

House Calendar

Saturday, May 13, 2013

123rd DAY OF THE BIENNIAL SESSION

House Convenes at 10:00 A.M.

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ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

S. 37

An act relating to tax increment financing districts

Favorable with Amendment

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Sec. 1 of this act shall be repealed on February 1, 2014.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. 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 ~~fin~~ assessed a civil penalty of not more than \$500.00. A person who violates subsection (b) of this section shall be ~~fin~~ 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:

~~(A)~~ (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.~~

~~(e) 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)

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)

Amendment to be offered by Rep. Poirier of Barre City to S. 77

Rep. Poirier of Barre City moves that the House concur in the Senate Proposal of amendment to the House Proposal of amendment with a further amendment thereto as follows:

First: In Sec. 1, in 18 V.S.A. § 5281, definitions, by striking out the subsection (a) designation and by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read:

(2) “Capacity” means that a patient:

(A) has the ability to communicate health care decisions to a physician, including communication through a qualified interpreter who is not an interested person;

(B) has the ability to understand the nature of the diagnosis and the possible risks and benefits of the treatment options;

(C) has the ability to appreciate the situation and the consequences of the potential treatment choices; and

(D) does not have impaired judgment.

Second: In Sec. 1, in 18 V.S.A. § 5281, definitions, by striking out subdivision (5) in its entirety and inserting in lieu thereof a new subdivision (5) to read:

(5) “Impaired judgment” means that a person is unable to:

(A) engage in a rational process of assessing the relevant information; and

(B) articulate the reason or reasons for the person's choice of treatment.

Amendment to be offered by Rep. Batchelor of Derby to S. 77

Rep. Batchelor of Derby moves that the House concur in the Senate Proposal of Amendment to the House Proposal of Amendment with further amendment by redesignating Sec. 3, effective dates, to be Sec. 4 and by adding a new Sec. 3 to read as follows:

Sec. 3. 18 V.S.A. § 9721 is added to read:

§ 9721. SURROGATE DECISION MAKING FOR HOSPICE ADMISSION

(a) If an individual without capacity has neither an agent nor a guardian, the individual's spouse, parent, adult child, or adult sibling may provide informed consent for the individual's admission to hospice care or receipt of hospice care services.

(b) As used in this section, "hospice care" means a program of care and support provided by a Medicare-certified hospice provider to help an individual with a terminal condition to live comfortably by providing palliative care, including effective pain and symptom management. Hospice care may include services provided by an interdisciplinary team that are intended to address the physical, emotional, psychosocial, and spiritual needs of the individual and his or her family.

Amendment to be offered by Rep. Donahue of Northfield to S. 77

Rep. Donahue of Northfield moves that the House concur in the Senate Proposal of Amendment to the House Proposal of Amendment with a further amendment thereto as follows:

Sec. 1. 18 V.S.A. chapter 113 is added to read:

CHAPTER 113. PATIENT CHOICE AT END OF LIFE

§ 5281. DEFINITIONS

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) "Capacity" means that a patient:

(A) has the ability to communicate health care decisions to a physician, including communication through a qualified interpreter who is not an interested person;

(B) has the ability to understand the nature of the diagnosis and the possible risks and benefits of the treatment options;

(C) has the ability to appreciate the situation and the consequences of the potential treatment choices; and

(D) does not have impaired judgment.

(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 is unable to:

(A) engage in a rational process of assessing the relevant information; and

(B) articulate the reason or reasons for the person’s choice of treatment.

(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 condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

§ 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. 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 has a terminal condition and has capacity;

(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 palliative medication requested by the patient that would hasten the patient’s death if a lethal dose were taken;

(4) the physician advises the patient of the risks and consequences of taking a lethal dose of the medication prescribed; and

(5) the patient makes an independent decision to self-administer a lethal dose of the medication for the purpose of hastening his or her death.

§ 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. 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 undertakes actions in accordance with the provisions of this chapter.

§ 5286. 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.

§ 5287. IMMUNITY

(a) 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.

(b) Except as otherwise provided in this section and in section 5283 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.

§ 5288. 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. EFFECTIVE DATE

This act shall take effect on passage.