection (d) as follows:

(d) The Department of Public Service (the Department) shall report to the General Assembly in writing:

(1) on or before December 15, 2013, on the findings of the Working Group with regard to the development of a residential building energy disclosure tool; and

(2) on or before December 15, 2014, on the findings of the Working Group with regard to the development of a commercial building energy disclosure tool.

Eighth: After the internal caption "Other Changes to Title 30" and before Sec. 13, by inserting Sec. 12a to read:

Sec. 12a. 30 V.S.A. § 2(e) is added to read:

(e) The Commissioner of Public Service (the Commissioner) will work with the Director of the Office of Economic Opportunity (the Director), the Commissioner of Housing and Community Development, the Vermont Housing and Conservation Board (VHCB), the Vermont Housing Finance Agency (VHFA), the Vermont Community Action Partnership, and the efficiency entity or entities appointed under subdivision 209(d)(2) of this title and such other affected persons or entities as the Commissioner considers relevant to improve the energy efficiency of both single- and multi-family affordable housing units, including multi-family housing units previously funded by VHCB and VHFA and subject to the Multifamily Energy Design Standards adopted by the VHCB and VHFA. In consultation with the other entities identified in this subsection, the Commissioner and the Director together shall report twice to the House and Senate Committees on Natural Resources and Energy, on or before January 31, 2015 and 2017, respectively,

on their joint efforts to improve energy savings of affordable housing units and increase the number of units assisted, including their efforts to:

(1) simplify access to funding and other resources for energy efficiency and renewable energy available for single- and multi-family affordable housing. For the purpose of this subsection, "renewable energy" shall have the same meaning as under section 8002 of this title;

(2) ensure the delivery of energy services in a manner that is timely, comprehensive, and cost-effective;

(3) implement the energy efficiency standards applicable to single- and multi-family affordable housing;

(4) measure the outcomes and performance of energy improvements;

(5) develop guidance for the owners and residents of affordable housing to maximize energy savings from improvements; and

(6) determine how to enhance energy efficiency resources for the affordable housing sector in a manner that avoids or reduces the need for assistance under 33 V.S.A. chapter 26 (home heating fuel assistance).

Ninth: In Sec. 21 (fuel purchasing; home heating fuel assistance), by striking out subsections (c) and (d) in their entirety

Tenth: By striking out Sec. 22 (workforce development working group; report) and the associated internal caption entitled "Workforce Development" in their entirety and inserting in lieu thereof [Deleted.]

Eleventh: By striking out Sec. 24 (study; renewables; heating and cooling) in its entirety and inserting in lieu thereof [Deleted.]

Twelfth: By striking out Sec. 25 (Public Service Board; review of cost-effectiveness screening tool) in its entirety and inserting in lieu thereof [Deleted.]

Thirteenth: By striking out Sec. 26 in its entirety and inserting in lieu thereof a new Sec. 26 as follows:

Sec. 26. PELLET STOVE EMISSIONS STANDARDS; REBATES

With respect to pellet stoves eligible for rebates and incentives funded by the State, the Secretary of Natural Resources shall determine whether the State should adopt emissions standards for these pellet stoves that are more stringent than the applicable standards under the Clean Air Act, 42 U.S.C. § 7401 et seq., and shall make this determination in writing on or before November 1, 2013.

Fourteenth: In Sec. 27, 2012 Acts and Resolves No. 170, Sec. 13, in

subsection (b), by striking out subdivisions (2) and (3) in their entirety and inserting in lieu thereof new subdivisions (2) and (3) to read:

(2) The group's study and report shall consider currently available information on the economic impacts to the state economy of implementing the policies and funding mechanisms described in this subsection.

(3) The group's report shall ~~include its recommended policy and funding mechanisms and the reasons for the recommendations~~ identify those policies and funding mechanisms described in this subsection that do and do not warrant serious consideration and any areas requiring further analysis and shall include any proposals for legislative action. The report shall be submitted to the ~~general assembly~~ General Assembly by December 15, 2013.

Fifteenth: After Sec. 27, by inserting a Sec. 27a to read as follows:

Sec. 27a. COORDINATION; TOTAL ENERGY AND THERMAL EFFICIENCY FUNDING REPORTS

To the extent feasible, the Department of Public Service and the Public Service Board shall coordinate the total energy study and report to be prepared under 2012 Acts and Resolves No. 170, Sec. 13, as amended by Sec. 27 of this act, and the public process and report on thermal efficiency funding and savings to be prepared under Sec. 29 of this act.

Sixteenth: By striking out Sec. 28 (climate change education; report) in its entirety and inserting in lieu thereof [Deleted.]

Seventeenth: By striking out Sec. 29 (thermal efficiency funding and savings; Public Service Board report) in its entirety and inserting in lieu thereof a new Sec. 29 as follows:

Sec. 29. THERMAL EFFICIENCY FUNDING AND SAVINGS; PUBLIC SERVICE BOARD REPORT

(a) On or before December 15, 2013, the Public Service Board shall conduct and complete a public process and submit a report to the House and Senate Committees on Natural Resources and Energy, the House Committee on Commerce and Economic Development, and the Senate Committee on Finance on the efficient use of unregulated fuels. In this section:

(1) "Regulated fuels" means electricity and natural gas delivered by a regulated utility.

(2) "Unregulated fuels" means all fuels used for heating and process fuel customers other than electricity and natural gas delivered by a regulated utility.

(b) During the process and in the report required by this section, the Board shall evaluate whether there are barriers or inefficiencies in the markets for

unregulated fuels that inhibit the efficient use of such fuels.

(c) The Board need not conduct the public process under this section as a contested case under 3 V.S.A. chapter 25 but shall provide notice and an opportunity for written and oral comments to the public and affected parties and state agencies.

Eighteenth: By striking out Sec. 29a (electric vehicles and charging stations, state fleet) in its entirety

Nineteenth: In Sec. 29b, 3 V.S.A. § 2291, in subdivision (c)(6), after the word "incorporate" by inserting conventional hybrid, and after the words "plug-in hybrid" by inserting a comma, and by renumbering the section to be Sec. 29a

Twentieth: By striking out Sec. 29c (promoting the use of electric vehicles) in its entirety

Twenty-first: By striking out Sec. 30 (effective dates) and inserting in lieu thereof a new Sec. 32 as follows:

Sec. 32. EFFECTIVE DATES

(a) The following shall take effect on passage: this section and Secs. 1 (findings); 2 (jurisdiction; general scope); 3 (appointed entities; initial plan; statutory revision); 12 (disclosure tool working group; reports); 18 (eligible beneficiaries; requirements); 19 (benefit amounts); 27 (total energy; report); and 29 (thermal efficiency funding and savings; report) of this act.

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

(For text see House Journal 3/22/2013)

H. 536

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

The Senate proposes to the House to amend the bill as follows:

By striking out Secs. 1, 2, 3, 4, and 6 in their entirety, and by striking out Sec. 8 in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.

And by renumbering the remaining sections to be numerically correct.

And that after passage the title of the bill be amended to read:

An act relating to the National Guard.

(For text see House Journal 4/17/2013 and 4/19/2013)

J.R.H. 11

Joint resolution approving a land exchange or sale in the town of Plymouth and a land transfer in the town of Grand Isle

The Senate proposes to the House that the resolution be struck in its entirety and that the following be inserted in lieu thereof:

Joint resolution approving a land sale in the town of Plymouth and a land transfer in the town of Grand Isle

Whereas, 29 V.S.A. § 166(b) authorizes the Commissioner of Buildings and General Services to sell state lands with the approval of the General Assembly, and

Whereas, 10 V.S.A. § 2606(b) authorizes the Commissioner of Forests, Parks and Recreation to exchange or lease certain lands with the approval of the General Assembly, and

Whereas, the General Assembly considers the following actions to be in the best interest of the State, now therefore be it

Resolved by the Senate and House of Representatives:

First: That notwithstanding the provisions of 29 V.S.A. § 166(b), the General Assembly authorizes the Department of Buildings and General Services, in consultation with the Department of Forests, Parks and Recreation, to sell a 38-acre portion of Coolidge State Forest (Coolidge parcel), in the town of Plymouth, to Markowski Excavation for the sum of $275,000.00 contingent on the following: (1) The Department of Buildings and General Services and the Department of Forests, Parks and Recreation shall each be reimbursed for all costs that each Department may incur; (2) the Coolidge parcel sold to Markowski Excavation shall not include any land that, in the opinion of the Agency of Natural Resources, includes important wildlife habitat, ecological or other significant natural resources, or outdoor recreation values; (3) the Department of Buildings and General Services shall hold a public meeting in the town of Plymouth on this proposal and gain the support of the Plymouth Selectboard for the sale; (4) upon the sale of the Coolidge parcel, Markowski Excavation shall convey to the State of Vermont a permanent access easement providing access from Route 100, across lands of Markowski Excavation, to adjacent state forestland located in the Calvin Coolidge State Forest; (5) the sale of the Coolidge parcel to Markowski Excavation shall be subject to restrictions that ensure that a 100-foot undeveloped buffer is retained around the perimeter of the parcel that abuts state forestland; (6) Markowski Excavation shall be responsible for all associated costs, including surveying,

permitting, and legal; (7) Markowski Excavation shall be responsible for securing all permits and approvals necessary for any subsequent development of the Coolidge parcel; and (8) authorization to enter into this sale shall not be interpreted as state approval of any development proposal for the Coolidge parcel;

Second: That the General Assembly authorizes the Department of Forests, Parks and Recreation to convey for public outdoor recreational purposes to the town of Grand Isle a parcel of up to 23.4 acres of Grand Isle State Park, currently licensed to the town of Grand Isle. Any conveyance of this parcel to the town shall be contingent on the following: (1) the town of Grand Isle shall not further subdivide or convey the parcel to another party, or develop or use the parcel for any purposes other than public outdoor recreational purposes; (2) the State shall retain a reversionary interest in the parcel, and the parcel shall revert to state ownership should the parcel not be used for public outdoor recreational purposes; (3) the conveyance to the town of Grand Isle shall include any covenants or deed restrictions the Vermont Division for Historic Preservation deems necessary to protect potential historic or archeological resources on the transferred parcel; (4) the National Park Service shall approve this conveyance; (5) the transfer to the town of Grand Isle shall include all responsibilities for this parcel that are associated with the federal Land and Water Conservation Fund program; and (6) the town of Grand Isle shall be responsible for all associated costs of the exchange, including surveying, permitting, and legal.

(For text see House Journal 5/3/2013)

Senate Proposal of Amendment to House Proposal of Amendment

S. 77

An act relating to patient choice and control at end of life

The Senate concurs in the House proposal of amendment thereto by striking all after the enacting clause and inserting in lieu thereof the following::

Sec. 1. 18 V.S.A. chapter 113 is added to read:

CHAPTER 113. PATIENT CHOICE AT END OF LIFE

§ 5281. DEFINITIONS

(a) As used in this chapter:

(1) "Bona fide physician–patient relationship" means a treating or consulting relationship in the course of which a physician has completed a full assessment of the patient's medical history and current medical condition, including a personal physical examination.

(2) "Capable" means that a patient has the ability to make and communicate health care decisions to a physician, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(3) "Health care facility" shall have the same meaning as in section 9432 of this title.

(4) "Health care provider" means a person, partnership, corporation, facility, or institution, licensed or certified or authorized by law to administer health care or dispense medication in the ordinary course of business or practice of a profession.

(5) "Impaired judgment" means that a person does not sufficiently understand or appreciate the relevant facts necessary to make an informed decision.

(6) "Interested person" means:

(A) the patient's physician;

(B) a person who knows that he or she is a relative of the patient by blood, civil marriage, civil union, or adoption;

(C) a person who knows that he or she would be entitled upon the patient's death to any portion of the estate or assets of the patient under any will or trust, by operation of law, or by contract; or

(D) an owner, operator, or employee of a health care facility, nursing home, or residential care facility where the patient is receiving medical treatment or is a resident.

(7) "Palliative care" shall have the same definition as in section 2 of this title.

(8) "Patient" means a person who is 18 years of age or older, a resident of Vermont, and under the care of a physician.

(9) "Physician" means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33.

(10) "Terminal condition" means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

§ 5282. RIGHT TO INFORMATION

The rights of a patient under section 1871 of this title to be informed of all available options related to terminal care and under 12 V.S.A. § 1909(d) to receive answers to any specific question about the foreseeable risks and

benefits of medication without the physician's withholding any requested information exist regardless of the purpose of the inquiry or the nature of the information. A physician who engages in discussions with a patient related to such risks and benefits in the circumstances described in this chapter shall not be construed to be assisting in or contributing to a patient's independent decision to self-administer a lethal dose of medication, and such discussions shall not be used to establish civil or criminal liability or professional disciplinary action.

§ 5283. REQUIREMENTS FOR PRESCRIPTION AND DOCUMENTATION; IMMUNITY

(a) A physician shall not be subject to any civil or criminal liability or professional disciplinary action if the physician prescribes to a patient with a terminal condition medication to be self-administered for the purpose of hastening the patient's death and the physician affirms by documenting in the patient's medical record that all of the following occurred:

(1) The patient made an oral request to the physician in the physician's physical presence for medication to be self-administered for the purpose of hastening the patient's death.

(2) No fewer than 15 days after the first oral request, the patient made a second oral request to the physician in the physician's physical presence for medication to be self-administered for the purpose of hastening the patient's death.

(3) At the time of the second oral request, the physician offered the patient an opportunity to rescind the request.

(4) The patient made a written request for medication to be self-administered for the purpose of hastening the patient's death that was signed by the patient in the presence of two or more witnesses who were not interested persons, who were at least 18 years of age, and who signed and affirmed that the patient appeared to understand the nature of the document and to be free from duress or undue influence at the time the request was signed.

(5) The physician determined that the patient:

(A) was suffering a terminal condition, based on the physician's physical examination of the patient and review of the patient's relevant medical records;

(B) was capable;

(C) was making an informed decision;

(D) had made a voluntary request for medication to hasten his or her death; and

(E) was a Vermont resident.

(6) The physician informed the patient in person, both verbally and in writing, of all the following:

(A) the patient's medical diagnosis;

(B) the patient's prognosis, including an acknowledgement that the physician's prediction of the patient's life expectancy was an estimate based on the physician's best medical judgment and was not a guarantee of the actual time remaining in the patient's life, and that the patient could live longer than the time predicted;

(C) the range of treatment options appropriate for the patient and the patient's diagnosis;

(D) if the patient was not enrolled in hospice care, all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(E) the range of possible results, including potential risks associated with taking the medication to be prescribed; and

(F) the probable result of taking the medication to be prescribed.

(7) The physician referred the patient to a second physician for medical confirmation of the diagnosis, prognosis, and a determination that the patient was capable, was acting voluntarily, and had made an informed decision.

(8) The physician either verified that the patient did not have impaired judgment or referred the patient for an evaluation by a psychiatrist, psychologist, or clinical social worker licensed in Vermont for confirmation that the patient was capable and did not have impaired judgment.

(9) If applicable, the physician consulted with the patient's primary care physician with the patient's consent.

(10) The physician informed the patient that the patient may rescind the request at any time and in any manner and offered the patient an opportunity to rescind after the patient's second oral request.

(11) The physician ensured that all required steps were carried out in accordance with this section and confirmed, immediately prior to writing the prescription for medication, that the patient was making an informed decision.

(12) The physician wrote the prescription no fewer than 48 hours after the last to occur of the following events:

(A) the patient's written request for medication to hasten his or her death;

(B) the patient's second oral request; or

(C) the physician's offering the patient an opportunity to rescind the request.

(13) The physician either:

(A) dispensed the medication directly, provided that at the time the physician dispensed the medication, he or she was licensed to dispense medication in Vermont, had a current Drug Enforcement Administration certificate, and complied with any applicable administrative rules; or

(B) with the patient's written consent:

(i) contacted a pharmacist and informed the pharmacist of the prescription; and

(ii) delivered the written prescription personally or by mail or facsimile to the pharmacist, who dispensed the medication to the patient, the physician, or an expressly identified agent of the patient.

(14) The physician recorded and filed the following in the patient's medical record:

(A) the date, time, and wording of all oral requests of the patient for medication to hasten his or her death;

(B) all written requests by the patient for medication to hasten his or her death;

(C) the physician's diagnosis, prognosis, and basis for the determination that the patient was capable, was acting voluntarily, and had made an informed decision;

(D) the second physician's diagnosis, prognosis, and verification that the patient was capable, was acting voluntarily, and had made an informed decision;

(E) the physician's attestation that the patient was enrolled in hospice care at the time of the patient's oral and written requests for medication to hasten his or her death or that the physician informed the patient of all feasible end-of-life services;

(F) the physician's verification that the patient either did not have impaired judgment or that the physician referred the patient for an evaluation and the person conducting the evaluation has determined that the patient did not have impaired judgment;

(G) a report of the outcome and determinations made during any evaluation which the patient may have received;

(H) the date, time, and wording of the physician's offer to the patient to rescind the request for medication at the time of the patient's second oral request; and

(I) a note by the physician indicating that all requirements under this section were satisfied and describing all of the steps taken to carry out the request, including a notation of the medication prescribed.

(15) After writing the prescription, the physician promptly filed a report with the Department of Health documenting completion of all of the requirements under this section.

(b) This section shall not be construed to limit civil or criminal liability for gross negligence, recklessness, or intentional misconduct.

§ 5284. NO DUTY TO AID

A patient with a terminal condition who self-administers a lethal dose of medication shall not be considered to be a person exposed to grave physical harm under 12 V.S.A. § 519, and no person shall be subject to civil or criminal liability solely for being present when a patient with a terminal condition self-administers a lethal dose of medication or for not acting to prevent the patient from self-administering a lethal dose of medication.

§ 5285. LIMITATIONS ON ACTIONS

(a) A physician, nurse, pharmacist, or other person shall not be under any duty, by law or contract, to participate in the provision of a lethal dose of medication to a patient.

(b) A health care facility or health care provider shall not subject a physician, nurse, pharmacist, or other person to discipline, suspension, loss of license, loss of privileges, or other penalty for actions taken in good faith reliance on the provisions of this chapter or refusals to act under this chapter.

(c) Except as otherwise provided in this section and sections 5283, 5289, and 5290 of this title, nothing in this chapter shall be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

§ 5286. HEALTH CARE FACILITY EXCEPTION

A health care facility may prohibit a physician from writing a prescription for a dose of medication intended to be lethal for a patient who is a resident in its facility and intends to use the medication on the facility's premises, provided the facility has notified the physician in writing of its policy with

regard to the prescriptions. Notwithstanding subsection 5285(b) of this title, any physician who violates a policy established by a health care facility under this section may be subject to sanctions otherwise allowable under law or contract.

§ 5287. INSURANCE POLICIES; PROHIBITIONS

(a) A person and his or her beneficiaries shall not be denied benefits under a life insurance policy, as defined in 8 V.S.A. § 3301, for actions taken in accordance with this chapter.

(b) The sale, procurement, or issue of any medical malpractice insurance policy or the rate charged for the policy shall not be conditioned upon or affected by whether the physician is willing or unwilling to participate in the provisions of this chapter.

§ 5288. NO EFFECT ON PALLIATIVE SEDATION

This chapter shall not limit or otherwise affect the provision, administration, or receipt of palliative sedation consistent with accepted medical standards.

§ 5289. PROTECTION OF PATIENT CHOICE AT END OF LIFE

A physician with a bona fide physician–patient relationship with a patient with a terminal condition shall not be considered to have engaged in unprofessional conduct under 26 V.S.A. § 1354 if:

(1) the physician determines that the patient is capable and does not have impaired judgment;

(2) the physician informs the patient of all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(3) the physician prescribes a dose of medication that may be lethal to the patient;

(4) the physician advises the patient of all foreseeable risks related to the prescription; and

(5) the patient makes an independent decision to self-administer a lethal dose of the medication.

§ 5290. IMMUNITY FOR PHYSICIANS

A physician shall be immune from any civil or criminal liability or professional disciplinary action for actions performed in good faith compliance with the provisions of this chapter.

§ 5291. SAFE DISPOSAL OF UNUSED MEDICATIONS

The Department of Health shall adopt rules providing for the safe disposal

of unused medications prescribed under this chapter.

§ 5292. STATUTORY CONSTRUCTION

Nothing in this chapter shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Action taken in accordance with this chapter shall not be construed for any purpose to constitute suicide, assisted suicide, mercy killing, or homicide under the law. This section shall not be construed to conflict with section 1553 of the Patient Protection and Affordable Health Care Act, Pub.L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub.L. No. 111-152.

Sec. 2. REPEAL

18 V.S.A. § 5283 (immunity for prescription and documentation) is repealed on July 1, 2016.

Sec. 3. EFFECTIVE DATES

(a) Sec. 1 (18 V.S.A. chapter 113) of this act shall take effect on passage, except that 18 V.S.A. §§ 5289 (protection of patient choice at end of life) and 5290 (immunity for physicians) shall take effect on July 1, 2016.

(b) The remaining sections of this act shall take effect on passage.

(For House Proposal of Amendment see House Journal 4/30/2013 and 5/1/2013)

S. 150

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

The Senate concurs in the House proposal of amendment thereto as follows::

First: In Sec. 15, 23 V.S.A. § 610, in subsection (a), in the first sentence, by striking out the following: "residential address unless the listing of another address is requested by the applicant or is otherwise authorized by law" and inserting in lieu thereof the following: residential address, except that at the request of the licensee, the licensee's mailing address may be listed, or an alternative address may be listed if otherwise authorized by law

Second: By striking out Secs. 28–29 and the internal caption preceding Sec. 28 in their entirety and inserting in lieu thereof the following:

* * * Motor Vehicle Moving Violation * * *

Sec. 28. 23 V.S.A. § 1002 is added to read:

§ 1002. MOTOR VEHICLE MOVING VIOLATION; NO POINTS

A person who commits a moving violation under another provision of this title for which no term of imprisonment is provided by law, and for which a penalty of not more than $1,000.00 is provided, commits a traffic violation and may be issued a complaint for a violation of this section in lieu of a complaint for a violation of the predicate moving violation provision. A person convicted of a violation of this section shall not be assessed points against his or her driving record under chapter 25 of this title, but shall be subject to the penalties prescribed in the provision of this title that specifies the predicate moving violation.

* * * Waiver of Assessment of Points * * *

Sec. 29. 23 V.S.A. § 2501 is amended to read:

§ 2501. MOTOR VEHICLE POINT SYSTEM

For the purpose of identifying habitually reckless or negligent drivers and frequent violators of traffic regulations governing the movement of vehicles, a uniform system is established assigning demerit points for convictions of violations of this title or of ordinances adopted by local authorities regulating the operation of motor vehicles. Notice of each assessment of points may be given. No points shall be assessed for violating section 1002 of this title or a provision of a statute or municipal ordinance regulating standing, parking, equipment, size, or weight, or if a superior judge or Judicial Bureau hearing officer has waived the assessment of points in the interest of justice. The conviction report from the court shall be prima facie evidence of the points assessed unless points are specifically waived in the conviction report. The ~~department is~~ Department also is authorized to suspend the license of a driver when the driver's driving record identifies the driver as an habitual offender under section 673a of this title.

Sec. 29a. 23 V.S.A. § 2502 is amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) ~~Any~~ Unless the assessment of points is waived by a superior judge or a Judicial Bureau hearing officer in the interests of justice, or unless a person is convicted of violating section 1002 of this title, a person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

* * *

Third: In Sec. 32, in subsection (c), by striking out the following: "and 28,"

(For House Proposal of Amendment see House Journal 4/30/2013 and 5/1/2013)

Consent Calendar

Concurrent Resolutions for Adoption Under Joint Rule 16a

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before today's adjournment. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar of May 9, 2013.

H.C.R. 141

House concurrent resolution honoring Dr. Kevin Daniel Crowley

H.C.R. 142

House concurrent resolution honoring Bennington College President Elizabeth Coleman for her visionary academic leadership and scholarship

H.C.R. 143

House concurrent resolution congratulating the Brattleboro Museum & Art Center on its 40th anniversary

H.C.R. 144

House concurrent resolution honoring the military valor of the Shores brothers in defending the Union during the Civil War

H.C.R. 145

House concurrent resolution recognizing the importance for U.S. military personnel of the award-winning documentary film *The Invisible War*

H.C.R. 146

House concurrent resolution honoring Dianne Jaquith for her exemplary career at the Barstow Memorial School in Chittenden

H.C.R. 147

House concurrent resolution honoring Stafford Technical Center Director Lyle Jepson on being named the 2013 Technical Director of the Year

H.C.R. 148

House concurrent resolution commemorating the opening of the new Adult Intensive Unit at the Brattleboro Retreat in partnership with the Department of Mental Health

H.C.R. 149

House concurrent resolution in memory of retired Vermont State Police Sgt. Harold Ackerman

H.C.R. 150

House concurrent resolution congratulating Mikaela Shiffrin on her international alpine ski racing achievements

H.C.R. 151

House concurrent resolution congratulating the Bennington Rural Fire Department on its 60th anniversary

H.C.R. 152

House concurrent resolution congratulating the Green Street School 2012 Vermont State Spelling Bee championship team

H.C.R. 153

House concurrent resolution congratulating the Bennington Children's Chorus on its silver anniversary

H.C.R. 154

House concurrent resolution congratulating the 2013 South Burlington High School Rebels Division I championship boys' ice hockey team

H.C.R. 155

House concurrent resolution congratulating the Vermont Shamrocks on winning the New England and National 2013 USA Hockey Tier II-U16 championships

H.C.R. 156

House concurrent resolution congratulating the Lake Champlain Committee on its 50th anniversary

H.C.R. 157

House concurrent resolution commemorating the bicentennial anniversary of the birth of Stephen A. Douglas, Brandon's most famous native son

H.C.R. 158

House concurrent resolution designating the week of May 5–11 as Vermont Organ Donor Awareness Week in honor of Jason Perry and Christian Stromberg

H.C.R. 159

House concurrent resolution congratulating the Puffer United Methodist Church of Morrisville on its bicentennial anniversary

H.C.R. 160

House concurrent resolution honoring John Hasen on his outstanding career as an attorney dedicated to serving the public

H.C.R. 161

House concurrent resolution honoring the civic and community leadership of the Montagne family of St. Albans

H.C.R. 162

House concurrent resolution designating May 13–19, 2013 as American Craft Beer Week in Vermont and celebrating Gregfest

H.C.R. 163

House concurrent resolution honoring Patricia Rocheleau Harper for her outstanding work on the restoration of the House committee rooms

H.C.R. 164

House concurrent resolution congratulating the Plainfield Fire Department on its centennial anniversary

H.C.R. 165

House concurrent resolution honoring the retiring educators and support staff in the Southwest Vermont Supervisory Union

H.C.R. 166

House concurrent resolution honoring the Civil War-era musical drama *Ransom* on its professional premiere as the opening production of Lost Nation Theater's 25th anniversary season

H.C.R. 167

House concurrent resolution honoring Robert Stannard on his retirement as a legislative lobbyist

H.C.R. 168

House concurrent resolution commemorating the placement of an historic marker at the Rutland fairgrounds honoring aviation pioneer George Schmitt

H.C.R. 169

House concurrent resolution congratulating the Pittsford Fire Department on its 65th anniversary

H.C.R. 170

House concurrent resolution honoring the Giancola family for their foresight in the transformation of the Howe Scale Company to the Howe Center

H.C.R. 171

`House concurrent resolution congratulating Windsor High School boys' Basketball Coach Harry Ladue on his induction into the New England Basketball Hall of Fame

H.C.R. 172

House concurrent resolution honoring the Joslin Memorial Library in Waitsfield on the occasion of its 100th anniversary

S.C.R. 25

Senate concurrent resolution designating May 7, 2013 as Senior Center Awareness Day

S.C.R. 26

Senate concurrent resolution honoring Charles Browne for his extraordinary leadership of the Fairbanks Museum & Planetarium.

S.C.R. 27

Senate concurrent resolution honoring Hanford Biron for exemplary public service in the town of Norton

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.