

# House Calendar

Tuesday, March 11, 2014

64th DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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**ACTION CALENDAR**

**Action Postponed Until March 11, 2014**

**Favorable with Amendment**

**H. 685**

An act relating to identification and registration of moorings

**Rep. Quimby of Concord**, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 29 V.S.A. § 401 is amended to read:

§ 401. POLICY

(a) Lakes and ponds which are public waters of Vermont and the lands lying thereunder are a public trust, and it is the policy of the State that these waters and lands shall be managed to serve the public good, as defined by section 405 of this title, to the extent authorized by statute. For the purposes of this chapter, the exercise of this management shall be limited to encroachments subject to ~~section 403 of this title~~ subchapter 2 and moorings subject to subchapter 3 of this chapter. The management of these waters and lands shall be exercised by the Department of Environmental Conservation in accordance with this chapter and the rules of the Department.

(b) For the purposes of regulation of encroachments under subchapter 2 of this chapter, jurisdiction of the Department shall be construed as extending to all lakes and ponds which are public waters and the lands lying thereunder, which lie beyond the shoreline or shorelines delineated by the mean water level of any lake or pond which is a public water of the State, as such mean water level is determined by the Department. For the purposes of regulation of encroachments under subchapter 2 of this chapter, jurisdiction shall include encroachments of docks and piers on the boatable tributaries of Lake Champlain and Lake Memphremagog upstream to the first barrier to navigation, and encroachments of docks and piers on the Connecticut River impoundments and boatable tributaries of such impounds upstream to the first barrier to navigation. No provision of this chapter shall be construed to permit trespass on private lands without the permission of the owner.

(c) For purposes of regulation of moorings regulated under subchapter 3 of this chapter, jurisdiction of the Department shall be construed as extending to all public waters of the State.

Sec. 2. 29 V.S.A. § 402(8) is added to read:

(8) “Mooring” means a buoy, piling, stake, or other apparatus used to secure, berth, or moor vessels in public water. It does not include fixed piers connected to the shore or accessory structures directly related thereto that are encroachments subject to the permitting requirements of section 403 of this title.

Sec. 3. 29 V.S.A. § 403(b) is amended to read:

(b) A permit shall not be required for the following uses provided that navigation or boating is not unreasonably impeded:

\* \* \*

(6) Moorings, as defined by subdivision 402(8) of this chapter.

Sec. 4. 29 V.S.A. § 406 is amended to read:

§ 406. APPEALS

Appeals of any act or decision of the ~~department~~ Department under this ~~chapter~~ subchapter shall be made in accordance with 10 V.S.A. chapter 220 of Title 10.

Sec. 5. 29 V.S.A. § 409 is amended to read:

§ 409. INJUNCTION

Any person aggrieved by any violation of this ~~chapter~~ subchapter, or the ~~attorney general~~ Attorney General at the request of the ~~department~~ Department, may institute any appropriate action in the ~~superior court~~ Superior Court of the county in which a proposed or existing encroachment is located to prevent, restrain, correct, or abate any violation of this ~~chapter~~ subchapter or of the conditions of any permit issued under this ~~chapter~~ subchapter.

Sec. 6. 29 V.S.A. chapter 11, subchapter 3 is added to read:

Subchapter 3. Moorings

§ 416. IDENTIFICATION OF MOORINGS

(a) A person who places a mooring on or in the waters of the State shall paint on or attach to the mooring the owner’s name and address.

(b) Any person may use a mooring not bearing the owner’s name and address to secure his or her vessel.

§ 417. UNAUTHORIZED USE OF MOORINGS

A person who ties or otherwise attaches a vessel to an identified mooring of another without express permission of the mooring’s owner is subject to an

administrative penalty of not more than \$75.00.

§ 418. APPEALS

Appeals of any act or decision of the Department under this subchapter shall be made in accordance with 10 V.S.A. chapter 220.

§ 419. APPLICATION OF MUNICIPAL ORDINANCES

This subchapter shall not apply to a mooring subject to a validly issued municipal ordinance.

Sec. 7. RECODIFICATION

29 V.S.A. §§ 401–402 are recodified within chapter 11 to be subchapter 1, which is added to read:

Subchapter 1. General Provisions

Sec. 8. RECODIFICATION

29 V.S.A. §§ 403–410 are recodified within chapter 11 to be subchapter 2, which is added to read:

Subchapter 2. Encroachments

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

**( Committee Vote: 9-0-0)**

**Amendment to be offered by Rep. Donahue of Northfield to the recommendation of amendment of the Committee on Fish, Wildlife & Water Resources to H. 685**

In Sec. 6, by striking 29 V.S.A. § 417 in its entirety and inserting in lieu thereof the following:

§ 417. UNAUTHORIZED USE OF MOORINGS

Unless use of a mooring is necessary in a time of emergency to protect personal safety or property, a person who ties or otherwise attaches a vessel to an identified mooring of another without express permission of the mooring's owner is subject to an administrative penalty of not more than \$75.00.

## NEW BUSINESS

### Third Reading

#### H. 227

An act relating to licensing and regulating property inspectors

**Amendment to be offered by Reps. Higley of Lowell, Cole of Burlington, Consejo of Sheldon, Devereux of Mount Holly, Evans of Essex, Hubert of Milton, Lewis of Berlin, Martin of Wolcott, Mook of Bennington, Sweaney of Windsor, and Townsend of South Burlington to H. 227**

In Sec. 2, 26 V.S.A. chapter 19, in § 1071 (duties of Director), in subsection (b), before the period, by inserting “, and may adopt rules establishing standards of practice for the profession”

#### H. 631

An act relating to lottery commissions

### Favorable with Amendment

#### H. 123

An act relating to Lyme disease and other tick-borne illnesses

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

Sec. 1. FINDINGS

The General Assembly finds:

(1) Lyme disease, caused by one or more Borrelia species of spirochete bacteria, is increasingly widespread in Vermont and has become endemic in the State.

(2) Lyme disease is a fast growing vector-borne disease in Vermont.

(3) Lyme disease may be successfully treated with a short-term course of antibiotics if diagnosed early; however, for patients whose Lyme disease is not identified early, complex and ongoing symptoms may require more aggressive treatment as acknowledged by the Centers for Disease Control and Prevention and the International Lyme and Associated Diseases Society.

(4) Treatment of Lyme disease needs to be tailored to the individual patient, and there is a range of opinions within the medical community regarding proper treatment of Lyme disease.

(5) Coinfection by other tick-borne illnesses may complicate and lengthen the course of treatment.

## Sec. 2. PURPOSE

The purpose of this act is to ensure that patients have access to treatment for Lyme disease and other tick-borne illnesses in accordance with their needs and the clinical judgment of their physicians.

## Sec. 3. POLICY STATEMENT

A policy statement clearly communicating the following shall be issued by the Vermont State Board of Medical Practice to physicians licensed pursuant to 26 V.S.A. chapter 23 and to physician assistants licensed pursuant to 26 V.S.A. chapter 31; the Vermont Board of Osteopathic Physicians to physicians licensed pursuant to 26 V.S.A. chapter 33; and the Vermont Board of Nursing to advanced practice registered nurses licensed pursuant to 26 V.S.A. chapter 28:

(1) a physician, physician assistant, or nurse practitioner, as appropriate, shall document the basis for diagnosis of and treatment for Lyme disease, other tick-borne illness, or coinfection in a patient's medical record;

(2) a physician, physician assistant, or nurse practitioner, as appropriate, shall obtain a patient's informed consent in writing prior to administering any proposed long-term treatment for Lyme disease, other tick-borne illness, or coinfection; and

(3) the Board shall not pursue disciplinary action against a physician, physician assistant, or nurse practitioner, as appropriate, solely for the use of medical care recognized by the guidelines of the Centers for Disease Control and Prevention, Infectious Diseases Society of America, or International Lyme and Associated Diseases Society for the treatment of a patient's symptoms when the patient is clinically diagnosed with Lyme disease or other tick-borne illness; however, this does not preclude discipline for errors, omissions, or other misconduct when practicing within such guidelines.

## Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

**( Committee Vote: 11-0-0)**

## **H. 542**

An act relating to the taxation of soil amendments

**Rep. Stevens of Shoreham**, for the Committee on **Agriculture and Forest Products**, recommends the bill be amended by striking all after the enacting

clause and inserting in lieu thereof the following:

Sec. 1. 32 V.S.A. § 9701(48)–(50) are added to read:

(48) Compost: means a stable humus-like material produced by the controlled biological decomposition of organic matter through active management, but does not mean sewage, septage, or materials derived from sewage or septage.

(49) Manipulated animal manure: means manure that is ground, pelletized, mechanically dried, or consists of separated solids.

(50) Perlite: means a lightweight granular material made of volcanic material expanded by heat treatment for use in growing media.

(51) Planting mix: means material that is:

(A) used in the production of plants; and

(B) made substantially from compost, peat moss, or coir and other ingredients that contribute to fertility and porosity, including perlite, vermiculite, and other similar materials.

(52) Vermiculite: means a lightweight mica product expanded by heat treatment for use in growing media.

Sec. 2. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

\* \* \*

(3) Agriculture feeds; seed; plants; baler twine; silage bags; agricultural wrap; sheets of plastic for bunker covers; liming materials; breeding and other livestock; semen breeding fees; baby chicks; turkey poults; agriculture chemicals other than pesticides; veterinary supplies; ~~and~~ bedding; clean high carbon bulking agents, as that term is used in the Agency of Natural Resources Solid Waste Management Rules, used for composting; food residuals used for composting or on-farm energy production; and fertilizers and pesticides for use and consumption directly in the production for sale of tangible personal property on farms, including stock, dairy, poultry, fruit and truck farms, orchards, nurseries, or in greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities for sale.

\* \* \*



(49) Sales of compost, animal manure, manipulated animal manure, and potting soil.

### Sec. 3. APPLICATION OF SALES TAX; COMPOST

Notwithstanding the imposition under 32 V.S.A. § 9771 of the sales and use tax on the sale of composting for farming, the Department of Taxes shall not impose or collect the sales and use tax on the sale of compost for farming that occurred between January 1, 2012 and July 1, 2014, and taxes paid on such charges shall be refunded upon request if made within the statute of limitations and documented to the satisfaction of the Commissioner of Taxes. As used in this section, “compost” shall have the same meaning as defined in 10 V.S.A. § 1266b(1) and “farming” shall have the same meaning as defined in 10 V.S.A. § 6001(22).

### Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

**( Committee Vote: 11-0-0)**

**Rep. Johnson of Canaan**, 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** and when further amended as follows:

First: By striking out Sec. 2 in its entirety and inserting in lieu thereof the following:

Sec. 2. 32 V.S.A. § 9741 is amended to read:

#### § 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

\* \* \*

(49) Clean high carbon bulking agents, as that term is used in the Agency of Natural Resources’ Solid Waste Management Rules, used for commercial or on-farm composting, and food residuals used for commercial or on-farm composting or on-farm energy production;

(50) Compost, animal manure, manipulated animal manure, and planting mix when any of these items are sold in bulk. As used in this subsection, the term “sold in bulk” shall mean sold in a form that is not prepackaged, or sold in a packaged form in volumes greater than one cubic yard.

Second: By striking out Sec. 3 in its entirety and inserting in lieu thereof

the following:

### Sec. 3. STATUTORY PURPOSE

The statutory purpose of the exemptions for composting materials, compost, animal manure, manipulated animal manure, and planting mix in 32 V.S.A. § 9741(49) and (50) is to support the composting industry, and to further the goals of 2012 Acts and Resolves No. 148. The Office of Legislative Council is authorized to place these statutory purposes in the appropriate statutory sections prior to July 1, 2014.

( Committee Vote: 10-0-1)

### H. 650

An act relating to establishing the Ecosystem Restoration and Water Quality Improvement Special Fund

**Rep. Beyor of Highgate**, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 1264d is added to read:

#### § 1264d. ECOSYSTEM RESTORATION AND WATER QUALITY

##### IMPROVEMENT SPECIAL FUND

(a) Purpose. The federal and State requirements for the permitting of Municipal Separate Storm Sewer Systems (MS4) require certain communities to collect water flow and precipitation data at monitoring stations on stormwater-impaired waters in order to demonstrate compliance with stormwater Total Maximum Daily Load allocations. The costs, equipment, and expertise to conduct monitoring can be prohibitive to individual communities. The establishment of the Ecosystem Restoration and Water Quality Improvement Special Fund is intended to ensure municipal compliance with the monitoring requirements for MS4 communities while reducing the fiscal and other pressures on these communities.

(b) Creation of fund; purpose. There is created an Ecosystem Restoration and Water Quality Improvement Special Fund, to be managed in accordance with the requirements of 32 V.S.A. chapter 7, subchapter 5, and to be administered by the Secretary of Natural Resources. The Ecosystem Restoration and Water Quality Improvement Special Fund shall be used to provide assistance to municipalities in fulfilling the monitoring, education, and other requirements of the MS4 permitting program. The Secretary is authorized to collect monies for the Fund and to make disbursements from the Fund directly related to the Secretary's oversight of monitoring required under

the MS4 program.

(c) Participation by municipalities.

(1) A municipality may through a memorandum of understanding (MOU) with the Secretary of Natural Resources agree to contribute to the Ecosystem Restoration and Water Quality Improvement Special Fund to perform the monitoring and other data collection that a municipality is required to conduct under the MS4 permitting program. Under the MOU, a municipality shall commit to contribute to the Fund the municipalities share of funding required by the Agency of Natural Resources to perform MS4 monitoring and provide oversight and administration. Memoranda of understanding shall serve to coordinate funding and work among municipalities, the State, and any entity contracted with or by a municipality or the State for the purposes of improving water quality.

(2) At a minimum, each memorandum of understanding developed under this section shall contain the following:

(A) the purpose of the memorandum of understanding;

(B) a description of the work to be performed under the memorandum of understanding;

(C) a description of how the coordinated work proposed under the memorandum of understanding will improve water quality;

(D) the entities eligible to participate under the memorandum of understanding; and

(E) the amount of required contribution by the entity, based on a funding formula developed in consultation with entities eligible to participate in the program.

(3) A memorandum of understanding developed under this section shall be posted on the Agency website and subject to a comment period of not less than 30 days.

(4) All participating entities, and the Agency, shall sign any final memoranda of understanding.

(d) Fund proceeds.

(1) The Ecosystem Restoration and Water Quality Improvement Special Fund Deposits shall consist of:

(A) payment of costs by participating MS4 communities;

(B) monies appropriated by the General Assembly; and

(C) any other source, public or private.

(2) Unexpended balances and interest earned on the Fund shall be retained in the Fund for use in accordance with the purposes of the Fund.

(e) Fund accounts; expenditures.

(1) The Secretary shall maintain separate accounts within the Ecosystem Restoration and Water Quality Improvement Special Fund for each memorandum of understanding. The Secretary may establish within the Fund an account for the purpose of conducting education and outreach related to improvements to water quality.

(2) Expenditures from an account shall be limited to the purposes established by the memorandum of understanding associated with that account. The Secretary is prohibited from disbursing funds on behalf of an entity that failed to contribute its assigned allocation pursuant to the funding formula established by the Secretary or for any purpose not associated with that account.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

**( Committee Vote: 9-0-0)**

**Rep. Helm of Fair Haven**, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committee on **Fish, Wildlife & Water Resources**.

**(Committee Vote: 10-0-1)**

### **H. 795**

An act relating to victim's compensation and restitution procedures

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

Sec. 1. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

(a) A Restitution Unit is created within the Center for Crime Victim Services for purposes of ~~assuring~~ ensuring that crime victims receive restitution when it is ordered by the Court.

(b) The Restitution Unit shall administer the Restitution Fund established under section 5363 of this title.

(c) The Restitution Unit shall have the authority to:

(1) Collect restitution from the offender when it is ordered by the ~~court~~ Court under section 7043 of this title.

(2) ~~Bring an action to enforce~~ Enforce a restitution obligation as a civil judgment under section 7043 of this title. The Restitution Unit shall enforce restitution orders issued prior to July 1, 2004 pursuant to the law in effect on the date the order is issued.

(3)(A) Share and access information, including information maintained by the National Criminal Information Center, consistent with Vermont and federal law, from the Court, the Department of Corrections, the Department of Motor Vehicles, the Department of Taxes, ~~and~~ the Department of Labor, and law enforcement agencies in order to carry out its collection and enforcement functions. The Restitution Unit, for purposes of establishing and enforcing restitution payment obligations, is designated as a law enforcement agency for the sole purpose of requesting and obtaining access to information needed to identify or locate a person, including access to information maintained by the National Criminal Information Center.

(B) Provide information to the Department of Corrections concerning supervised offenders, including an offender's restitution payment history and balance, address and contact information, employment information, and information concerning the Restitution Unit's collection efforts.

(C) The Restitution Unit is specifically authorized to collect, record, use, and disseminate Social Security numbers as needed for the purpose of collecting restitution and enforcing restitution judgment orders issued by the Court.

(4) Investigate and verify losses as determined by the Restitution Unit, including losses that may be eligible for advance payment from the Restitution Special Fund, and verify the amount of insurance or other payments paid to or for the benefit of a victim, and reduce the amount collected or to be collected from the offender or disbursed to the victim from the Crime Victims' Restitution Special Fund accordingly. The Restitution Unit, when appropriate, shall submit to the ~~court~~ Court a proposed revised restitution order ~~stipulated to by the victim and the unit~~, with copies provided to the victim and the offender. No hearing shall be required, ~~and the Court shall amend the judgment order to reflect the amount stipulated to by the victim and the Restitution Unit.~~

(5) Adopt such administrative rules as are reasonably necessary to carry out the purposes set forth in this section.

(6) Report offenders' payment histories to credit reporting agencies;

~~provided that the Unit shall not report information regarding offenders who are incarcerated.~~ The Unit shall not make a report under this subdivision until after it has notified the offender of the proposed report by first class mail or other like means to give actual notice, and provided the offender a period not to exceed 20 days to contest the accuracy of the information with the Unit. The Unit shall immediately notify each credit bureau organization to which information has been furnished of any increases or decreases in the amount of restitution owed by the offender.

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

(8) Contract with one or more sheriff's departments for the purposes of serving process, warrants, demand letters, and mittimus in restitution cases, and contract with one or more law enforcement agencies or other investigators for the purpose of investigating and locating offenders and enforcing restitution judgment orders.

(9) Collect from an offender subject to a restitution judgment order all fees and direct costs, including reasonable attorney's fees, incurred by the Restitution Unit as a result of enforcing the order and investigating and locating the offender.

Sec. 2. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIM'S RESTITUTION SPECIAL FUND

\* \* \*

(d)(1) The Restitution Unit is authorized to advance up to ~~\$10,000.00~~ \$5,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the Court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative;

(C) has not been reimbursed under subdivision (2) of this subsection; and

(D) is a natural person and has been referred to the Restitution Unit by a diversion program pursuant to 3 V.S.A. § 164a.

(2) The Restitution Unit may make advances of up to ~~\$10,000.00~~ \$5,000.00 under this subsection to the following persons or entities:

(A) A victim service agency approved by the Restitution Unit if the

agency has advanced monies which would have been payable to a victim under subdivision (1) of this subsection.

(B) A victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract requiring payment of restitution.

(3) An advance under this subsection shall not be made to the government or to any governmental subdivision or agency.

(4) An advance under this subsection shall not be made to a victim who:

(A) fails to provide the Restitution Unit with the documentation necessary to support the victim's claim for restitution; ~~or~~

(B) violated a criminal law of this State which caused or contributed to the victim's material loss; or

(C) has crime-related losses that are eligible for payment from the Victim Compensation Special Fund.

(5) An advance under this subsection shall not be made for the amount of cash loss included in a restitution judgment order.

(6) An advance under this subsection shall not be made for jewelry, precious metals, luxury items, and collectibles identified in rules adopted by the Unit pursuant to subdivision 5362(c)(5) of this title.

\* \* \*

Sec. 3. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

\* \* \*

(e)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the Court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection (k) of this section. Notwithstanding 12 V.S.A. chapter 113 or any other provision of law, interest shall not accrue on a restitution judgment.

(2)(A) Every order of restitution shall:

(i) include the offender's name, address, telephone number, and Social Security number;

(ii) include the name, address, and telephone number of the

offender's employer; and

(iii) require the offender, until his or her restitution obligation is satisfied, to notify the Restitution Unit within 30 days if the offender's address, telephone number, or employment changes, including providing the name, address, and telephone number of each new employer.

(B) [Repealed.]

(3) An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement which provides that the offender pay restitution for that offense. A copy of the plea agreement shall be attached to the restitution order.

(f)(1) If not paid at the time of sentencing, restitution may be ordered as a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole if the convicted person is sentenced to preapproved furlough, probation, or supervised community sentence, or is sentenced to imprisonment and later placed on parole. A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation, furlough, or parole for nonpayment of a restitution obligation incurred after July 1, 2004.

(2) The Department of Corrections shall work collaboratively with the Restitution Unit to assist with the collection of restitution. The Department shall provide the Restitution Unit with information about the location and employment status of the offender.

(g)(1) When restitution is requested but not ordered, the Court shall set forth on the record its reasons for not ordering restitution.

(2)(A) If restitution was not requested at the time of sentencing, or if expenses arose after the entry of a restitution order, ~~the State may file a motion with the sentencing court to reopen the restitution case in order to consider a~~ the victim may request for restitution payable from the Restitution Fund. Restitution ordered paid under this subdivision shall be payable from the Restitution Fund and capped at \$1,000.00, and shall not be payable by the offender.

(B) A motion under this subdivision shall be filed within one year after the imposition of sentence or the entry of the restitution order.

(h) Restitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.

(i)(1) The ~~court~~ Court shall transmit a copy of a restitution order and the



plea agreement, if any, to the Restitution Unit, which shall make payment to the victim in accordance with section 5363 of this title.

(2) To the extent that the Victims Compensation Board has made payment to or on behalf of the victim in accordance with chapter 167 of this title, restitution, if imposed, shall be paid to the Restitution Unit, which shall make payment to the Victims Compensation Fund.

(j) The Restitution Unit may bring an action, including a small claims procedure, on a form approved by the Court Administrator, to enforce a restitution judgment order entered by the Criminal Division of the Superior Court. The action shall be brought against an the offender in the Civil Division of the Superior Court of the unit where the offender resides or in the unit where the order was issued. In an action under this subsection, a restitution order issued by the Criminal Division of the Superior Court shall be enforceable in the Civil Division of the Superior Court or in a small claims procedure in the same manner as a civil judgment. Superior and Small Claims Court filing fees shall be waived for an action brought under this subsection, ~~and for an action to renew a restitution judgment.~~

\* \* \*

(m)(1) If the offender fails to pay restitution as ordered by the ~~court~~ Court, the Restitution Unit may file an action to enforce the restitution order in Superior or Small Claims Court. After an enforcement action is filed, any further proceedings related to the action shall be heard in the court where it was filed. The court shall set the matter for hearing and shall provide notice to the Restitution Unit, the victim, and the offender. The Court may order the defendant to appear at the hearing and disclose assets and liabilities and produce any documents the Court deems relevant. If the ~~court~~ Court determines the offender has failed to comply with the restitution order, the ~~court~~ Court may take any action the Court deems necessary to ensure the offender will make the required restitution payment, including:

~~(1)~~(A) amending the payment schedule of the restitution order;

~~(2)~~(B) ordering, in compliance with the procedures required in Rule 4.1 of the Vermont Rules of Civil Procedure, the disclosure, attachment, and sale of assets and accounts owned by the offender;

~~(3)~~(C) ordering the offender's wages withheld pursuant to subsection (n) of this section; or

~~(4)~~(D) ordering the suspension of any recreational licenses owned by the offender.

(2) If the Court finds that the offender has an ability to pay and willfully

refuses to do so, the offender may be subject to civil contempt proceedings under 12 V.S.A. chapter 5.

\* \* \*

(p) An obligation to pay restitution is part of a criminal sentence and is:

(1) nondischargeable in the United States Bankruptcy Court to the maximum extent provided under 11 U.S.C. § § 523 and 1328;~~and~~

(2) not subject to any statute of limitations;~~and~~

(3) not subject to the renewal of judgment requirements of 12 V.S.A. § 506.

\* \* \*

#### Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2014 and shall apply to restitution orders issued after that date.

**( Committee Vote: 11-0-0)**

**Rep. Fagan of Rutland City**, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committee on **Judiciary**.

**(Committee Vote: 10-0-1)**

#### **H. 799**

An act relating to the importation of untreated firewood

**Rep. Martin of Springfield**, for the Committee on **Agriculture and Forest Products**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 83, subchapter 8 is added to read:

Subchapter 8. Importation of Firewood

§ 2681. IMPORTATION OF FIREWOOD; PROTECTION FROM  
INVASIVE PESTS

(a) Definitions. As used in this section:

(1) “Commissioner” means the Commissioner of Forests, Parks and Recreation.

(2) “Department” means the Department of Forests, Parks and Recreation.

(3) “Firewood” means wood that is sold or transported for residential or recreational consumption in fireplaces, woodstoves, outdoor fireplaces, or campfires. “Firewood” shall not mean wood chips, wood pellets, fuel for biomass boilers, pulpwood, or other wood sold or transported for manufacturing purposes.

(b) Rulemaking. On or before July 1, 2015, the Commissioner, after consultation with the Secretary of Agriculture, Food and Markets, shall adopt rules regulating the importation of firewood into the State. The rules shall address:

(1) whether certain types of firewood should be prohibited from importation due to the potential to spread invasive species;

(2) whether a health certificate or some other approval shall be required to import firewood;

(3) whether persons who produce or sell firewood in the State shall be required to track purchases of firewood from out of State in order to allow for identification of sources of invasive species; and

(4) any other issue the Commissioner identifies as necessary for preventing the importation of invasive species into the State when importing firewood.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

**( Committee Vote: 11-0-0)**

### **NOTICE CALENDAR**

#### **Committee Bill for Second Reading**

##### **H. 869**

An act relating to miscellaneous agricultural subjects.

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

#### **Favorable with Amendment**

##### **H. 239**

An act relating to information regarding the rights of landlords and tenants

**Rep. Weed of Enosburgh, for the Committee on General, Housing and Military Affairs, recommends the bill be amended as follows:**

In Sec. 2, the effective date, by striking out “2013” and inserting in lieu thereof

2014

( Committee Vote: 7-0-1)

### H. 501

An act relating to operating a motor vehicle under the influence of alcohol or drugs

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

#### Sec. 1. INTENT

It is the intent of the General Assembly that 23 V.S.A. § 1201(a)(3) as amended by this act be construed in the same manner that the Vermont Supreme Court has construed 23 V.S.A. § 1201(a)(2). In cases such as *State v. Schmitt*, 150 Vt. 503, 508 (1988) and *State v. Storrs*, 105 Vt. 180, 185 (1933), the Court has said that “under the influence of intoxicating liquor” means that a person’s full mental or physical abilities are diminished, impaired, or affected in the slightest degree by intoxicating liquor. It is the intent of the General Assembly that the words “under the influence of any other drug or under the combined influence of alcohol and any other drug” in 23 V.S.A. § 1201(a)(3) be interpreted in the same manner.

Sec. 2. 23 V.S.A. § 1201 is amended to read:

#### § 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL REFUSAL; ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person’s alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug ~~to a degree which renders the person incapable of driving safely~~; or

(4) when the person’s alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title.

\* \* \*

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

( Committee Vote: 10-0-1)

**H. 555**

An act relating to the commitment of a criminal defendant who is incompetent to stand trial because of a traumatic brain injury

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

Sec. 1. 13 V.S.A. § 4801 is amended to read:

§ 4801. TEST OF INSANITY IN CRIMINAL CASES

(a) The test when used as a defense in criminal cases shall be as follows:

(1) A person is not responsible for criminal conduct if at the time of such conduct, as a result of ~~mental disease or defect~~ illness, intellectual disability, or traumatic brain injury, he or she lacks adequate capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

(2) The terms ~~“mental disease or defect”~~ “mental illness, intellectual disability, or traumatic brain injury” do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct. ~~The terms “mental disease or defect” shall include congenital and traumatic mental conditions as well as disease.~~

(b) The defendant shall have the burden of proof in establishing insanity as an affirmative defense by a preponderance of the evidence.

Sec. 2. 13 V.S.A. § 4814 is amended to read:

§ 4814. ORDER FOR EXAMINATION

(a) Any court before which a criminal prosecution is pending may order the ~~department of mental health~~ Department of Mental Health to have the defendant examined by a psychiatrist at any time before, during or after trial, and before final judgment in any of the following cases:

(1) ~~When~~ when the defendant enters a plea of not guilty, or when such a plea is entered in the defendant's behalf, and then gives notice of the defendant's intention to rely upon the defense of insanity at the time of the alleged crime, or to introduce expert testimony relating to a ~~mental disease, defect,~~ mental illness, intellectual disability, traumatic brain injury or other

condition bearing upon the issue of whether he or she had the mental state required for the offense charged;

(2) ~~When~~ when the defendant, the ~~state~~ State, or an attorney, guardian, or other person acting on behalf of the defendant, raises before ~~such~~ the court the issue of whether the defendant is mentally competent to stand trial for the alleged offense;

(3) ~~When~~ when the court believes that there is doubt as to the defendant's sanity at the time of the alleged offense; or

(4) ~~When~~ when the court believes that there is doubt as to the defendant's mental competency to be tried for the alleged offense.

(b) ~~Such~~ An order under this section may be issued by the court on its own motion, or on motion of the ~~state~~ State, the defendant, or an attorney, guardian, or other person acting on behalf of the defendant.

Sec. 3. 13 V.S.A. § 4815 is amended to read:

§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

(a) It is the purpose of this section to provide a mechanism by which a defendant is examined in the least restrictive environment deemed sufficient to complete the examination and prevent unnecessary pre-trial detention and substantial threat of physical violence to any person, including a defendant.

(b) The order for examination may provide for an examination at any jail or correctional center, or at the ~~State~~ Vermont Psychiatric Care Hospital or a designated hospital, ~~or at its successor in interest~~, or at such other place as the Court shall determine, after hearing a recommendation by the Commissioner of Mental Health.

(c) A motion for examination shall be made as soon as practicable after a party or the Court has good faith reason to believe that there are grounds for an examination. An attorney making such a motion shall be subject to the potential sanctions of Rule 11 of the Vermont Rules of Civil Procedure.

(d) Upon the making of a motion for examination, the Court shall order a mental health screening to be completed by a designated mental health professional while the defendant is still at the Court.

(e) If the screening cannot be commenced and completed at the courthouse within two hours from the time of the defendant's appearance before the Court, the Court may ~~forego~~ forgo consideration of the screener's recommendations.

(f) The Court and parties shall review the recommendation of the designated mental health professional and consider the facts and circumstances surrounding the charge and observations of the defendant in court. If the Court

finds sufficient facts to order an examination, it may be ordered to be completed in the least restrictive environment deemed sufficient to complete the examination, consistent with subsection (a) of this section.

(g)(1) Inpatient examination at the Vermont ~~State~~ Psychiatric Care Hospital, or its successor in interest, or a designated hospital. The Court shall not order an inpatient examination unless the designated mental health professional determines that the defendant is a person in need of treatment as defined in 18 V.S.A. § 7101(17).

(2) Before ordering the inpatient examination, the ~~court~~ Court shall determine what terms, if any, shall govern the defendant's release from custody under sections 7553-7554 of this title.

(3) An order for inpatient examination shall provide for placement of the defendant in the custody and care of the ~~commissioner of mental health~~ Commissioner of Mental Health.

(A) If a Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest~~, or a designated hospital psychiatrist determines prior to admission that the defendant is not in need of inpatient hospitalization ~~prior to admission~~, the Commissioner shall release the defendant pursuant to the terms governing the defendant's release from the Commissioner's custody as ordered by the Court. The Commissioner of Mental Health shall ensure that all individuals who are determined not to be in need of inpatient hospitalization receive appropriate referrals for outpatient mental health services.

(B) If a Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest~~, or designated hospital psychiatrist determines that the defendant is in need of inpatient hospitalization:

(i) The Commissioner shall obtain an appropriate inpatient placement for the defendant at the Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest~~, or a designated hospital and, based on the defendant's clinical needs, may transfer the defendant between hospitals at any time while the order is in effect. A transfer to a designated hospital outside the no refusal system is subject to acceptance of the patient for admission by that hospital.

(ii) The defendant shall be returned to court for further appearance on the following business day if the defendant is no longer in need of inpatient hospitalization, unless the terms established by the ~~court~~ Court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(C) The defendant shall be returned to court for further appearance within two business days after the Commissioner notifies the ~~court~~ Court that the examination has been completed, unless the terms established by the Court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(4) If the defendant is to be released pursuant to subdivision (3)(A), (3)(B)(ii), or (3)(C) of this subsection and is not in the custody of the Commissioner of Corrections, the defendant shall be returned to the defendant's residence or ~~such other~~ to another appropriate place within the State of Vermont by the Department of Mental Health at the expense of the ~~court~~ Court.

(5) If it appears that an inpatient examination cannot reasonably be completed within 30 days, the Court issuing the original order, on request of the ~~commissioner~~ Commissioner and upon good cause shown, may order placement at the hospital extended for additional periods of 15 days in order to complete the examination, and the defendant on the expiration of the period provided for in such order shall be returned in accordance with this subsection.

(6) ~~For the purposes of~~ As used in this subsection, "in need of inpatient hospitalization" means an individual has been determined under clinical standards of care to require inpatient treatment.

(h) Except upon good cause shown, defendants charged with misdemeanor offenses who are not in the custody of the Commissioner of Corrections shall be examined on an outpatient basis for mental competency. Examinations occurring in the community shall be conducted at a location within 60 miles of the defendant's residence or at another location agreed to by the defendant.

(i) As used in this section:

~~(1) "No, "no~~ "no refusal system" means a system of hospitals and intensive residential recovery facilities under contract with the Department of Mental Health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the Commissioner in contract.

~~(2) "Successor in interest" shall mean the mental health hospital owned and operated by the State that provides acute inpatient care and replaces the Vermont State Hospital.~~

Sec. 4. 13 V.S.A. § 4816 is amended to read:

#### § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

(a) Examinations provided for in the preceding section shall have reference to:



(1) ~~Mental~~ mental competency of the person examined to stand trial for the alleged offense; and

(2) ~~Sanity~~ sanity of the person examined at the time of the alleged offense.

(b) A competency evaluation for an individual thought to have a ~~developmental~~ an intellectual disability or traumatic brain injury shall include a current evaluation by a psychologist or other appropriate medical professional skilled in assessing individuals with ~~developmental disabilities~~ those conditions.

(c) As soon as practicable after the examination has been completed, the examining psychiatrist or psychologist, if applicable, shall prepare a report containing findings in regard to each of the matters listed in subsection (a) of this section. The report shall be transmitted to the Court issuing the order for examination, and copies of the report shall be sent to the ~~state's attorney~~ State's Attorney, and to the respondent's attorney if the respondent is represented by counsel.

(d) No statement made in the course of the examination by the person examined, whether or not he or she has consented to the examination, shall be admitted as evidence in any criminal proceeding for the purpose of proving the commission of a criminal offense or for the purpose of impeaching testimony of the person examined.

(e) The relevant portion of a psychiatrist's report shall be admitted into evidence as an exhibit on the issue of the person's mental competency to stand trial, and the opinion therein shall be conclusive on the issue if agreed to by the parties and if found by the Court to be relevant and probative on the issue.

(f) Introduction of a report under subsection (d) of this section shall not preclude either party or the Court from calling the psychiatrist who wrote the report as a witness or from calling witnesses or introducing other relevant evidence. Any witness called by either party on the issue of the defendant's competency shall be at the state's expense, or, if called by the Court, at the Court's expense.

Sec. 5. 13 V.S.A. § 4817 is amended to read:

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

(a) A person shall not be tried for a criminal offense if he or she is incompetent to stand trial.

(b) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in his or her behalf, or the ~~state~~ State, at any time before final judgment, raises before the court before which

~~such the~~ person is tried or is to be tried, the issue of whether ~~such the~~ person is incompetent to stand trial, or if the court has reason to believe that ~~such the~~ person may not be competent to stand trial, a hearing shall be held before ~~such the~~ court at which evidence shall be received and a finding made regarding his or her competency to stand trial. However, in cases where the court has reason to believe that ~~such the~~ person may be incompetent to stand trial due to a mental ~~disease or mental defect~~, such illness, intellectual disability, or traumatic brain injury, the hearing shall not be held until an examination has been made and a report submitted by an examining psychiatrist in accordance with sections 4814-4816 of this title.

(c) A person who has been found incompetent to stand trial for an alleged offense may be tried for that offense if, upon subsequent hearing, ~~such the~~ person is found by the court having jurisdiction of his or her trial for the offense to have become competent to stand trial.

Sec. 6. 13 V.S.A. § 4819 is amended to read:

#### § 4819. ACQUITTAL BY REASON OF INSANITY

When a person tried on information, complaint, or indictment is acquitted by a jury by reason of insanity at the time of the alleged offense, the jury shall state in its verdict of not guilty that the ~~same is given for such cause~~ acquittal is for that reason.

Sec. 7. 13 V.S.A. § 4820 is amended to read:

#### § 4820. HEARING REGARDING COMMITMENT

When a person charged on information, complaint, or indictment with a criminal offense:

(1) Is reported by the examining psychiatrist following examination pursuant to sections 4814-4816 of this title, to have been insane at the time of the alleged offense; ~~or,~~

(2) Is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to a mental ~~disease or mental defect~~; ~~or~~ illness, intellectual disability, or traumatic brain injury.

(3) Is not indicted upon hearing by grand jury by reason of insanity at the time of the alleged offense, duly certified to the court; ~~or,~~

(4) Upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense; the court before which ~~such the~~ person is tried or is to be tried for ~~such the~~ offense, shall hold a hearing for the purpose of determining whether ~~such the~~ person should be committed to the custody of the ~~commissioner of mental health~~ Commissioner of Mental Health or the

Commissioner of Disabilities, Aging, and Independent Living. Such person may be confined in jail or some other suitable place by order of the court pending hearing for a period not exceeding 15 days.

Sec. 8. 13 V.S.A. § 4821 is amended to read:

§ 4821. NOTICE OF HEARING; PROCEDURES

The person who is the subject of the proceedings, his or her attorney, the legal guardian, if any, the ~~commissioner of mental health or the commissioner of disabilities, aging, and independent living, and the state's attorney~~ Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living, and the State's Attorney or other prosecuting officer representing the ~~state~~ State in the case, shall be given notice of the time and place of a hearing under the preceding section. Procedures for hearings for persons who are mentally ill shall be as provided in 18 V.S.A. chapter 181 of Title 18. Procedures for hearings for persons who are ~~mentally retarded intellectually disabled or have a traumatic brain injury~~ shall be as provided in 18 V.S.A. chapter 206, subchapter 3 of chapter 206 of Title 18.

Sec. 9. 13 V.S.A. § 4822 is amended to read:

§ 4822. FINDINGS AND ORDER; MENTALLY ILL PERSONS

(a) If the Court finds that ~~such~~ the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the ~~court~~ Court shall issue an order of commitment directed to the Commissioner of Mental Health, which shall admit the person to the care and custody of the Department of Mental Health for an indeterminate period. In any case involving personal injury or threat of personal injury, the committing Court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

(b) ~~Such~~ The order of commitment shall have the same force and effect as an order issued under 18 V.S.A. §§ 7611-7622, and persons committed under such an order shall have the same status, and the same rights, including the right to receive care and treatment, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. §§ 7611-7622.

(c) Notwithstanding the provisions of subsection (b) of this section, at least 10 days prior to the proposed discharge of any person committed under this section the Commissioner of Mental Health shall give notice thereof to the committing Court and ~~state's attorney~~ State's Attorney of the county where the prosecution originated. In all cases requiring a hearing prior to discharge of a person found incompetent to stand trial under section 4817 of this title, the

hearing shall be conducted by the committing Court issuing the order under that section. In all other cases, when the committing Court orders a hearing under subsection (a) of this section or when, in the discretion of the Commissioner of Mental Health, a hearing should be held prior to the discharge, the hearing shall be held in the Family Division of the Superior Court to determine if the committed person is no longer a person in need of treatment or a patient in need of further treatment as set forth in subsection (a) of this section. Notice of the hearing shall be given to the Commissioner, the ~~state's attorney~~ State's Attorney of the county where the prosecution originated, the committed person, and the person's attorney. Prior to the hearing, the ~~state's attorney~~ State's Attorney may enter an appearance in the proceedings and may request examination of the patient by an independent psychiatrist, who may testify at the hearing.

(d) The Court may continue the hearing provided in subsection (c) of this section for a period of 15 additional days upon a showing of good cause.

(e) If the ~~court~~ Court determines that commitment shall no longer be necessary, it shall issue an order discharging the patient from the custody of the ~~department of developmental and mental health services~~ Department of Mental Health.

(f) The Court shall issue its findings and order not later than 15 days from the date of hearing.

Sec. 10. 13 V.S.A. § 4823 is amended to read:

§ 4823. FINDINGS AND ORDER; PERSONS WITH ~~MENTAL~~  
~~RETARDATION~~ INTELLECTUAL DISABILITY OR  
TRAUMATIC BRAIN INJURY

(a) If the court finds that ~~such~~ the person is a person in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order of commitment directed to the Commissioner of Disabilities, Aging, and Independent Living for care and habilitation of such person for an indefinite or limited period in a designated program.

(b) ~~Such~~ The order of commitment shall have the same force and effect as an order issued under 18 V.S.A. § 8843 and persons committed under ~~such an~~ the order shall have the same status, and the same rights, including the right to receive care and habilitation, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. § 8843.

(c) Section 4822 of this title shall apply to persons proposed for discharge under this section; however, judicial proceedings shall be conducted in the

Criminal Division of the Superior Court in which the person then resides, unless the person resides out of state in which case the proceedings shall be conducted in the original committing Court.

Sec. 11. 18 V.S.A. § 8839 is amended to read:

§ 8839. DEFINITIONS

As used in this subchapter:

\* \* \*

(3) “Person in need of custody, care, and habilitation” means:

(A) a ~~mentally-retarded~~ person with an intellectual disability or a person with a traumatic brain injury;

(B) who presents a danger of harm to others; and

(C) for whom appropriate custody, care, and habilitation can be provided by the ~~commissioner~~ Commissioner in a designated program.

Sec. 12. CONSTRUCTION

This act’s replacement of the terms “mental disease or mental defect” with the terms “mental illness” or “intellectual disability” in 13 V.S.A. chapter 157 shall not be construed to alter the substance or effect of existing law or judicial precedent. These changes in terminology are merely meant to reflect evolving attitudes toward persons with disabilities.

Sec. 13. REPORTS

(a) On or before September 1, 2014 the Court Administrator shall report to the House and Senate Committees on Judiciary on the number of cases from July 1, 2011 through June 30, 2013 in which the Court ordered the Department of Mental Health to examine a defendant pursuant to 13 V.S.A. § 4814 to determine if he or she was insane at the time of the offense or is incompetent to stand trial. The report shall include a break-down indicating how many orders were based on mental illness, intellectual disability, and traumatic brain injury, and shall include the number of persons who were found to be in need of custody, care, and habilitation under 13 V.S.A. § 4823. A copy of the report shall be provided to the Department of Disabilities, Aging, and Independent Living.

(b)(1) On or before September 1, 2014, the Department of Sheriffs and State’s Attorneys shall report to the House and Senate Committees on Judiciary regarding the charging practices of State’s Attorneys for persons with traumatic brain injury.

(2) The report shall describe the number of cases from July 1, 2011

through June 30, 2013, broken down by the type of criminal charge, in which a person with traumatic brain injury was:

(A) charged with a criminal offense, including the disposition of the offense;

(B) charged with a criminal offense and the charges were dismissed because the person was suffering from a traumatic brain injury; and

(C) arrested for, or otherwise believed to be responsible for, a crime and criminal charges were not brought because the person was suffering from a traumatic brain injury.

(3) A copy of the report shall be provided to the Department of Disabilities, Aging, and Independent Living.

(c) On or before October 1, 2014 and on or before February 1, 2015, the Department of Disabilities, Aging, and Independent Living shall report to the House and Senate Committees on Judiciary on the status of the Department's implementation of this act. The status reports shall include updates on the Department's progress developing the programs and services needed to treat persons with traumatic brain injuries who have been found not guilty by reason of insanity or incompetent to stand trial as required by this act.

#### Sec. 14. EFFECTIVE DATES

(a) Secs. 1–12 shall take effect on July 1, 2015.

(b) Sec. 13 and this section shall take effect on passage.

**( Committee Vote: 10-0-1)**

### **H. 618**

An act relating to exclusive jurisdiction over delinquency proceedings by the Family Division of the Superior Court

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

#### Sec. 1. REPORT; PROTOCOLS FOR CHARGING ARRESTED MINORS

On or before January 1, 2015, the Department of Sheriffs and State's Attorneys shall report to the House and Senate Committees on Judiciary regarding the treatment of arrested minors under 18 years of age. The report shall include written protocols for use by the Vermont State's Attorneys describing under what circumstances, according to which criteria, and for what types of offenses minors under 18 years of age are:

(1) charged as juveniles in the Family Division or as adults in the Criminal Division;

(2) treated as youthful offenders; and

(3) transferred between the Family and Criminal Divisions.

Sec. 2. COURT ADMINISTRATOR; NOTICE OF RIGHT TO TRANSFER;  
FORM

(a) The Court Administrator shall develop a form that informs a minor charged with a criminal offense in the Criminal Division that:

(1) there may be collateral consequences that result from pleading guilty to a criminal offense in the Criminal Division; and

(2) the minor has the right to request that the charges against him or her be transferred from the Criminal Division to the Family Division pursuant to 33 V.S.A. chapter 52 (Delinquency Proceedings).

(b) The Court Administrator shall ensure that the form developed pursuant to subsection (a) of this section is provided to all persons under 18 years of age who are charged with a criminal offense in the Criminal Division.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to delinquency proceedings".

( Committee Vote: 10-0-1)

**H. 656**

An act relating to professions and occupations regulated by the Office of Professional Regulation

**Rep. Evans of Essex**, for the Committee on **Government Operations**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

\* \* \* General Provisions \* \* \*

Sec. 1. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

An Office of Professional Regulation is created within the Office of the Secretary of State. The Office shall have a director who shall be appointed by the Secretary of State and shall be an exempt employee. The following boards or professions are attached to the Office of Professional Regulation:

\* \* \*

(11) ~~Board of Examiners for~~ Nursing Home Administrators

(12) ~~Board of Examiners of~~ Opticians

\* \* \*

(17) Board of ~~Radiological~~ Radiologic Technology

\* \* \*

(20) ~~Veterinary~~ Board of Veterinary Medicine

(21) Motor Vehicle Racing ~~Commission~~

(22) Boxing-

\* \* \*

(27) ~~{Deleted.}~~ Tattooists and Body Piercers

\* \* \*

(33) ~~{Deleted.}~~ Respiratory Care Practitioners

\* \* \*

Sec. 2. 3 V.S.A. § 123 is amended to read:

§ 123. DUTIES OF OFFICE

\* \* \*

(g) The Office of Professional Regulation shall create a process for:

(1) accepting education, training, or service completed by a member of the U.S. Armed Forces toward the requirements of professional licensure or certification;

(2) creating a process for educational institutions under the supervision of a licensing board to award educational credits to a member of the U.S. Armed Forces for courses taken as part of the member's military training or service that meet the standards of the American Council on Education; and

(3) expediting the issuance of a professional license to a person:

(A) who is certified or licensed in another state;

(B) whose spouse is a member of the U.S. Armed Forces and who has been subject to a military transfer to Vermont; and

(C) who left employment to accompany his or her spouse to Vermont.



Sec. 3. 3 V.S.A. § 128 is amended to read:

§ 128. DISCIPLINARY ACTION TO BE REPORTED TO THE BOARD

(a) Any hospital, clinic, community mental health center, or other health care institution in which a licensee performs professional services shall report to the appropriate board, along with supporting information and evidence, any disciplinary action taken by it or its staff, after an initial investigation or hearing in which the licensee has been afforded the opportunity to participate, which limits or conditions the licensee's privilege to practice or leads to suspension or expulsion from the institution. The report shall be made within ten days of the date such disciplinary action was taken, regardless of whether the action is the subject of a pending appeal, and in the case of a licensee who is employed by, or under contract with, a community mental health center, a copy of the report shall also be sent to the ~~Commissioner of Mental Health and Mental Retardation~~ Commissioners of Mental Health and of Disabilities, Aging, and Independent Living. This section shall not apply to cases of resignation, separation from service, or changes in privileges which are unrelated to:

\* \* \*

\* \* \* Barbers and Cosmetologists \* \* \*

Sec. 4. 26 V.S.A. § 281 is amended to read:

§ 281. POSTSECONDARY SCHOOL OF BARBERING AND COSMETOLOGY; REGISTRATION CERTIFICATE OF APPROVAL

(a) No school of barbering or cosmetology shall be granted ~~registration a certificate of approval~~ unless the school:

(1) Is a postsecondary school operating a program of professional education.

(2) Employs and maintains a sufficient number of competent instructors and has apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum.

(~~2~~)(3) Maintains a daily record of the attendance of each student and regular class and instruction hours, establishes grades, and holds examinations before issuing diplomas.

(~~3~~)(4) Requires a school term of training,:

(A) in the case of a school of barbering, of not less than 1,000 hours for a complete course which includes all or the majority of the practices of barbering, and includes practical demonstrations and theoretical studies in

sanitation, sterilization, the use of antiseptics, and electrical appliances, consistent with the practical and theoretical requirements applicable to barbering or any practice of barbering; and

(B) in the case of a school of cosmetology, requires a school term of training of not less than 1,500 hours for a complete course which includes all or the majority of the practices of cosmetology, and includes practical demonstrations and theoretical studies in sanitation, sterilization, the use of antiseptics, cosmetics, and electrical appliances, consistent with the practical and theoretical requirements applicable to cosmetology or any practice of cosmetology.

(b) Regional vocational centers may offer courses of instruction in barbering or cosmetology without ~~certification by a certificate of approval from the board~~ Board, and ~~state~~ State correctional facilities may offer courses of instruction in barbering without ~~certification by a certificate of approval from the board~~ Board; however, credits for licensing will only be given for courses that meet the ~~board's~~ Board's standards for courses offered in postsecondary schools of barbering or cosmetology certified by the Board.

(c) A school of barbering or cosmetology shall not require, as a condition of training for licensure, that a person enter into a covenant not to compete with the training organization or an affiliate.

\* \* \* Funeral Services \* \* \*

Sec. 5. 26 V.S.A. § 1211 is amended to read:

#### § 1211. DEFINITIONS

(a) The following words as used in this chapter, unless a contrary meaning is required by the context, shall have the following meanings:

(1) “Crematory establishment” means a ~~place of business~~ registered with the Board conducted at a specific street address or location devoted to the disposition of dead human bodies by means of cremation, alkaline hydrolysis, or any other type of human reduction acceptable to the Board of Funeral Service as established by Board rule.

(2) “Funeral director” means a licensed person who is the owner, co-owner, employee, or manager of a licensed funeral establishment and who, for compensation, engages in the practice of funeral service.

(3) “Funeral establishment” means a ~~place of business~~ registered with the Board conducted at a specific street address or location devoted to the practice of funeral service, and includes a limited services establishment.

(4) "Practice of funeral service" means arranging, directing, or providing for the care, preparation, or disposition of dead human bodies for a fee or other compensation. This includes, ~~but is not limited to:~~

(A) meeting with the public to select a method of disposition or funeral observance and merchandise;

(B) entering into contracts, either at-need or pre-need, for the provision of dispositions, funeral observances, and merchandise;

(C) arranging, directing, or performing the removal or transportation of a dead human body;

(D) securing or filing certificates, permits, forms, or other documents;

(E) supervising or arranging a funeral, memorial, viewing, or graveside observance;

(F) holding oneself out to be a licensed funeral director by using the words or terms "funeral director," "mortician," "undertaker," or any other words, terms, title, or picture that, when considered in context, would imply that such person is engaged in the practice of funeral service or is a licensed funeral director.

(5) "Removal" means the removal of dead human bodies from places of death, hospitals, institutions, or other locations, for a fee or other compensation.

(b) Nothing in this section shall prohibit:

(1) cemetery owners, associations, or their employees from engaging in any functions normally performed by them in the course of their everyday affairs as allowed by 18 V.S.A. chapter 121;

(2) the University of Vermont from engaging in functions normally performed by it in the course of receiving anatomical gifts for research or education, provided that embalming and removal of dead human remains are performed by persons licensed or registered under this chapter;

(3) immediate family members of the deceased from providing for the care, preparation, or disposition of dead human bodies; or

(4) religious or spiritual persons directly authorized by the immediate family members of the deceased from providing for the care or preparation of dead human bodies without compensation.

(c) Notwithstanding this section, crematory owners and their personnel may engage in the listed activities in subsection (a) of this section only to the

extent such functions are necessary to the performance of their duties. Specifically, crematory personnel may:

(1) provide for the disposition of dead human bodies by cremation, and meet with the public to arrange and provide for the disposition;

(2) enter into contracts, without taking prepaid funds, for the provision of dispositions by cremation;

(3) arrange, direct, or perform the removal or transportation of a dead human body, so long as removals are performed by licensed removal personnel; and

(4) secure and file certificates, permits, forms, or other documents.

Sec. 6. 26 V.S.A. § 1252 is amended to read:

#### § 1252. APPLICATION; QUALIFICATIONS

\* \* \*

(d) Crematory establishment. A person, partnership, corporation, association, or other organization desiring to operate a crematory establishment shall apply, in writing, to the ~~board of funeral service~~ Board of Funeral Service for a license. The applicant, if a partnership, corporation, association, or other organization, must have a designated manager or co-owner who is responsible for the operation of the establishment and who is registered with the Board under subsection (e) of this section. The application for a license shall be sworn to by the individual, or a partner or a duly authorized officer of a corporation, shall be on the form prescribed and furnished by the ~~board~~ Board, and the applicant shall furnish information, as required by rule. The application shall be accompanied by a licensing fee. However, the applicant shall not be required to pay the fee under this subsection if the applicant pays the fee under subsection (b) of this section.

(e) Crematory personnel. Any person who desires to engage in direct handling, processing, identification, or cremation of dead human remains within a licensed crematory establishment shall register with the Board of Funeral Service and pay the fee established in subsection 1256(d) of this chapter. The applicant shall have attained the age of majority and be directly employed by a licensed crematory establishment. The Board may prescribe, by rule, the forms for applicants, which may include proof of completion of up to three hours of education and training in programs approved by the Board.

(f) Removal personnel. Any person who desires to engage in removals shall register with the ~~board of funeral service~~ Board of Funeral Service and pay the fee established in subsection 1256(d) of this ~~title~~ chapter. The applicant shall have attained the age of majority and be directly employed by a

licensed funeral or crematory establishment, or the University of Vermont for removals related to the University's anatomical gift program. The ~~board~~ Board may prescribe, by rule, the forms for applicants, which may include proof of completion of up to three hours of education and training in infectious diseases in programs approved by the ~~board~~ Board. Registrants under this section are authorized to perform removals only, as defined by this chapter. Unregistered personnel may accompany registered personnel to assist in removals so long as they have been instructed in handling and precautionary procedures prior to the call.

(g) Limited services establishment.

(1) The Board of Funeral Service may adopt rules for the issuance of limited service establishment licenses in accordance with this chapter. Limited service establishment licensees are authorized to perform only disposition services without arranging, directing, or performing embalming, public viewings, gatherings, memorials, funerals, or related ceremonies. Disposition services under this subsection (d) include direct cremation, direct alkaline hydrolysis, immediate burial, or direct green burial.

(2) Limited services shall be overseen by a funeral director licensed under this chapter who is employed by the limited service establishment.

(3) Each limited service arrangement shall include a mandatory written disclosure providing notice to the purchaser that limited services do not include embalming, public viewings, gatherings, memorials, funerals, or related ceremonies.

(4) A funeral director associated with a funeral establishment licensed under subsection (c) of this section may provide limited services so long as the mandatory disclosure described under subdivision (3) of this subsection is provided to the purchaser.

Sec. 7. 26 V.S.A. § 1256 is amended to read:

§ 1256. RENEWAL OF REGISTRATION OR LICENSE

\* \* \*

(d) Applicants and persons regulated under this chapter shall pay the following fees:

- |                                 |           |
|---------------------------------|-----------|
| (1) Application for license     | \$ 70.00  |
| (2) Biennial renewal of license |           |
| (A) Funeral director            | \$ 300.00 |
| (B) Embalmer                    | \$ 300.00 |

(C) Funeral establishment	\$ 540.00
(D) Crematory establishment	\$ 540.00
(E) <u>Crematory personnel</u>	\$ 85.00
(F) Removal personnel	\$ 85.00
(G) <u>Limited services establishment license</u>	\$ 540.00

\* \* \*

Sec 8. 26 V.S.A. § 1271 is amended to read:

§ 1271. PREPAID ARRANGEMENTS

A funeral ~~director, who~~ establishment that sells services or merchandise which that is not to be delivered or provided within 30 days of sale; has entered into a prepaid funeral arrangement and shall comply with the requirements of this subchapter.

\* \* \* Pharmacy \* \* \*

Sec. 9. 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 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, 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 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. If a prescription is communicated orally, it shall be reduced promptly to writing by the pharmacist.

\* \* \*

Sec. 10. 18 V.S.A. § 4215b is amended 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 to a patient not personally known to the pharmacist,~~ the 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. 11. 26 V.S.A. § 2022 is amended to read:

§ 2022. DEFINITIONS

As used in this chapter:

\* \* \*

(19) “Collaborative practice” means a licensed pharmacist providing certain patient care under a written agreement with a Vermont licensed practitioner pursuant to rules adopted by the Board of Pharmacy.

Sec. 12. 26 V.S.A. § 2042a is amended to read:

§ 2042a. PHARMACY TECHNICIANS; QUALIFICATIONS FOR  
REGISTRATION

No person shall perform the duties of a pharmacy technician unless registered with the ~~board~~ Board. To obtain a registration as a pharmacy technician, an applicant shall:

(1) not have engaged in acts which affect the ability of the applicant to practice as a pharmacy technician; ~~and~~

(2) be certified or eligible for certification by a national pharmacy technician certification authority pursuant to rules adopted by the Board; and

(3) have paid the fee specified in section 2046 of this ~~title~~ chapter.

\* \* \* Real Estate Brokers and Salespersons \* \* \*

Sec. 13. 26 V.S.A. § 2211 is amended to read:

§ 2211. DEFINITIONS

(a) When used in this chapter, the following definitions shall have the following meanings except where the context clearly indicates that another meaning is intended:

(1) “Commission” means the Vermont ~~real estate commission~~ Real Estate Commission.

\* \* \*

Sec. 14. 26 V.S.A. § 2214 is amended to read:

§ 2214. TRUST AND ESCROW ACCOUNTS

\* \* \*

(b) If a deposit is reasonably expected to earn a substantial amount of interest, the broker shall, at the request of the person or persons making the deposit, place the deposit in an individual interest-bearing trust or escrow account for the benefit of the beneficial owner. In regard to individual interest-bearing trust and escrow accounts:

\* \* \*

Sec. 15. 26 V.S.A. § 2255 is amended to read:

§ 2255. FEES

(a) Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application

(A) Broker license \$ 50.00

(B) Salesperson license \$ 50.00

(C) Brokerage firm registration \$50.00

~~(i) Corporation or partnership \$ 50.00~~

~~(ii) Sole proprietor \$ 0.00~~

(D) Branch office registration \$ 50.00

(2) Biennial renewal of broker or salesperson license \$175.00

(3) Biennial brokerage firm or branch office  
registration renewal \$75.00



<del>(A) Corporation or partnership</del>	<del>\$ 75.00</del>
<del>(B) Sole proprietor</del>	<del>\$ 0.00</del>
(4) Temporary permit	\$ 25.00
(5) Transfer of license	\$ 10.00
(6) Transfer to inactive status	\$ 25.00

~~(b) A sole proprietor of a brokerage firm shall only pay the sole proprietor application and renewal fees pursuant to this section, provided the brokerage firm has no other persons licensed under this chapter providing professional services within the brokerage firm.~~

Sec. 16. 26 V.S.A. § 2291 is amended to read:

§ 2291. GENERAL PROVISIONS

(a) A real estate license shall not be authority for more than one person to perform the activities listed in section 2211 of this ~~title~~ chapter.

(b) A ~~person, firm, partnership, association, or corporation~~ registered brokerage firm shall designate in its application the individual who is to serve as the principal broker under the license brokerage firm registration.

(c) Every applicant for licensure shall have attained the age of majority.

Sec. 17. 26 V.S.A. § 2293 is amended to read:

§ 2293. RENEWAL OF LICENSE; LAPSED LICENSE

(a)(1) Licenses shall be renewed every two years without examination and on payment of the required fees, provided that the person applying for renewal completes at least ~~16~~ 24 hours of instruction for brokers and 16 hours of instruction for salespersons, approved by the ~~commission~~ Commission, during the preceding two-year period. Four hours of this continuing education instruction shall address legislation and other topics specified by the ~~real estate commission~~ Commission for each renewal period.

(2) In addition to the 16 hours of required continuing education for salespersons, within 90 days from the issuance of an initial salesperson license, the salesperson shall complete eight hours of instruction addressing topics specified by the Commission related to the salesperson's practice of the profession post-licensure.

(b) A broker or salesperson applying for reinstatement of a license that has lapsed shall be assessed both the renewal fee and late renewal penalty established by the ~~director of the office of professional regulation~~ Director of the Office of Professional Regulation and shall not be assessed renewal fees for the years during which the license was lapsed. Reinstatement shall not take

place until the applicant completes the continuing education required for the previous renewal period.

(c) If a broker or salesperson's license has lapsed for greater than five consecutive years, the broker or salesperson shall apply for reinstatement in accordance with the initial licensure requirements as set forth in section 2292 of this ~~title~~ chapter, including a course of instruction and examination. The ~~commission~~ Commission may waive the reinstatement requirements based upon licensed practice in another state.

(d) The ~~commission~~ Commission may waive or postpone compliance with the instructional requirements of this section in cases of extreme hardship on the part of the licensee. No licensee, however, may receive a postponement or waiver for two successive two-year periods of licensure. The ~~commission~~ Commission may accept fewer hours of continuing education instruction for renewal of a license on a prorated basis following an initial licensing period of less than two years.

(e) [Repealed.]

Sec. 18. 26 V.S.A. § 2294 is amended to read:

#### § 2294. CHANGE OF NAME OR LOCATION

(a) Whenever a licensed broker desires to be licensed under a different name, the broker shall pay the fee established under section 2255 of this ~~title~~ chapter. ~~A license shall not be issued to a broker in a name other than the broker's own, or transferred to a name other than the broker's own, unless he or she has complied with 11 V.S.A. chapter 15 relating to registration of business entities. If a licensee is a partnership, corporation, or association, notice~~ Notice of any change in the names and addresses of the ~~partners, officers, or associates~~ licensees shall be given to the ~~real estate commission~~ Commission within ~~ten~~ 30 days after the change becomes effective.

(b) Each licensee shall notify the ~~commission~~ Commission in writing of any change of the licensee's principal business location, and the ~~commission~~ Commission shall issue a new license with the new address for the fee established under section 2255. ~~Duplicate licenses may be obtained on payment of the fee established under section 2255 of this chapter.~~

(c) If a ~~broker~~ brokerage firm maintains more than one place of business within the ~~state~~ State, a branch office ~~license shall be issued to that broker~~ registration is required for each branch office so maintained. Branch offices shall ~~incorporate~~ use the same registered brokerage firm name as the main office and shall ~~have~~ designate a licensed broker in charge for each branch office.

Sec. 19. 26 V.S.A. § 2299 is amended to read:

§ 2299. DEATH OF BROKER; TEMPORARY LICENSE

In the event of the death of a licensed real estate broker, the ~~commission~~ Commission may, upon application by the broker's legal representative, issue without examination a temporary license to such legal representative or to an individual designated by the representative or the broker and approved by the ~~commission~~ Commission on payment of the prescribed fee established under section 2255 of this ~~title~~ chapter. Such temporary licensee may continue to transact said real estate business for a period not to exceed one year. A temporary licensee shall not ~~take new listings~~ enter into new brokerage service agreements.

\* \* \* Opticians \* \* \*

Sec. 20. 26 V.S.A. chapter 47, subchapter 2 is redesignated to read:

Subchapter 2. ~~State Board of Opticians~~ Administration

\* \* \*

\* \* \* Psychology \* \* \*

Sec. 21. 26 V.S.A. § 3001 is amended to read:

§ 3001. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

\* \* \*

~~(12) "Psychological trainee" means a person engaged in postdegree supervision who shall register with the board and be subject to its jurisdiction.~~

Sec. 22. 26 V.S.A. § 3010 is amended to read:

§ 3010. FEES; LICENSES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application for license	\$175.00
(2) Biennial renewal of license	\$150.00
<del>(3) Psychological trainee registration</del>	<del>\$75.00</del>
<del>(4) Biennial renewal of trainee registration</del>	<del>\$90.00</del>

Sec. 23. 26 V.S.A. § 3011a is amended to read:

§ 3011a. APPLICATIONS

\* \* \*

(b) A person engaged in supervised practice in Vermont, if not licensed as a clinical mental health counselor, marriage and family therapist, licensed independent clinical social worker, or licensed master’s social worker shall be registered on the roster of psychotherapists who are nonlicensed and noncertified.

(c) In exceptional cases, the ~~board~~ Board may waive any requirement of this section if in its judgment the applicant demonstrates appropriate qualifications.

\* \* \* Private Investigative and Security Services \* \* \*

Sec. 24. 26 V.S.A. § 3162 is amended to read:

§ 3162. POWERS AND DUTIES

The ~~board~~ Board may:

\* \* \*

(7)(A) Adopt rules establishing a security guard or private investigator training program, consisting of not fewer than 40 hours of training, as a prerequisite to registration.

(B) Full-time employees shall complete the training program prior to being issued a permanent registration.

(C)(i) Part-time employees shall complete not fewer than eight hours of training prior to being issued a part-time employee temporary registration, which shall be valid for not more than 180 days from the date of issuance. The remaining training hours for part-time employees shall be completed within the temporary registration period of 180 days or before the employee has worked 500 hours, whichever occurs first. The part-time employee temporary registration may be issued only once and shall expire after 180 days or 500 hours.

(ii) ~~For the purposes of~~ As used in this section subdivision (C), “part-time employee” means an employee who works no more than 80 hours per month.

(iii) The ~~board~~ Board may prioritize training subjects to require that certain subject areas are covered in the initial eight hours of training required for part-time employees.

\* \* \*

\* \* \* Social Workers \* \* \*

Sec. 25. 26 V.S.A. chapter 61 is redesignated to read:

## CHAPTER 61. ~~CLINICAL~~ SOCIAL WORKERS

Sec. 26. 26 V.S.A. § 3201 is amended to read:

### § 3201. DEFINITIONS

As used in this chapter:

(1) ~~“Clinical social work” is defined as providing a service, for a consideration, which is primarily drawn from the academic discipline of social work theory, in which a special knowledge of social resources, human capabilities, and the part that motivation plays in determining behavior, is directed at helping people to achieve a more adequate, satisfying, and productive psychosocial adjustment. The application of social work principles and methods includes, but is not restricted to assessment, diagnosis, prevention, and amelioration of adjustment problems and emotional and mental disorders of individuals, families, and groups. The scope of practice for licensed clinical social workers includes the provision of psychotherapy.~~ “Director” means the Director of the Office of Professional Regulation.

(2) ~~“Clinical social worker” means a person who practices clinical social work in some or all of its aspects and is licensed to practice clinical social work in this state.~~ “Licensed independent clinical social worker” means a person licensed under this chapter to practice independent clinical social work, which includes providing social work and psychotherapy services. Licensed independent clinical social workers are qualified to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), and other diagnostic classification systems used in diagnosis and other activities.

(3) ~~“Disciplinary action” or “disciplinary cases” includes any action taken by the secretary of state or an administrative law officer established by 3 V.S.A. § 129(j) against a licensed clinical social worker or applicant premised on a finding of unprofessional conduct by the licensed clinical social worker or applicant. It includes all sanctions of any kind, refusal to grant or renew a license, suspension or revocation of a license, issuing warnings, and other similar sanctions.~~ “Licensed master’s social worker” means a person licensed under this chapter who practices social work. Psychotherapy is not within the scope of practice of a licensed master’s social worker.

(4) “Office” means the Office of Professional Regulation.

~~(4)(5)(A)~~ “Psychotherapy” means the provision of treatment, diagnosis, evaluation, or counseling services to individuals or groups, for a consideration, for the purpose of alleviating mental disorders.

(B) “Psychotherapy” involves the application of therapeutic

techniques to understand unconscious or conscious motivation, resolve emotional, relationship or attitudinal conflicts, or modify behavior which interferes with effective emotional, social, or mental functioning.

(C) “Psychotherapy” follows a systematic procedure of psychotherapeutic intervention which takes place on a regular basis over a period of time, or, in the case of evaluation and brief psychotherapies, in a single or limited number of interventions.

(D) If a person is employed by or under contract with the ~~agency of human services~~ Agency of Human Services, this definition does not apply to persons with less than a master’s degree, to persons providing life skills training or instruction, such as learning to make friends, to handle social situations, to do laundry, and to develop community awareness, or interactions of employees or contracted individuals with clients whose job description or contract specifications do not specifically mention “psychotherapy” as a job responsibility or duty.

(6) “Social work” is defined as providing a service, for a consideration, which is primarily drawn from the academic discipline of social work theory, in which a special knowledge of social resources, human capabilities, and the part that motivation plays in determining behavior, is directed at helping people to achieve a more adequate, satisfying, and productive psychosocial adjustment. The application of social work principles and methods includes assessment, diagnosis, prevention, and amelioration of adjustment problems and emotional and mental disorders of individuals, families, and groups.

#### Sec. 27. TRANSITIONAL PROVISION; PERSONS CURRENTLY LICENSED AS CLINICAL SOCIAL WORKERS

A person licensed as a clinical social worker on the effective date of Sec. 26, 26 V.S.A. § 3201 (definitions), of this act shall be deemed to be licensed at the level of a licensed independent clinical social worker, as that term is defined in that section, and may within the limits of his or her education, training, and experience practice all aspects of social work without restriction.

Sec. 28. 26 V.S.A. § 3202 is amended to read:

#### § 3202. PROHIBITION, OFFENSES

(a) No person shall practice or attempt to practice licensed independent clinical social work or licensed master’s social work, nor shall any person use in connection with the person’s name any letters, words, or insignia indicating or implying that the person is a licensed independent clinical social worker or a licensed master’s social worker unless the person is licensed in accordance

with this chapter.

(b) A person who violates any of the provisions of subsection (a) of this section shall be subject to the penalties provided in ~~3 V.S.A. § 127(e)~~ 3 V.S.A. § 127.

Sec. 29. 26 V.S.A. § 3203 is amended to read:

§ 3203. DIRECTOR OF THE OFFICE OF PROFESSIONAL  
REGULATION; DUTIES

(a) The ~~director of professional regulation~~ Director shall:

(1) explain appeal procedures to ~~licensed clinical social workers~~ licensees and applicants and complaint procedures to the public;

(2) administer fees collected under this chapter;

(3) provide general information to applicants for licensure as licensed independent clinical social workers and licensed master's social workers;

(4) receive applications for licensing, license applicants qualified under this chapter, or renew, revoke, reinstate, and condition ~~licensing~~ licenses as ordered by an administrative law officer; and

(5) adopt by rule criteria for licensing independent clinical social workers and licensed master's social workers who have five years' licensed or certified practice experience in another jurisdiction of the United States or Canada.

(b) The ~~director~~ Director, with the advice of two licensed independent clinical social workers appointed under section 3204 of this ~~title~~ chapter, may adopt rules necessary to enable the ~~director~~ Director to perform his or her duties under subsection (a) of this section.

Sec. 30. 26 V.S.A. § 3204 is amended to read:

§ 3204. ADVISOR APPOINTEES

(a) The ~~secretary of state~~ Secretary of State shall appoint two licensed independent clinical social workers to serve as advisors in matters relating to licensed ~~clinical~~ social workers. They shall be appointed as set forth in 3 V.S.A. § 129b and shall serve at the pleasure of the ~~secretary~~ Secretary. One of the initial appointments may be for less than a full term.

(b) Appointees shall not have less than three years' experience as a licensed independent clinical social worker ~~certified or licensed under this chapter~~ during the period immediately preceding appointment and shall be actively engaged in the active practice of ~~clinical social work~~ in Vermont during incumbency.

(c) ~~The office of professional regulation~~ Director shall refer complaints and disciplinary matters to an administrative law officer established under 3 V.S.A. § 129(j).

(d) ~~The director~~ Director shall seek the advice of the ~~clinical social workers advisors~~ appointed under this section in carrying out the provisions of this chapter. Such members shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010 for attendance at any meeting called by the ~~director~~ Director for this purpose.

Sec. 31. 26 V.S.A. § 3205 is amended to read:

§ 3205. LICENSED MASTER'S SOCIAL WORKER ELIGIBILITY

(a) To be eligible for licensing as a ~~clinical~~ licensed master's social worker an applicant ~~must~~ shall have:

(1) received a master's degree or ~~doctorate~~ doctoral degree from an accredited social work education program;

(2) ~~{Deleted.}~~ within five years prior to applying for licensure, passed the examinations designated by the Director; and

(3) completed ~~3,000~~ 1,200 hours of supervised practice of ~~clinical~~ social work as defined by rule under the supervision of a ~~licensed physician or a licensed osteopathic physician who has completed a residency in psychiatry, a licensed psychologist, a licensed clinical mental health counselor, a person licensed or certified under this chapter, or a person licensed or certified in another state or Canada in one of these professions~~ as a licensed independent clinical social worker or a licensed master's social worker or their substantial equivalent.

(b) Persons engaged in ~~post-masters~~ post-master's degree supervised practice in Vermont to become licensed master's social workers shall ~~be entered on the roster of nonlicensed, noncertified psychotherapists; register with the Office as provided by rule.~~

(4) ~~submitted the names and addresses of three persons who can attest to the applicant's professional competence. Such person shall be a licensed physician or a licensed osteopathic physician who has completed a residency in psychiatry, a licensed psychologist, a licensed clinical mental health counselor, a person licensed or certified under this chapter, or a person licensed in another state or Canada in one of these professions; and~~

(5) ~~passed an examination to the satisfaction of the director of the office of professional regulation.~~

Sec. 32. 26 V.S.A. § 3205a is added to read:



§ 3205a. LICENSED INDEPENDENT CLINICAL SOCIAL WORKER  
ELIGIBILITY

(a) To be eligible for licensure as a licensed independent clinical social worker, an applicant shall have:

(1) received a master's degree or doctoral degree from an accredited social work education program;

(2) within five years prior to applying for licensure, passed the examinations designated by the Director; and

(3) completed 3,000 hours of supervised practice of independent clinical social work as defined by rule under the supervision of a:

(A) licensed independent clinical social worker;

(B) licensed independent clinical mental health counselor;

(C) licensed psychologist; or

(D) a person licensed or certified in another state or Canada in one of these professions or their substantial equivalent.

(b) Persons not licensed as master's social workers who engage in post-master's supervised practice in Vermont toward licensure as licensed independent clinical social workers shall be entered on the roster of nonlicensed, noncertified psychotherapists.

(c) Licensed master's social workers who engage in post-master's supervised practice to become licensed independent clinical social workers must first register with the Office as set forth by rule, if the supervised practice toward licensure as an independent clinical social worker is to occur within the State of Vermont.

Sec. 33. 26 V.S.A. § 3206 is amended to read:

§ 3206. APPLICATION

A person who desires to be licensed as a clinical social worker under this chapter shall apply to the secretary in writing on a using an application form furnished by the secretary available from the Office, accompanied by payment of the specified fee.

Sec. 34. 26 V.S.A. § 3207 is amended to read:

§ 3207. EXAMINATION

(a) The director of professional regulation shall conduct examinations under this chapter at least once a year at a time and place designated by it, provided, however, that examinations need not be conducted at times when

~~there are no applicants requesting to be examined. Examinations shall be written. Each applicant shall be designated by a number so that his or her name is not disclosed to the director until the examination has been graded. Examinations shall include questions in such theoretical and applied fields as the director deems most suitable to test an applicant's knowledge and competence to engage in the practice of clinical social work. The director of professional regulation, with the advice of the clinical social workers appointed under section 3204 of this title, shall establish by rule fixed criteria for passing an examination that shall apply to all persons taking the examination.~~

~~(b) Examinations administered by the director and the procedures of administration shall be fair and reasonable and shall be designed and implemented to ensure that all applicants are granted a license if they demonstrate that they possess the minimal occupational qualifications which are consistent with the public health, safety, and welfare. They shall not be designed or implemented for the purpose of limiting the number of licenses issued.~~

~~(e) The director of the office of professional regulation~~ Director may contract with ~~clinical social workers or with~~ independent testing services for the preparation and administration of ~~the exam~~ examinations.

Sec. 35. 26 V.S.A. § 3208 is amended to read:

§ 3208. RENEWALS

(a) Licenses shall be renewed every two years on a schedule determined by the Office and upon payment of the required fee.

(b) An application for ~~renewal~~ reinstatement of a license which has lapsed shall be accompanied by the renewal fee in addition to ~~the reinstatement fee~~ other fees set forth in 3 V.S.A. chapter 5. A person shall not be required to pay renewal fees for the years during which the license was lapsed.

~~(c) The director may, after notice and an opportunity for hearing, revoke a person's right to renew his or her license if such license has lapsed for five years. [Repealed.]~~

(d) As a condition of renewal, a licensee shall complete continuing education, approved by the ~~director~~ Director by rule, during the preceding two-year period. For purposes of this subsection, the ~~director~~ Director may require, as set forth by rule, not more than 20 hours of approved continuing social work education as a condition of renewal.

(e) The Director may by rule prescribe standards for persons wishing to resume practice after five years since holding an active license.

Sec. 36. 26 V.S.A. § 3209 is amended to read:

§ 3209. ~~LICENSING WITHOUT EXAMINATION~~ LICENSURE BY ENDORSEMENT

The ~~director of the office of professional regulation~~ Director may, upon payment of the required fee, grant a license without examination if the applicant:

(1) ~~is licensed~~ holds an active license to practice ~~clinical licensed~~ master's social work or licensed independent clinical social work in another state or Canadian jurisdiction; and

(2) the requirements for licensing in that state or jurisdiction are, in the judgment of the ~~director of the office of professional regulation~~ Director, ~~essentially~~ substantially equivalent to the requirements of this chapter.

Sec. 37. 26 V.S.A. § 3210 is amended to read:

§ 3210. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct set forth in 3 V.S.A. § 129a by a person ~~licensed social worker under this chapter~~ constitutes unprofessional conduct. When that conduct is by an applicant or a person who later becomes an applicant, it may constitute grounds for denial or discipline of a license:

(1) failing to use a correct title in professional activity;

(2) conduct which evidences unfitness to practice licensed independent clinical social work or licensed master's social work;

(3) engaging in any sexual conduct with a client, or with the immediate family member of a client, with whom the licensee has had a professional relationship within the previous two years;

(4) harassing, intimidating, or abusing a client or patient;

(5) practicing outside or beyond a ~~clinical social worker's area of licensee's education, training, experience, or competence~~ without appropriate supervision;

(6) ~~engaging in conflicts~~ having a conflict of interest that ~~interfere~~ interferes with the exercise of the ~~clinical social worker's licensee's~~ professional responsibilities, discretion, and impartial judgment;

(7) failing to inform a client when a real or potential conflict of interest arises, and failing to take reasonable steps to resolve the issue in a manner that makes the client's interest primary and protects the client's interest to the greatest extent possible;

(8) taking unfair advantage of any professional relationship or exploiting others to further the ~~clinical social worker's licensee's~~ personal, religious,

political, or business interests;

(9) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(10) failing to take steps to protect a client and to set clear, appropriate, and culturally sensitive boundaries, in instances where dual or multiple relationships are unavoidable;

(11) failing to clarify with all parties which individuals will be considered clients and the nature of the ~~clinical social worker's~~ licensee's professional obligations to the various individuals who are receiving services, when a ~~clinical social worker~~ licensee provides services to two or more people who have a spousal, familial, or other relationship with each other;

(12) failing to clarify the ~~clinical social worker's~~ licensee's role with the parties involved and to take appropriate action to minimize any conflicts of interest, when the clinical social worker anticipates a conflict of interest among the individuals receiving services or anticipates having to perform in conflicting roles such as testifying in a child custody dispute or divorce proceedings involving clients.

(b) After hearing, and upon a finding of unprofessional conduct, an administrative hearing officer may take disciplinary action against a ~~licensed clinical social worker~~ licensee or applicant.

Sec. 38. 26 V.S.A. § 3212 is amended to read:

#### § 3212. EXEMPTIONS

(a) The provisions of this chapter shall not apply to persons while engaged in the course of their customary duties as clergy, licensed physicians, nurses, osteopaths, optometrists, dentists, lawyers, psychologists, mental health counselors, certified marriage and family therapists and psychoanalysts, rostered psychotherapists, or licensed educators when performing their duties consistent with the accepted standards of their respective professions; provided, however, that they do not describe themselves to the public by any other title or description stating or implying that they are licensed independent clinical social workers or ~~are licensed to practice clinical social work~~ master's social workers.

\* \* \*

~~(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the provisions of this chapter shall apply to any person licensed as a clinical social worker under this chapter. [Repealed.]~~

Sec. 39. 26 V.S.A. § 3213 is amended to read:

§ 3213. DISCLOSURE OF INFORMATION

(a) ~~The office of professional regulation~~ Director, in consultation with the advisor appointees, shall adopt rules requiring licensed independent clinical social workers to disclose to each client the licensed independent clinical social worker's professional qualifications and experience, those actions that constitute unprofessional conduct, the method for filing a complaint or making a consumer inquiry, and provisions relating to the manner in which the information shall be displayed and signed by both the licensed independent clinical social worker and the client. The rules may include provisions for applying or modifying these requirements in cases involving institutionalized clients, minors, and adults under the supervision of a guardian.

(b) The Director, in consultation with the advisor appointees, may adopt rules requiring licensed master's social workers to disclose to each client the licensed master's social worker's professional qualifications and experience, those actions that constitute unprofessional conduct, the method for filing a complaint or making a consumer inquiry, and provisions relating to the manner in which the information shall be displayed and signed by both the licensed master's social worker and the client. The rules may include provisions for applying or modifying these requirements in cases involving institutionalized clients, minors, and adults under the supervision of a guardian.

\* \* \* Clinical Mental Health Counselors \* \* \*

Sec. 40. 26 V.S.A. § 3262a is amended to read:

§ 3262a. BOARD OF ALLIED MENTAL HEALTH PRACTITIONERS

(a) ~~A board of allied mental health practitioners~~ Board of Allied Mental Health Practitioners is established.

(b) ~~The board~~ Board shall consist of six members appointed by the ~~governor~~ Governor pursuant to 3 V.S.A. §§ 129b and 2004.

(1) Two members shall be licensed clinical mental health counselors; one member shall be a ~~certified~~ licensed marriage and family therapist; one member shall, at the time of appointment, be a nonlicensed and noncertified psychotherapist entered on the roster; and two members shall be public members.

(2) The public members shall have no direct financial interest personally or through a spouse, parent, child, brother, or sister in clinical mental health counseling, marriage and family therapy, or psychotherapy.

(3) The professional members ~~of the board~~ shall have at least three years of professional experience as a clinical mental health counselor, marriage and family therapist, or psychotherapist, ~~during the period immediately preceding~~

~~appointment~~ and shall be actively engaged in ~~the practice of clinical mental health counseling, marriage and family therapy, or psychotherapy~~ one of these professions during incumbency.

(c) A majority of the members of the ~~board~~ Board shall constitute a quorum for transacting business, and all action shall be taken upon a majority vote of the members present and voting.

\* \* \* Real Estate Appraisers \* \* \*

Sec. 41. 26 V.S.A. § 3314 is amended to read:

§ 3314. BOARD; POWERS AND DUTIES

(a) The Board shall administer the provisions of this chapter in a manner that conforms in all respects with the requirements of the Act.

(b) In addition to its other powers and duties under this chapter, the Board shall:

(1) receive and review applications;

(2) collect the registry fee as required by the Act and transmit that fee to the ASC. The registry fee shall be in addition to State licensing and registration fees;

(3) annually publish a roster of all licensees and transmit the roster to the ASC as required by the Act;

(4) register appraisal management companies; ~~and~~

(5) inquire of the Vermont Criminal Information Center for any information on criminal records of any and all applicants, and the Center shall provide such information to the Board. The Board, through the Vermont Criminal Information Center, shall also inquire of the appropriate state criminal record repositories in all states in which it has reason to believe an applicant has resided or been employed, and it shall also inquire of the Federal Bureau of Investigation for any information on criminal records of applicants. The Board shall obtain fingerprints of the applicant, in digital form if practicable, and any appropriate identifying information for submission to the Federal Bureau of Investigation in connection with a state and national background check. Applicants shall bear all costs associated with background screening. The Board may also make additional inquiries it deems necessary into the character, integrity, and reputation of the applicant; and

(6) perform other functions and duties as may be necessary to carry out the provisions of this chapter.

Sec. 42. 26 V.S.A. § 3319a is amended to read:

§ 3319a. APPRAISER TRAINEE REGISTRATION

\* \* \*

~~(b) To be credited toward the hourly experience requirement for licensure, the trainee shall inspect each property appraised with the trainee's supervisor. [Repealed.]~~

~~(c) Notwithstanding subsection (b) of this section, the~~ The Board may, in its discretion, give credit for training hours, not exceeding 10 percent of the total hourly experience requirement, for hours worked or training given that does not include or is unrelated to a site inspection.

\* \* \* Tattooists and Body Piercers \* \* \*

Sec. 43. 26 V.S.A. § 4102 is amended to read:

§ 4102. PROHIBITIONS

(a) No person shall practice tattooing, permanent cosmetics, or body piercing unless that person is registered in accordance with the provisions of this chapter.

(b) No person under the age of 18 may practice tattooing, permanent cosmetics, or body piercing.

(c) A tattooist shall not tattoo a minor without the written consent of the parent or guardian of the minor.

(d) A person who violates any of the provisions of this section shall be subject to the penalties provided in 3 V.S.A. § 127(c).

Sec. 44. 26 V.S.A. § 4104 is amended to read:

§ 4104. ADVISORY APPOINTEES

(a)(1) The Secretary of State shall appoint:

(A) a professional in the field of public health and medicine from a list of persons provided by the Commissioner of Health; and

(B) two registered operators who have been practicing tattooing and body piercing for at least the three years immediately preceding appointment and who shall actively be engaged in the practice of tattooing and body piercing in Vermont during incumbency.

(2) The appointees shall be appointed to serve as advisors in matters relating to tattooing, permanent cosmetics, and body piercing. The appointees shall be appointed as set forth in 3 V.S.A. § 129b.

(b) The Director shall seek the advice of the advisor appointees in carrying

out the provisions of this chapter. The advisor appointees shall be entitled to compensation and necessary expenses as provided in 32 V.S.A. § 1010 for attendance at any meeting called by the Director for that purpose.

Sec. 45. 26 V.S.A. § 4105 is amended to read:

§ 4105. REGISTRATION; APPRENTICESHIP REQUIREMENTS

\* \* \*

(b)(1) As a prerequisite to registration, a tattooist or body piercer applicant shall provide proof of an apprenticeship of at least 1,000 hours of experience obtained within two calendar years working under the ~~direction and~~ direct supervision of a body piercer or tattooist registered and in good standing with this ~~state~~ State or the state in which he or she is regulated, and who has been in practice a minimum of three years. ~~Such proof~~ Proof may be in the form of a sworn affidavit from the supervising tattooist or body piercer, including information as the ~~director~~ Director may reasonably require on forms provided by the ~~director~~ Director.

(2) Apprenticeships shall include successful completion of a three-hour course in universal precautions and infectious diseases.

(3) Apprentices shall contact the ~~office~~ Office for the appropriate forms prior to beginning the apprenticeship.

(4) ~~For the purposes of~~ As used in this section subsection, “good standing” shall mean that the tattooist or body piercer supervisor holds a current, unrestricted ~~license~~ registration in this State or an unrestricted authorization to practice tattooing or body piercing in another state. A tattooist or body piercer who holds a restricted ~~license~~ registration or restricted authorization to practice may petition the ~~director~~ Director for permission to be a tattooist or body piercer supervisor, which may be granted by the ~~director~~ Director for good cause shown.

(c)(1) As a prerequisite to registration for the practice of permanent cosmetics, an applicant shall provide proof of a course of approved study lasting at least 60 hours. In addition, the applicant shall obtain at least 40 hours of practical experience, within two calendar years preceding the application, working under the direct supervision of a ~~registered~~ tattooist or permanent cosmetologist registered and in good standing in Vermont with this State or the state ~~where~~ in which he or she is regulated, and who has been in practice a minimum of three years. Proof may be in the form of a sworn affidavit from the supervising permanent cosmetologist or tattooist, including information ~~in a form~~ as the ~~director~~ Director may reasonably require on forms provided by the Director.



(2) Training shall include successful completion of a three-hour course in universal precautions and infectious diseases.

(3) Prior to training and obtaining practical experience, applicants shall contact the ~~office~~ Office and submit the appropriate forms.

(4) ~~For the purposes of~~ As used in this section subsection, “in good standing” shall mean that the permanent cosmetologist or tattooist supervisor holds a current, unrestricted ~~license~~ registration in this State or an unrestricted authorization to practice permanent cosmetics or tattooing in another state. A permanent cosmetologist or tattooist who holds a restricted ~~license~~ registration or restricted authorization to practice may petition the ~~director~~ Director for permission to be a supervisor, which the ~~director~~ Director may grant for good cause shown.

(d) No shop shall operate in this ~~state~~ State without first registering with the ~~office of professional regulation~~ Office of Professional Regulation and paying a fee of \$100.00. Registration shall be in the form required by the ~~director~~ Director.

(1) No shop shall be granted registration unless the shop complies with this chapter and rules adopted under this chapter.

(2) All shops shall designate a person, who is ~~licensed pursuant to~~ registered under this chapter in the practice of tattooing or body piercing, who shall be responsible for overall cleanliness and sanitation of the shop.

(3) The practice of tattooing or body piercing shall be permitted only in registered shops.

(4) The practice of permanent cosmetics may be performed anywhere the practice of tattooing is ~~licensed~~ permitted, on the premises of a health care professional licensed pursuant to this title, or on premises meeting the sanitation requirements of this chapter as determined by the ~~director~~ Director or as set forth by rule.

(e) [Repealed.]

\* \* \* Naturopathic Physicians \* \* \*

Sec. 46. 26 V.S.A. § 4125 is amended to read:

§ 4125. DIRECTOR; DUTIES

\* \* \*

(e)(1) The Director shall appoint an advisory committee to study and report to the Director and the Commissioner of Health on matters relating to the prescribing authority of naturopathic physicians under the special license

endorsement, including recommendations if necessary for revisions to the administrative rules in order to ensure that naturopathic physicians prescribe, dispense, and administer prescription medicines within the scope of a naturopathic physician's pharmacology education, training, and experience.

(2) The Committee shall be composed of at least seven members: two naturopathic physicians, two physicians licensed by the Board of Medical Practice or the Board of Osteopathic Physicians and Surgeons, a pharmacologist, a pharmacist, and a member of the public.

(3) Members of the Committee shall be entitled to compensation at the rate provided in 32 V.S.A. § 1010.

\* \* \* Midwives \* \* \*

Sec. 47. 26 V.S.A. § 4185 is amended to read:

§ 4185. DIRECTOR; DUTIES

\* \* \*

(c)(1) The Director shall appoint an advisory committee to study and report to the Director and to the Commissioner of Health on matters relating to midwifery, including recommendations if necessary for revisions to the administrative rules. The Committee shall focus on improving communication and collaboration among birth providers.

(2) The Committee shall be composed of at least six members: three midwives licensed under this chapter, two physicians licensed by the Board of Medical Practice or the Board of Osteopathic Physicians and Surgeons, and one advanced practice registered nurse midwife licensed by the Board of Nursing.

(3) Members of the Committee shall be entitled to compensation at the rate provided in 32 V.S.A. § 1010.

\* \* \* Electrologists \* \* \*

Sec. 48. 26 V.S.A. § 4402 is amended to read:

§ 4402. DEFINITIONS

As used in this chapter:

\* \* \*

(3) "Electrology" means the removal of hair by electrical current using needle/probe electrode-type epilation which would include electrolysis (direct current/DC), thermolysis (alternating current/AC), or a combination of both (superimposed or sequential blend). "Electrology" includes the use ~~by~~

~~properly trained licensed electrologists of lasers approved by the United States U.S. Food and Drug Administration for electrology and as otherwise permitted by Vermont law by electrologists possessing a special license endorsement set forth in subsection 4404(d) of this chapter.~~

\* \* \*

Sec. 49. 26 V.S.A. § 4403 is amended to read:

§ 4403. PROHIBITION; PENALTY

\* \* \*

(c) A person licensed under this chapter shall not use lasers for hair removal without obtaining from the Director the special license endorsement set forth in subsection 4404(d) of this chapter.

(d) A person who violates this section shall be subject to the penalties provided in ~~3 V.S.A. § 127(e)~~ 3 V.S.A. § 127.

Sec. 50. 26 V.S.A. § 4404 is amended to read:

§ 4404. DIRECTOR; DUTIES

\* \* \*

(d) The Director shall adopt rules regulating a special license endorsement which shall authorize an electrologist to use lasers for hair removal. These rules shall require an electrologist to complete a comprehensive laser hair removal course satisfactorily in order to obtain this special license endorsement.

Sec. 51. EFFECTIVE DATES

This act shall take effect on July 1, 2014, except this section and Sec. 27 (transitional provision; persons currently licensed as clinical social workers), which shall take effect on passage.

( Committee Vote: 10-0-1)

## H. 852

An act relating to improving workforce education and training

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

Sec. 1. 10 V.S.A. chapter 22A is amended to read:

CHAPTER 22A. WORKFORCE EDUCATION AND TRAINING

§ 540. WORKFORCE EDUCATION AND TRAINING LEADER

The Commissioner of Labor shall be the leader of workforce education and training in the State, and shall have the authority and responsibility for the coordination of workforce education and training within State government, including the following duties:

(1) Perform the following duties in consultation with the State Workforce Investment Board:

(A) Advise the Governor on the establishment of an integrated system of workforce education and training for Vermont.

(B) Create and maintain an inventory of all existing workforce education and training programs and activities in the State.

(C) Use data to ensure that State workforce education and training activities are aligned with the needs of the available workforce, the current and future job opportunities in the State, and the specific credentials needed to achieve employment in those jobs.

(D) Develop a State plan, as required by federal law, to ensure that workforce education and training programs and activities in the State serve Vermont citizens and businesses to the maximum extent possible.

(E) Ensure coordination and non-duplication of workforce education and training activities.

(F) Identify best practices and gaps in the delivery of workforce education and training programs.

(G) Design and implement criteria and performance measures for workforce education and training activities.

(H) Establish goals for the integrated workforce education and training system.

(2) Require from each business, training provider, or program that receives State funding to conduct workforce education and training a report that evaluates the results of the training. Each recipient shall submit its report on a schedule determined by the Commissioner and shall include at least the following information:

(A) name of the person who receives funding;

(B) amount of funding;

(C) activities and training provided;

(D) number of trainees and their general description;

(E) employment status of trainees

(F) future needs for resources.

(3) Review reports submitted by each recipient of workforce education and training funding.

(4) Issue an annual report to the Governor and the General Assembly on or before December 1 that includes a systematic evaluation of the accomplishments of the State workforce investment system and the performance of participating agencies and institutions.

(5) Coordinate public and private workforce programs to assure that information is easily accessible to students, employees, and employers, and that all information and necessary counseling is available through one contact.

(6) Facilitate effective communication between the business community and public and private educational institutions.

**§ 541. WORKFORCE DEVELOPMENT COUNCIL; STATE WORKFORCE INVESTMENT BOARD; MEMBERS, TERMS**

~~(a) The Workforce education and training Council is created as the successor to and the continuation of the Governor's Human Resources Investment Council and shall be the State Workforce Investment Board under Public Law 105-220, the Workforce Investment Act of 1998, and any reauthorization of that act. The Council shall consist of the members required under the federal act and the following: the President of the University of Vermont or designee; the Chancellor of the Vermont State Colleges or designee; the President of the Vermont Student Assistance corporation or designee; the President of the Association of Vermont Independent Colleges or designee; a representative of the Abenaki Self Help Organization; at least two representatives of labor appointed by the Governor in addition to the two required under the federal act, who shall be chosen from a list of names submitted by Vermont AFL-CIO, Vermont NEA, and the Vermont State Employees Association; one representative of the low income community appointed by the Governor; two members of the Senate appointed by the Senate Committee on Committees; and two members of the house appointed by the speaker. In addition, the Governor shall appoint enough other members who are representatives of business or employers so that one half plus one of the members of the council are representatives of business or employers. At least one third of those appointed by the Governor as representatives of business or employers shall be chosen from a list of names submitted by the regional technical centers. As used in this section, "representative of business" means a business owner, a chief executive operating officer, or other business executive, and "employer" means an individual with policy-making or hiring authority, including a public school superintendent or school board member~~

~~and representatives from the nonprofit, social services, and health sectors of the economy. If there is a dispute as to who is to represent an interest as required under the federal law, the Governor shall decide who shall be the member of the Council.~~

~~(b) Appointed members, except legislative appointees, shall be appointed for three year terms and serve at the pleasure of the Governor.~~

~~(c) A vacancy shall be filled for the unexpired term in the same manner as the initial appointment.~~

~~(d) The Governor shall appoint one of the business or employer members to chair the council for a term of two years. A member shall not serve more than three consecutive terms as chair.~~

~~(e) Legislative members shall be entitled to compensation and expenses as provided in 2 V.S.A. § 406, and other members shall be entitled to compensation and expenses as provided in 32 V.S.A. § 1010.~~

~~(f) The Department of Labor shall provide the Council with administrative support.~~

~~(g) The Workforce education and training Council shall be subject to 1 V.S.A. chapter 5, subchapters 2 and 3, relating to public meetings and access to public records.~~

~~(h) [Repealed.]~~

~~(i) The Workforce education and training Council shall:~~

~~(1) Advise the Governor on the establishment of an integrated network of workforce education and training for Vermont.~~

~~(2) Coordinate planning and services for an integrated network of workforce education and training and oversee its implementation at State and regional levels.~~

~~(3) Establish goals for and coordinate the State's workforce education and training policies.~~

~~(4) Speak for the workforce needs of employers.~~

~~(5) Negotiate memoranda of understanding between the Council and agencies and institutions involved in Vermont's integrated network of workforce education and training in order to ensure that each is working to achieve annual objectives developed by the Council.~~

~~(6) Carry out the duties assigned to the State Workforce Investment Board, as required for a single service delivery state, under P.L. 105-220, the~~

~~Workforce Investment Act of 1998, and any amendments that may be made to it. [Repealed.]~~

§ 541a. STATE WORKFORCE INVESTMENT BOARD

(a) Board established; duties. Pursuant to the requirements of 29 U.S.C. § 2821, the Governor shall establish a State Workforce Investment Board to assist the Governor in the execution of his or her duties under the Workforce Investment Act of 1998 and to assist the Commissioner of Labor as specified in section 540 of this title.

(b) Additional duties; planning; process. In order to inform its decision-making and to provide effective assistance under subsection (a) of this section, the Board shall:

(1) Conduct an ongoing public engagement process throughout the State at which Vermonters have the opportunity to provide feedback and information concerning their workforce education and training needs.

(2) Maintain familiarity with the federal Comprehensive Economic Development Strategy (CEDS) and other economic development planning processes, and coordinate workforce and education activities in the State, including the development and implementation of the state plan required under the Workforce Investment Act of 1998, with economic development planning processes occurring in the State, as appropriate.

(c) Membership. The Board shall consist of the Governor and the following members who are appointed by the Governor and serve at his or her pleasure, unless otherwise indicated:

(1) two Members of the Vermont House of Representatives appointed by the Speaker of the House;

(2) two Members of the Vermont Senate appointed by the Senate Committee on Committees;

(3) the President of the University of Vermont or his or her designee;

(4) the Chancellor of the Vermont State Colleges or his or her designee;

(5) the President of the Vermont Student Assistance Corporation or his or her designee;

(6) a representative of an independent Vermont college or university;

(7) the Secretary of Education or his or her designee;

(8) a director of a regional technical center;

(9) a principal of a Vermont high school;

(10) two representatives of labor organizations who have been nominated by State labor federations;

(11) two representatives of individuals and organizations who have experience with respect to youth activities, as defined in 29 U.S.C. § 2801(52);

(12) two representatives of individuals and organizations who have experience in the delivery of workforce investment activities, as defined in 29 U.S.C. § 2801(51);

(13) the lead State agency officials with responsibility for the programs and activities carried out by one-stop partners, as described in 29 U.S.C. § 2841(b), or if no official has that responsibility, a representative in the State with expertise relating to these programs and activities;

(14) the Commissioner of Economic Development;

(15) the Commissioner of Labor;

(16) the Secretary of Human Services or his or her designee;

(17) two individuals who have experience in, and can speak for, the training needs of underemployed and unemployed Vermonters; and

(18) a number of appointees sufficient to constitute a majority of the Board who:

(A) are owners, chief executives, or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;

(B) represent businesses with employment opportunities that reflect the employment opportunities of the State; and

(C) are appointed from among individuals nominated by State business organizations and business trade associations.

(d) Operation of Board.

(1) Member representation.

(A) Members of the State Board who represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities.

(B) The members of the Board shall represent diverse regions of the State, including urban, rural, and suburban areas.

(2) Chair. The Governor shall select a chair for the Board from among the business representatives appointed pursuant to subdivision (c)(18) of this section.



(3) Meetings. The Board shall meet at least three times annually and shall hold additional meetings upon call of the Chair.

(4) Work groups; task forces. The Chair, in consultation with the Commissioner of Labor, may:

(A) assign one or more members to work groups to carry out the work of the Board; and

(B) appoint one or more members of the Board, or non-members of the Board, or both, to one or more task forces for a discrete purpose and duration.

(5) Quorum; meetings; voting.

(A) A majority of the sitting members of the Board shall constitute a quorum, and to be valid any action taken by the Board shall be authorized by a majority of the members present and voting at any regular or special meeting at which a quorum is present.

(B) The Board may permit one or more members to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication, including an electronic, telecommunications, and video- or audio-conferencing conference telephone call, by which all members participating may simultaneously or sequentially communicate with each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

(C) The Board shall deliver electronically the minutes for each of its meetings to each member of the Board and to the Chairs of the House Committees on Education and on Commerce and Economic Development, and to the Senate Committees on Education and on Economic Development, Housing and General Affairs.

(6) Reimbursement. Unless otherwise compensated by his or her employer for performance of his or her duties on the Board, a member of the Board shall be eligible for per diem compensation of \$50.00 per day for attendance at a meeting of the Board, and for reimbursement of his or her necessary expenses, which shall be paid by the Department of Labor solely from funds available for that purpose under the Workforce Investment Act of 1998.

(7) Conflict of interest. A member of the Board shall not:

(A) vote on a matter under consideration by the Board:

(i) regarding the provision of services by the member, or by an entity that the member represents; or

(ii) that would provide direct financial benefit to the member or the immediate family of the member; or

(B) engage in any activity that the Governor determines constitutes a conflict of interest as specified in the State Plan required under 29 U.S.C. § 2822.

(8) Sunshine provision. The Board shall make available to the public, on a regular basis through open meetings, information regarding the activities of the Board, including information regarding the State Plan adopted pursuant to 29 U.S.C. § 2822 and prior to submission of the State Plan to the U.S. Secretary of Labor, information regarding membership, and, on request, minutes of formal meetings of the Board.

§ 541b. WORKFORCE EDUCATION AND TRAINING; DUTIES OF OTHER STATE AGENCIES, DEPARTMENTS, AND PRIVATE PARTNERS

(a) To ensure the Workforce Investment Board and the Commissioner of Labor are able to fully perform their duties under this chapter, each agency and department within State government, and each person who receives funding from the State, shall comply within a reasonable period of time with a request for data and information made by the Board or the Commissioner in furtherance of their duties under this chapter.

(b) The Agency of Commerce and Community Development shall coordinate its work in adopting a statewide economic development plan with the activities of the Board and the Commissioner of Labor, including the development and implementation of the state plan for workforce education and training required under the Workforce Investment Act of 1998.

§ 542. REGIONAL WORKFORCE ~~DEVELOPMENT~~ EDUCATION AND TRAINING

(a) The Commissioner of Labor, in coordination with the Secretary of Commerce and Community Development, and in consultation with the Workforce ~~education and training Council~~ Investment Board, is authorized to issue performance grants to one or more persons to perform workforce education and training activities in a region.

(b) Each grant shall specify the scope of the workforce education and training activities to be performed and the geographic region to be served, and shall include outcomes and measures to evaluate the grantee's performance.

(c) The Commissioner of Labor and the Secretary of Commerce and Community Development shall jointly develop a grant process and eligibility criteria, as well as an outreach process for notifying potential participants of

the grant program. The Commissioner of Labor shall have final authority to approve each grant.

§ 543. WORKFORCE EDUCATION AND TRAINING FUND; GRANT PROGRAMS

(a) Creation. There is created a Workforce Education and Training Fund in the ~~department of labor~~ Department of Labor to be managed in accordance with 32 V.S.A. chapter 7, subchapter 5.

(b) Purposes. The Fund shall be used exclusively for the following ~~two~~ purposes:

(1) training ~~to improve the skills of~~ for Vermont workers, including those who are unemployed, underemployed, or in transition from one job or career to another; and

(2) internships to provide students with work-based learning opportunities with Vermont employers; and

(3) apprenticeship-related instruction.

(c) Administrative Support. Administrative support for the grant award process shall be provided by the ~~Departments~~ Department of Labor ~~and of Economic Development~~. Technical, ~~administrative, financial, and other~~ support shall be provided whenever appropriate and reasonable by the Workforce ~~Development Council~~ Investment Board and all other public entities involved in ~~Economic Development, workforce development and training, and education~~ economic development and workforce education and training.

(d) Eligible Activities. Awards from the Fund shall be made to employers and entities that offer programs that require collaboration between employees and businesses, including private, public, and nonprofit entities, institutions of higher education, high schools, technical centers, and workforce education and training programs. Funding shall be for training programs and student internship programs that offer education, training, apprenticeship, mentoring, or work-based learning activities, or any combination; that employ innovative intensive student-oriented competency-based or collaborative approaches to workforce education and training; and that link workforce education and economic development strategies. Training programs or projects that demonstrate actual increased income and economic opportunity for employees and employers may be funded for more than one year. Student internships and training programs that involve the same employer may be funded multiple times, provided that new students participate.

~~(e) Award Criteria and Process. The Workforce education and training Council, in consultation with the Commissioners of Labor and of Economic Development and the Secretary of Education, shall develop criteria consistent with subsection (d) of this section for making awards under this section. The Commissioners of Labor and of Economic Development and the Secretary of Education, shall develop a process for making awards. [Repealed].~~

(f) Awards. ~~Based on guidelines set by the council, the~~ The Commissioner of labor, ~~and the Secretary of Education~~ Labor, in consultation with the Workforce Investment Board, shall ~~jointly~~ develop award criteria and may make awards to the following:

(1) Training Programs.

~~(A) Public, private, and nonprofit entities for existing or new innovative training programs. Awards may be made to programs that retrain enhance the skills of Vermont incumbent workers and:~~

~~(i) train workers for trades or occupations that are expected to lead to jobs paying at least 200 percent of the current minimum wage or at least 150 percent if benefits are included; this requirement may be waived when warranted based on regional or occupational wages or economic reality;~~

~~(ii) do not duplicate, supplant, or replace other available programs funded with public money;~~

~~(iii) articulate clear goals and demonstrate readily accountable, reportable, and measurable results; and~~

~~(iv) demonstrate an integrated connection between training and specific new or continuing employment opportunities.~~

~~(B) Awards under this subdivision shall be made to programs or projects that do all the following:~~

~~(A)(i) offer innovative programs of intensive, student-centric, competency-based education, training, apprenticeship, mentoring, or any combination of these;~~

~~(B)(ii) address the needs of workers who are unemployed, underemployed, or are at risk of becoming unemployed due to changing workplace demands by increasing productivity and developing new skills for incumbent workers; or~~

~~(iii) in the discretion of the Commissioner, otherwise serves the purposes of this chapter.~~

~~(C) train workers for trades or occupations that are expected to lead to jobs paying at least 200 percent of the current minimum wage or at least 150~~

~~percent if benefits are included; this requirement may be waived when warranted based on regional or occupational wages or economic reality;~~

~~(D) do not duplicate, supplant, or replace other available programs funded with public money;~~

~~(E) articulate clear goals and demonstrate readily accountable, reportable, and measurable results;~~

~~(F) demonstrate an integrated connection between training and specific employment opportunities, including an effort and consideration by participating employers to hire those who successfully complete a training program; and.~~

(2) Vermont Career Internship Program. Funding for eligible internship programs and activities under the Vermont Career Internship Program established in section 544 of this title.

(3) Apprenticeship Program. The Vermont Apprenticeship Program established under 21 V.S.A. chapter 13. Awards under this subdivision may be used to fund the cost of apprenticeship-related instruction provided by the Department of Labor.

(g) [Repealed.]

#### § 544. VERMONT CAREER INTERNSHIP PROGRAM

(a)(1) The Department of Labor, in consultation with the Agency of Education, shall develop and implement a statewide Vermont Career Internship Program for Vermonters who are in high school or in college and for those who are recent graduates of 24 months or less.

(2) The Department of Labor shall coordinate and provide funding to public and private entities for internship programs that match Vermont employers with students from public and private secondary schools, regional technical centers, the Community High School of Vermont, colleges, and recent graduates of 24 months or less.

(3) Funding awarded through the Vermont Career Internship Program may be used to administer an internship program and to provide participants with a stipend during the internship, based on need. Funds may be made only to programs or projects that do all the following:

(A) do not replace or supplant existing positions;

(B) create real workplace expectations and consequences;

(C) provide a process that measures progress toward mastery of skills, attitude, behavior, and sense of responsibility required for success in that

workplace;

(D) are designed to motivate and educate secondary and postsecondary students and recent graduates through work-based learning opportunities with Vermont employers that are likely to lead to real employment;

(E) include mechanisms that promote employer involvement with secondary and postsecondary students and curriculum and the delivery of education at the participating schools; and

(F) offer participants a continuum of learning, experience, and relationships with employers that will make it financially possible and attractive for graduates to continue to work and live in Vermont.

(4) ~~For the purposes of~~ As used in this section, “internship” means a learning experience working with an employer where the intern may, but does not necessarily, receive academic credit, financial remuneration, a stipend, or any combination of these.

(b) The Department of Labor, in collaboration with the Agencies of Agriculture, Food and Markets and of Education, ~~state-funded~~ State-funded postsecondary educational institutions, the Workforce ~~Development Council~~ Investment Board, and other ~~state~~ State agencies and departments that have workforce education and training and training monies, shall:

(1) identify new and existing funding sources that may be allocated to the Vermont Career Internship Program;

(2) collect data and establish program goals and quantifiable performance measures for internship programs funded through the Vermont Career Internship Program;

(3) develop or enhance a website that will connect students and graduates with internship opportunities with Vermont employers;

(4) engage appropriate agencies and departments of the State in the Internship Program to expand internship opportunities with State government and with entities awarded State contracts; and

(5) work with other public and private entities to develop and enhance internship programs, opportunities, and activities throughout the State.

Sec. 2. 10 V.S.A. chapter 22 is amended to read:

CHAPTER 22. ~~EMPLOYMENT~~ THE VERMONT  
TRAINING PROGRAM

§ 531. ~~EMPLOYMENT~~ THE VERMONT TRAINING PROGRAM

(a)(1) The Secretary of Commerce and Community Development may, in consultation with the Workforce Investment Board, shall have the authority to design and implement a Vermont Training Program, the purpose of which shall be to issue performance-based grants to any employer, consortium of employers, or providers of training, either individuals or organizations, as necessary, to conduct training under the following circumstances: to employers and to education and training providers to increase employment opportunities in Vermont consistent with this chapter.

(2) The Secretary shall structure the Vermont Training Program to serve as a flexible, nimble, and strategic resource for Vermont businesses and workers across all sectors of the economy.

~~(1) when issuing grants to an employer or consortium of employers, the employer promises as a condition of the grant to where eligible facility is defined as in subdivision 212(6) of this title relating to the Vermont Economic Development Authority, or the employer or consortium of employers promises to open an eligible facility within the State which will employ persons, provided that for the purposes of this section, eligible facility may be broadly interpreted to include employers in sectors other than manufacturing; and~~

~~(2) training is required for potential employees, new employees, or long-standing employees in the methods, either singularly or in combination relating to pre-employment training, on-the-job training, upgrade training, and crossover training, or specialized instruction, either in plant or through a training provider.~~

(b) Eligibility for grant. The Secretary of Commerce and Community Development may award a grant to an employer if:

(1) the employer's new or expanded initiative will enhance employment opportunities for Vermont residents; the training is for pre-employment, new employees, or incumbent employees in the methods, either singularly or in combination, relating to pre-employment training, on-the-job training, upgrade training, and crossover training, or specialized instruction, either on-site or through a training provider;

(2) the employer provides its employees with at least three of the following:

(A) health care benefits with 50 percent or more of the premium paid by the employer;

(B) dental assistance;

(C) paid vacation; ~~and~~

(D) paid holidays;

- ~~(D)~~(E) child care;
- ~~(E)~~(F) other extraordinary employee benefits;
- ~~(F)~~(G) retirement benefits; ~~and~~
- (H) other paid time off, including paid sick days;

(3) the training is directly related to the employment responsibilities of the trainee; and

(4) unless modified by the Secretary if warranted based on regional or occupational wages or economic reality, the training is expected to lead to a position for which the employee is compensated at least twice the State minimum wage, reduced by the value of any benefit package up to a limit of 30 percent of the employee's gross wage; provided that for each grant in which the Secretary modifies the compensation provisions of this subdivision, he or she shall identify in the records for that grant the basis and nature of the modification.

~~(c) The employer promises as a condition of the grant to:~~

~~(1) employ new persons at a wage which, at the completion of the training program, is two times the prevailing state or federal minimum wage, whichever is greater, reduced by the value of any existing health benefit package up to a limit of 30 percent of the gross program wage, or for existing employees, to increase the wage to two times the prevailing state and federal minimum wage, whichever is greater, reduced by the value of any existing health benefit package up to a limit of 20 percent of the gross program wage, upon completion of training; provided, however, that in areas defined by the Secretary of Commerce and Community Development in which the Secretary finds that the rate of unemployment is 50 percent greater than the average for the State, the wage rate under this subsection may be set by the Secretary at a rate no less than one and one half times the federal or state minimum wage, whichever is greater;~~

~~(2) employ persons who have completed the training provided for them and nominated as qualified for a reasonable period at the wages and occupations described in the contract, unless the employer reasonably finds the nominee is not qualified;~~

~~(3) provide its employees with at least three of the following:~~

~~(A) health care benefits with 50 percent or more of the premium paid by the employer;~~

~~(B) dental assistance;~~

~~(C) paid vacation and holidays;~~



~~(D) child care;~~

~~(E) other extraordinary employee benefits; and~~

~~(F) retirement benefits.~~

~~(4) submit a customer satisfaction report to the Secretary of Commerce and Community Development, on a form prepared by the Secretary for that purpose, no more than 30 days from the last day of the training program.~~

In the case of a grant to a training provider, the Secretary shall require as a condition of the grant that the provider shall disclose to the Secretary the name of the employer and the number of employees trained prior to final payment for the training.

(d) In order to avoid duplication of programs or services and to provide the greatest return on investment from training provided under this section, the Secretary of Commerce and Community Development shall:

~~(1) first consult with the Commissioner of Labor regarding whether the grantee has accessed, or is eligible to access, other workforce education and training resources offered by public or private workforce education and training partners;~~

(2) disburse grant funds only for training hours that have been successfully completed by employees; provided that a grant for on-the-job training shall either provide not more than 50 percent of wages for each employee in training, or not more than 50 percent of trainer expense, but not both, and further provided that training shall be performed in accordance with a training plan that defines the subject of the training, the number of training hours, and how the effectiveness of the training will be evaluated; and

(3) use funds under this section only to supplement training efforts of employers and not to replace or supplant training efforts of employers.

~~(e) The Secretary of Commerce and Community Development shall administer all training programs under this section, may select and use providers of training as appropriate, and shall adopt rules and may accept services, money, or property donated for the purposes of this section. The Secretary may promote awareness of, and may give priority to, training that enhances critical skills, productivity, innovation, quality, or competitiveness, such as training in Innovation Engineering, "Lean" systems, and ISO certification for expansion into new markets. [Repealed.]~~

(f) Upon completion of the training program for any individual, the secretary of Commerce and Community Development shall review the records and shall award to the trainee, if appropriate, a certificate of completion for the training.

~~(g) None of the criteria in subdivision (a)(1) of this section shall apply to a designated job development zone under chapter 29, subchapter 2 of this title. [Repealed.]~~

~~(h) The Secretary may designate the Commissioner of Economic Development to carry out his or her powers and duties under this chapter. [Repealed.]~~

~~(i) Program Outcomes:~~

~~(1) On or before September 1, 2011, the Agency of Commerce and Community Development, in coordination with the department of labor, and in consultation with the Workforce education and training Council and the legislative Joint Fiscal Office, shall develop, to the extent appropriate, a common set of benchmarks and performance measures for the training program established in this section and the Workforce Education and Training Fund established in section 543 of this title, and shall collect employee-specific data on training outcomes regarding the performance measures; provided, however, that the Secretary shall redact personal identifying information from such data.~~

~~(2) On or before January 15, 2013, the Joint Fiscal Office shall prepare a performance report using the benchmarks and performance measures created pursuant to subdivision (1) of this subsection. The Joint Fiscal Office shall submit its report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development.~~

~~(3) The Secretary shall use information gathered pursuant to this subsection and customer satisfaction reports submitted pursuant to subdivision (c)(4) of this section to evaluate the program and make necessary changes that fall within the Secretary's authority or, if beyond the scope of the Secretary's authority, to recommend necessary changes to the appropriate committees of the General Assembly. [Repealed.]~~

~~(j) Consistent with the training program's goal of providing specialized training and increased employment opportunities for Vermonters, and notwithstanding provisions of this section to the contrary, the Secretary shall canvas apprenticeship sponsors to determine demand for various levels of training and classes and shall transfer up to \$250,000.00 annually to the regional technical centers to fund or provide supplemental funding for apprenticeship training programs leading up to certification or licensing as journeyman or master electricians or plumbers. The Secretary shall seek to provide these funds equitably throughout Vermont; however, the Secretary shall give priority to regions not currently served by apprenticeship programs~~

~~offered through the Vermont Department of Labor pursuant to 21 V.S.A. chapter 13. [Repealed].~~

(k) Annually on or before January 15, the Secretary shall submit a report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs, summarizing In addition to the reporting requirements under section 540 of this title, the report shall identify:

(1) all active and completed contracts and grants;

(2) the types of training activities provided, from among the following, the category the training addressed:

(A) pre-employment training or other training for a new employee to begin a newly created position with the employer;

(B) pre-employment training or other training for a new employee to begin in an existing position with the employer;

(C) training for an incumbent employee who, upon completion of training, assumes a newly created position with the employer;

(D) training for an incumbent employee who upon completion of training assumes a different position with the employer;

(E) training for an incumbent employee to upgrade skills;

(3) for the training identified in subdivision whether the training is onsite or classroom-based;

(4) the number of employees served, and ;

(5) the average wage by employer, and addressing ;

(6) any waivers granted;

(7) the identity of the employer, or, if unknown at the time of the report, the category of employer;

(8) the identity of each training provider; and

(9) whether training results in a wage increase for a trainee, and the amount of increase.

### Sec. 3. REPEAL

2007 Acts and Resolves No. 46, Sec. 6(a), as amended by 2009 Acts and Resolves No. 54, Sec. 8 (workforce education and training leader) and 2013 Acts and Resolves No. 81, Sec. 2, is repealed.

### Sec. 4. DEPARTMENT OF LABOR; AGENCY OF COMMERCE AND

## COMMUNITY DEVELOPMENT; STATUTORY PROPOSALS

On or before November 1, 2014:

(1) The Commissioner of Labor shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a proposal to amend the language of 10 V.S.A. § 543 to reflect best practices and improve clarity in the administration of, and for applicants to, the grant program from the Workforce Education and Training Fund under that section.

(2) The Secretary of Commerce and Community Development shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a proposal to amend the language of 10 V.S.A. § 531 to reflect best practices and improve clarity in the administration of, and for applicants to, the Vermont Training Program under that section.

### Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

**( Committee Vote: 11-0-0)**

**Favorable**

**H. 584**

An act relating to municipal regulation of parking lots and meters

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

**( Committee Vote: 7-3-1)**

### **Senate Proposal of Amendment**

**H. 526**

An act relating to the establishment of lake shoreland protection standards

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

### Sec. 1. LEGISLATIVE FINDINGS AND LEGISLATIVE INTENT

The General Assembly finds and declares that:

(1) Clean water is essential in Vermont's quality of life.

(2) Preserving, protecting, and restoring the water quality of all lakes, ponds, rivers, and streams are necessary for the clean water, recreation,

economic opportunity, wildlife habitat, and ecological value that such waters provide.

(3) Currently, there are multiple pressures on the protection of the water quality of the State's surface waters.

(4) The State has responded to the multiple pressures on water quality by implementing regulatory programs for stormwater, wastewater, and agricultural runoff, but water quality issues remain that need addressing.

(5) Vermont's lakes are among the State's most valuable and fragile economic and natural resources, and the protection of naturally vegetated shorelands adjacent to lakes is necessary to prevent water quality degradation, maintain healthy habitat, and promote flood resilience.

(6) Naturally vegetated shorelands and implementation of best management practices in lands adjacent to lakes function to:

(A) intercept and infiltrate surface water runoff, wastewater, and groundwater flows from upland sources;

(B) remove or minimize the effects of nutrients, sediment, organic matter, pesticides, and other pollutants;

(C) moderate the temperature of shallow water habitat;

(D) maintain the conditions that sustain the full support of aquatic biota, wildlife, and aquatic habitat uses; and

(E) promote stability and flood resilience by protecting shoreline banks from erosion.

(7) Healthy lakes and adjacent shorelands:

(A) support Vermont's tourism economy and promote widespread recreational opportunities, including swimming, boating, fishing, and hunting;

(B) support property values and tax base; and

(C) reduce human health risks.

(8) According to the Agency of Natural Resources Water Quality Remediation, Implementation, and Funding Report in 2013, review of the development, protection, and stabilization of shorelands is necessary because of the importance of shorelands to the health of lakes.

(9) A lake or pond of more than 10 acres is located in 184 of the State's 251 municipalities. However, only 48 municipalities have shoreland zoning that requires vegetative cover. Scientifically based standards for impervious surface and cleared area adjacent to lakes are necessary to protect and maintain the integrity of water quality and aquatic and shoreland habitat, while also

allowing for reasonable development of shorelands.

(10) The shorelands of the state owned by private persons remain private property, and this act does not extend the common-law public trust doctrine to private shoreland that is not currently public trust land. The State has an interest in protecting lakes and adjacent shorelands in a manner that respects existing rights of property owners to control access to land they own in lake shorelands, and the regulation of the creation of new impervious surface or cleared area in the shoreland areas should not and does not affect the ability of property owners to control access to their lands.

(11) In order to fulfill the State's role as trustee of its waters and promote public health, safety, and the general welfare, it is in the public interest for the General Assembly to establish lake shoreland protection standards for impervious surface and cleared area in the shorelands adjacent to the State's lakes.

Sec. 2. 10 V.S.A. chapter 49A is added to read:

#### CHAPTER 49A. LAKE SHORELAND PROTECTION STANDARDS

##### § 1441. PURPOSE

The purposes of this chapter shall be to:

(1) provide clear and adaptable standards for the creation of impervious surface or cleared area in lands adjacent to lakes;

(2) prevent degradation of water quality in lakes and preserve natural stability of shoreline;

(3) protect aquatic biota and protect habitat for wildlife and aquatic life;

(4) mitigate, minimize, and manage any impact of new impervious surface and new cleared area on the lakes of the State;

(5) mitigate the damage that floods and erosion cause to development, structures, and other resources in the lands adjacent to lakes;

(6) accommodate creation of cleared areas and impervious surfaces in protected shoreland areas in a manner that allows for reasonable development of existing parcels;

(7) protect shoreland owners' access to, views of, and use of the State's lakes; and

(8) preserve and further the economic benefits and values of lakes and their adjacent shorelands.

##### § 1442. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Natural Resources.

(2) “Best management practices” means approved activities, maintenance procedures, and other practices to prevent or reduce the effects of impervious surface or cleared area on water quality and natural resources.

(3) “Cleared area” means an area where existing vegetative cover, soil, tree canopy, or duff is permanently removed or altered. Cleared area shall not mean management of vegetative cover conducted according to the requirements of section 1447 of this title.

(4) “Duff” means leaf litter plus small fragments of plants and organic debris that provide a spongy substrate that absorbs the energy of falling water and allows runoff to infiltrate soil.

(5) “Expansion” means an increase or addition of impervious surface or cleared area.

(6) “Grass lawn” means land maintained in continuous plant coverage of grasses and similar plants that are closely and regularly mowed, including meadow or pasture on nonagricultural land. “Grass lawn” does not include pasture cropland, land used to grow sod, or similar land used for agricultural production.

(7) “Habitable structure” means a permanent assembly of materials built for the support, shelter, or enclosure of persons, animals, goods, or property, including a dwelling, a commercial or industrial building, and driveways, decks, and patios attached or appurtenant to a dwelling or commercial or industrial building. “Habitable structure” shall not mean a motor home, as that term is defined under 32 V.S.A. § 8902, tents, lean-tos, or other temporary structures.

(8) “Impervious surface” means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(9) “Lake” means a body of standing water, including a pond or a reservoir, which may have natural or artificial water level control. Private ponds shall not be considered lakes.

(10) “Mean water level” means the mean water level of a lake as defined in the Mean Water Level Rules of the Agency of Natural Resources adopted under 29 V.S.A. § 410.

(11) “Parcel” means a portion of land or a tract of land with defined boundaries created by dividing the land by sale, gift, lease, mortgage,

foreclosure, court-ordered partition or decree, or filing of a plat, plan, or deed in the records of the municipality where the act of division occurred.

(12) “Private pond” means a body of standing water that is a natural water body of not more than 20 acres located on property owned by a person or an artificial water body of any size located on property owned by one person. A “private pond” shall include a reservoir specifically constructed for one of the following purposes: snowmaking storage, golf course irrigation, stormwater management, or fire suppression.

(13) “Private road” means a road or street other than a highway, as that term is defined in 19 V.S.A. § 1(12), that is owned by one or more persons and that is used as a means of travel from a highway to more than one parcel of land.

(14) “Project” means an act or activity that results in cleared area or the creation of impervious surface in a protected shoreland area.

(15) “Protected shoreland area” means all land located within 250 feet of the mean water level of a lake that is greater than 10 acres in surface area.

(16) “Secretary” means the Secretary of Natural Resources or the Secretary’s duly authorized representative.

(17) “Slope” means the vertical rise divided by the horizontal run of a place expressed as a percentage.

(18) “Stormwater runoff” means precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain or wastes from combined sewer overflows.

(19) “Vegetative cover” means mixed vegetation within the protected shoreland area, consisting of trees, shrubs, groundcover, and duff. “Vegetative cover” shall not mean grass lawns, noxious weeds designated by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 84, or nuisance plants, such as poison ivy and poison oak, designated by the Secretary of Natural Resources.

§ 1443. INDIVIDUAL PERMIT REQUIREMENT FOR IMPERVIOUS SURFACE OR CLEARED AREA IN A PROTECTED SHORELAND AREA

(a) Permit requirement. A person shall not create cleared area or impervious surface in a protected shoreland area without a permit from the Secretary, except for activities authorized to occur without a permit under section 1446 of this title.



(b) Permit issuance. The Secretary shall issue a permit under this section if the proposed impervious surface or cleared area meets the requirements of sections 1444 or 1445 of this title.

(c) Permit process.

(1) A person applying for a permit shall do so on a form provided by the Secretary. The application shall be posted on the Agency's website.

(2) A person applying for a permit shall provide notice, on a form provided by the Secretary, to the municipal clerk of the municipality in which the construction of impervious surface or creation of cleared area is located at the time the application is filed with the Secretary.

(3) The Secretary shall provide an opportunity for written comment, regarding whether an application complies with the requirements of this chapter or any rule adopted by the Secretary, for 30 days following receipt of the application.

(d) Permit condition. A permit issued under this section may include permit conditions, including authorizing a permittee, no more frequently than two times per year, to clear vegetative cover within three feet of both sides of a footpath within the protected shoreland area in order to allow access to the mean water level for maintenance or repair of recreational structures or for other activity approved by the Secretary.

(e) Permit term. Individual permits issued under this section shall be for an indefinite term, provided that the permittee complies with the requirements of the permit and takes no additional action for which an individual permit is required.

(f) Recording. A permit or registration issued under this chapter shall, for the purposes of having the permit or registration run with the land, be recorded in the land records of the municipality in which the impervious surface or cleared area is located.

#### § 1444. PERMIT STANDARDS

(a) Permit standards; generally. Except for permits issued under section 1445 of this title, the Secretary shall issue a permit under this chapter if the permit applicant demonstrates that:

(1) cleared area or impervious surface shall be located at least 100 feet from the mean water level, except for a public recreational access when compliance with this subdivision (1) would be inconsistent or in conflict with applicable federal requirements for the management of the parcel;

(2) cleared area or impervious surface within the protected shoreland

area shall be located on a site:

(A) with a slope of less than 20 percent; or

(B) that the permit applicant demonstrates will have a stable slope with minimal erosion and minimal negative impacts to water quality;

(3)(A) no more than 20 percent of the protected shoreland area of the parcel shall consist of impervious surface; or

(B) the permit applicant shall demonstrate that best management practices will be used to manage, treat, and control erosion due to stormwater runoff from that portion of impervious surface that exceeds 20 percent of the protected shoreland area;

(4)(A) no more than 40 percent of the protected shoreland area of the parcel shall consist of cleared area, including area cleared for the purposes of creating impervious surface; or

(B) the permit applicant shall demonstrate that best management practices will be used to provide erosion control, bank stability, and wildlife habitat functionally equivalent to that which would be provided by clearing less than 40 percent of the shoreland protection area;

(5) within 100 feet of the mean water level, vegetative cover shall be managed according to the requirements of section 1447 of this title.

(b) Repair of highway or private road. When the repair, emergency repair, or replacement of a private road or highway, as that term is defined in 19 V.S.A. § 1(12), results in the construction, creation, or expansion of impervious surface or cleared area on a property adjacent to the private road or highway, the impervious surface or cleared area constructed or created on the adjacent property shall not be calculated as square footage of impervious surface or cleared area for purposes of permitting or registration under this chapter.

(c) Calculation of area. Under this chapter, the area of constructed, created, or expanded impervious surface or cleared area shall be the square footage as measured on a horizontal plane.

#### § 1445. NONCONFORMING PARCELS; PERMIT STANDARDS

(a) Permit for nonconforming parcels. A permit applicant shall comply with the requirements of subsection (b) of this section if the applicant cannot meet the standard required under subdivision 1444(a)(1) of this title on a parcel of land in existence on July 1, 2014, due to one of the following limitations:

(1) parcel size;

(2) the site characteristic or site limitations of the parcel, including presence of highway or rights of way and soil type; or

(3) application of municipal setback requirement in a municipal bylaw adopted on or before July 1, 2014.

(b) Permit standards for nonconforming parcels.

(1) For a parcel on which there is no habitable structure, the cleared area or impervious surface shall be as far as possible from the mean water level, and at a minimum shall be no less than 25 feet from the mean water level.

(2) For a parcel on which a habitable structure is located, the expansion of any portion of the structure within 100 feet of the mean water level shall be on the side of the structure farthest from the lake, unless the Secretary determines that:

(A) expansion on an alternate side of the structure will have an impact on water quality that is equivalent to or less than expansion of the structure on the side farthest from the lake; and

(B) the structure is not expanded toward the mean water level.

(3) Cleared area or impervious surface within the protected shoreland area shall be located on a site:

(A) with a slope of less than 20 percent; or

(B) that the permit applicant demonstrates will have a stable slope with minimal erosion and minimal negative impacts to water quality.

(4)(A) No more than 20 percent of the protected shoreland area of the parcel shall consist of impervious surface.

(B) The permit applicant shall demonstrate that best management practices will be used to manage, treat, and control erosion due to stormwater runoff from that portion of impervious surface that exceeds 20 percent of the protected shoreland area.

(5)(A) No more than 40 percent of the protected shoreland area of the parcel shall consist of cleared area, including area cleared for the purposes of creating an impervious surface.

(B) The permit applicant shall demonstrate that best management practices will be used to provide erosion control, bank stability, and wildlife habitat functionally equivalent to that which would be provided by clearing less than 40 percent of the protected shoreland area.

(c) Vegetation maintenance on nonconforming parcels. A permit issued under this section for creation of cleared area or impervious surface on a

nonconforming parcel shall not require compliance with the requirements of section 1447 for the management of vegetative cover.

(d) Application process. An applicant for a permit under this section shall submit to the Secretary a form that identifies the basis of the nonconformity on the parcel. The Secretary may issue a permit under this section to an applicant who meets the requirements of subsection (b) of this section.

#### § 1446. REGISTERED PROJECTS; EXEMPTIONS FROM PERMITTING

(a)(1) Registered projects. The following projects in a protected shoreland area do not require a permit under section 1444 or 1445 of this title:

(A) The creation of no more than 100 square feet of impervious surface or cleared within 100 feet of the mean water level, provided that:

(i) the owner of the property on which the impervious surface or cleared area is created registers with the Secretary, on a form provided by the Secretary that contains the name of the property owner, the address of the property, and a certification that the project meets the requirements of this subsection (a);

(ii) the impervious surface or cleared area is located at least 25 feet from the mean water level; and

(iii) vegetative cover in the protected shoreland area shall be managed according to the requirements of section 1447 of this title.

(B) The creation of 500 square feet or less of impervious surface, cleared area, or a combination of impervious surface and cleared area, provided that:

(i) the owner of the property on which the impervious surface or cleared area is created registers with the Secretary a form provided by the Secretary that contains the name of the property owner, the address of the property, and a certification that the project meets the requirements of this subsection;

(ii) the impervious surface or cleared area is at least 100 feet from the mean water level;

(iii) any proposed cleared area or area within the protected shoreland area where an impervious surface shall be sited has a slope of less than 20 percent;

(iv) after the completion of the project, the protected shoreland area shall consist of no more than 20 percent impervious surface; and

(v) after the completion of the project, the protected shoreland

area shall consist of no more than 40 percent cleared area, including any area cleared for the purposes of creating impervious surface.

(2) Limit on registration per parcel. A person shall not use the registration process under this subsection to create more than a maximum total per parcel of:

(A) 100 square feet of impervious surface or cleared area within 100 feet of the mean water level; and

(B) 500 square feet of impervious surface or cleared area within the protected shoreland area that is at least 100 feet from the mean water level.

(3) Effect of registration. A registration shall take effect 15 days after being filed with the Secretary, unless the Secretary requests that the person registering submit additional information that the Secretary considers necessary or the Secretary notifies the person registering that an individual permit is required.

(4) Term. Registrations shall be for an indefinite term, provided that the person complied with the requirements of this subsection and takes no action for which an individual permit is required.

(b) Exemptions. The following activities in a protected shoreland area do not require a permit under section 1444 or 1445 of this title:

(1) Management of vegetative cover. Management of vegetative cover conducted in compliance with section 1447 of this title.

(2) Removal of vegetation for recreational purposes. The cutting or removal of no more than 250 square feet of the existing vegetation under three feet in height within 100 feet of the mean water level to allow for recreational use in the protected shoreland area, provided that:

(A) the cutting or removal of vegetation occurs at least 25 feet from the mean water level; and

(B) other ground cover, including leaf litter and the forest duff layer, shall not be removed from the area in which cutting occurs.

(3) Maintenance of lawns. The maintenance, but not the enlargement, of lawns, gardens, landscaped areas, and beaches in existence as of July 1, 2014.

(4) Creation of footpaths. The creation of one footpath per parcel with a width of no greater than six feet that provides access to the mean water level. Under this subdivision, a footpath includes stairs, landings, or platforms within the authorized six-foot width.

(5) Construction within footprint. Construction within the footprint of an impervious surface, existing as of July 1, 2014, that does not result in a net increase in the amount of impervious surface on a parcel.

(6) Silvicultural activities. Silvicultural activities in a protected shoreland area if the silvicultural activities are in compliance with:

(A) a forest management plan, approved by the Commissioner of Forests, Parks and Recreation, for the land in the protected shoreland area in which the silvicultural activities occur;

(B) the accepted management practices adopted by the Commissioner of Forests, Parks and Recreation under section 2622 of this title.

(7) Agricultural activities. Agricultural activities on land in agricultural production on July 1, 2014, provided that:

(A) no impervious surface shall be created or expanded in a protected shoreland area except when no alternative outside the protected shoreland area exists, the construction of a best management practice to abate an agricultural water quality issue when the best management practice is approved by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215; and

(B) the agricultural activities within the protected shoreland area comply with the rules adopted by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215 regarding agricultural water quality, including accepted agricultural practices, best management practices, medium and small farm operation, and large farm operation; and

(8) Transportation infrastructure and private roads. The maintenance, emergency repair, repair, and replacement of:

(A) Transportation infrastructure by the Vermont Agency of Transportation or by a municipality.

(B) A private road that does not require a permit under section 1264 of this title, provided that emergency repair, repair, and replacement of the private road shall comply with the applicable water quality best management practices approved by the Secretary under 19 V.S.A. § 996 and incorporated within the Vermont Agency of Transportation town road and bridge standards for controlling stormwater runoff and direct discharges to State waters. The requirement to comply with the water quality best management practices shall apply even if the municipality in which the private road is located has not adopted the town road and bridge standards. Under this subdivision, expansion of a private road in order to allow for passage of emergency vehicles shall be considered repair that does not require a permit under section 1443 of this title.

(9) Railroad activities. Railroad activities and facilities within the jurisdiction of federal law.

(10) Parcel intersected by public highway. The creation or expansion of impervious surface or cleared area on a parcel within the protected shoreland area when the parcel is intersected by a public highway, as that term is defined in 19 V.S.A. § 1, and the impervious surface or cleared area is created or expanded on that portion of the parcel on the side of the highway away from the mean water level.

(11) Wastewater systems and potable water supplies. Installation, maintenance, repair, or replacement of a wastewater system or potable water supply permitted by the Agency of Natural Resources under chapter 64 of this title.

(12) Stormwater treatment. Discharges of stormwater, stormwater treatment facilities or practices, including repair or maintenance, permitted by the Agency of Natural Resources under section 1264 of this title.

(13) Utility projects and utility lines.

(A) The construction of projects that require a certificate of public good under 30 V.S.A. § 248 subject to the Agency of Natural Resources Riparian Buffer Guidance for Act 250 and Section 248 projects.

(B) The routine repair and maintenance of utility lines and structures including vegetation maintenance in utility line corridors, in a protected shoreland area that are subject to 30 V.S.A. § 248, chapter 151 of this title, or a vegetation management plan approved by the Agency in a protected shoreland area. Vegetation management practices in a protected shoreland area shall be performed in accordance with a vegetation management plan approved by the Agency of Natural Resources.

(C) The emergency repair of utility lines and poles in protected shoreland areas, provided that such repair minimizes adverse impacts to vegetation in the protected shoreland area.

(14) Act 250 permit. Projects which have received a permit pursuant to chapter 151 of this title.

(15) Designated downtowns and village centers. Projects in downtowns and village centers designated pursuant to 24 V.S.A. chapter 76A.

(16) Urban and industrial redevelopment. Construction, creation, or expansion of impervious surface or cleared area within a protected shoreland area, provided that:

(A) the area in which the impervious surface or cleared area will be

constructed, created, or expanded is:

(i) urban or industrial in nature;

(ii) contains as of July 1, 2014 impervious surface or cleared area; and

(iii) has been designated by municipal bylaw for redevelopment.

(B) the municipality has adopted a shoreland bylaw or ordinance that:

(i) is at least as stringent as the permitting requirements and exemptions of this chapter; or

(ii) requires best management practices or other controls that are, as determined by the Secretary, functionally equivalent to compliance with the permitting requirements and exemptions of this chapter.

(17) Mosquito control. Where mosquito populations create a public health hazard, as that term is defined in 18 V.S.A. § 2, physical practices or activities approved by the Secretary that create cleared area or remove vegetative cover in order to reduce mosquito breeding habitat, provided that any activity authorized under this subdivision shall comply with the Vermont wetlands rules.

(c) Application of vegetative cover requirements. Activities authorized under subdivisions (b)(2)–(13) of this section shall not be required to comply with the requirements for the management of vegetative cover under section 1447 of this title.

#### § 1447. LAKE SHORELAND VEGETATION PROTECTION STANDARDS

(a) Within 100 feet of the mean water level, cutting of trees is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. Vegetation management that occurs within the protected shoreland area and that is conducted according to the requirements of this section shall not be counted toward the cleared area on a parcel.

(b) A “well-distributed stand of trees adjacent to a lake” shall be defined as maintaining a minimum rating score of 12, in each 25-foot by 25-foot area within 100 feet of the mean water level, as determined by the following rating system.

<u>(1) Diameter of tree at 4-1/2 feet above</u>	<u>Points</u>
<u>ground level (inches)</u>	
<u>2–&lt; 4 in.</u>	<u>1</u>



<u>4- &lt; 8 in.</u>	<u>2</u>
<u>8- &lt; 12 in.</u>	<u>4</u>
<u>12 in. or greater</u>	<u>8</u>

(2) The following shall govern in applying this point system:

(A) 25-foot by 25-foot plots shall be established within 100 feet of the mean water level for vegetation management purposes.

(B) Each successive plot must be adjacent to but not overlap a previous plot.

(C) Any plot not containing the required points must have no vegetative cover removed unless the removal is allowed pursuant to a registration or individual permit.

(D) Any plot containing the required points may have trees removed down to the minimum points allowed.

(E) Existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or as allowed pursuant to a registration or individual permit.

(F) Pruning of tree branches on the bottom one-third of a tree's height is allowed.

(G) Removal of dead, diseased, or unsafe trees shall be allowed regardless of points.

(c) As used in this section, "other natural vegetation" means retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at four and one-half feet above ground level for each 25-foot by 25-foot area. If five saplings do not exist, no woody stems less than two inches in diameter can be removed until five saplings have been planted or rooted in the plot.

§ 1448. MUNICIPAL DELEGATION

(a) Municipal shoreland bylaws or ordinances. The Secretary may delegate authority to permit the construction, creation, or expansion of impervious surface or cleared area under this chapter to a municipality that has adopted a shoreland bylaw or ordinance if:

(1) the municipality adopts a bylaw or ordinance regulating construction of impervious surface or creation of cleared area in a protected shoreland area; and

(2) the municipal bylaw or ordinance is at least as stringent as the permitting requirements and exemptions of this chapter, upon a determination by the Secretary that the bylaw or ordinance is functionally equivalent to the requirements under sections 1444, 1445, 1446, and 1447 of this title.

(b) Delegation agreement.

(1) Delegation under subsection (a) of this section shall be by agreement between the Secretary and the delegated municipality. The delegation agreement shall set the terms for revocation of delegation.

(2) Under the delegation agreement, the Secretary and the municipality may agree, in instances where a delegated municipality does not or cannot address noncompliance, that the Secretary, after consultation with the municipality, may institute enforcement proceedings under chapter 201 of this title.

(3) The delegation agreement shall require the municipality to:

(A) have or establish a process for accepting, reviewing, and processing applications and issuing permits for construction of impervious surface or creation of cleared area in protected shoreland areas;

(B) take timely and appropriate enforcement actions;

(C) commit to reporting annually to the Secretary on a form and date determined by the Secretary;

(D) comply with all other requirements of the rules adopted under this chapter; and

(E) cure any defects in such bylaw or ordinance or in the administration or enforcement of such bylaw or ordinance upon notice of a defect from the Secretary.

(4) A municipality that seeks delegation under subsection (a) of this section shall be presumed to satisfy the requirements of this subsection for a permit process and enforcement if the municipality has designated a municipal zoning administrator or other municipal employee or official as responsible for the permitting and enforcement of the construction, creation, or expansion of impervious surface or cleared area within the municipality.

§ 1449. COORDINATION OF AGENCY OF NATURAL RESOURCES'  
PERMITTING OF ACTIVITIES IN PROTECTED SHORELAND  
AREAS

(a) Coordination of permitting in protected shoreland area. During technical review of a permit application for a wastewater system, potable water supply, stormwater discharge, or stormwater treatment facility that is proposed

to be located in a protected shoreland area and that does not require a permit under this chapter, the Agency division issuing the wastewater system, potable water supply, stormwater discharge, or stormwater treatment facility permit shall consult with the Agency's Lakes and Ponds Section regarding practices or activities that could reduce the impact of the proposed activity on the protected shoreland area or water quality of lakes adjacent to the protected shoreland area.

(b) Agency guidance or procedure. The Agency may formalize the consultation process required by this section in a guidance document or internal agency procedure.

(c) Agency lands. All lands held by the Agency within a protected shoreland area shall be managed according to the requirements of this chapter when consistent and not in conflict with applicable federal requirements for the management of a parcel of land held by the Agency.

#### § 1450. MUNICIPAL ZONING BYLAW OR ORDINANCE

(a) Construction of impervious surface or creation of cleared area occurring outside protected shoreland areas. Construction of impervious surface or creation of cleared area occurring outside a protected shoreland area shall conform to duly adopted municipal zoning bylaws and applicable municipal ordinances and shall not be subject to regulation by the Secretary of Natural Resources under this chapter.

(b) Existing municipal bylaws and ordinances. The requirements of this chapter are in addition to existing municipal bylaws and ordinances, and proposed construction of impervious surface or creation of cleared area within the protected shoreland area shall comply with all relevant, existing municipal, State, and federal requirements.

#### § 1451. RULEMAKING

The Secretary may adopt rules to implement the requirements of this chapter.

#### § 1452. EDUCATION AND OUTREACH; CITIZEN'S GUIDE

The Secretary shall conduct ongoing education and outreach to assist Vermont citizens with understanding and complying with the requirements of this chapter. The education and outreach activities shall include publication on or before January 1, 2015 of a Citizen's Guide to Shoreland Protection, which shall provide easily understood instructions on the requirements of this chapter, how to apply for a permit or registration, and the activities that are exempt from or otherwise not subject to the requirements of this chapter.

Sec. 3. 10 V.S.A. § 8003(a) is amended to read:

(a) The ~~secretary~~ Secretary may take action under this chapter to enforce the following statutes:

\* \* \*

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps; ~~and~~

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a solid waste implementation plan that is consistent with the State Solid Waste Plan; and

(24) 10 V.S.A. chapter 49A, relating to lake shoreland protection standards.

Sec. 4. 10 V.S.A. § 8503 is amended to read:

#### § 8503. APPLICABILITY

(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

\* \* \*

(R) chapter 32 (flood hazard areas).

(S) chapter 49A (lake shoreland protection standards).

\* \* \*

Sec. 5. 3 V.S.A. § 2822(j)(32) is added to read:

(32) For projects taking place in a protected shoreland area that require:

(A) a registration under 10 V.S.A. § 1446: \$100.00.

(B) a permit under 10 V.S.A. §§ 1443, 1444, and 1445: \$125.00 plus \$0.50 per square foot of impervious surface.

#### Sec. 5a. REPORT ON COSTS OF LAKE SHORELAND PROTECTION PROGRAM

On or before January 15, 2016, the Secretary of Natural Resources shall submit to the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Committee on Natural Resources and Energy, and the House Committee on Fish, Wildlife and Water Resources a report regarding the costs to the Agency of Natural Resources of administering the Lake

Shoreland Protection Program under 10 V.S.A. chapter 49A. The report shall include:

(1) the number of lake shoreland protection registrations and permits issued by the Agency;

(2) the permit and registration fees collected by the Agency; and

(3) the cost to the Agency of implementing the Lake Shoreland Protection Program.

Sec. 6. 10 V.S.A. § 1454 is amended to read:

§ 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC  
NUISANCE SPECIES

(a) No person shall transport an aquatic plant or aquatic plant part, zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), or other aquatic nuisance species identified by the ~~secretary~~ Secretary by rule to or from any Vermont waters on the outside of a vehicle, boat, personal watercraft, trailer, or other equipment. This section shall not restrict proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species.

(b) The ~~secretary~~ Secretary may grant exceptions to persons to allow the transport of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species for scientific or educational purposes. When granting exceptions, the ~~secretary~~ Secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the ~~secretary~~ Secretary authorizing the transport must accompany the specimens during transport.

(c) A violation of this section may be brought by any law enforcement officer, as that term is defined in 23 V.S.A. § 4(11), in the Environmental Division of the Superior Court. When a violation is brought by an enforcement officer other than an environmental enforcement officer employed by the Agency of Natural Resources, the enforcement officer shall submit to the Secretary a copy of the citation for purposes of compliance with the public participation requirements of section 8020 of this title.

Sec. 7. TRANSITION

A permit or registration under 10 V.S.A. chapter 49A for the creation of impervious surface or cleared area within a protected shoreland area shall not be required on a parcel of land for a project for which:

(1) all necessary State, local, or federal permits have been obtained prior to the effective date of this act and the permit holder takes no subsequent act that would require a permit or registration under 10 V.S.A. chapter 49A; or

(2) a complete application for all applicable local, State, and federal permits has been submitted on or before the effective date of this act, provided that the applicant does not subsequently file an application for a permit amendment that would require a permit under 10 V.S.A. chapter 49A and substantial construction of the impervious surface or cleared area commences within two years of the date on which all applicable local, State, and federal permits become final.

#### Sec. 8. EFFECTIVE DATE

This act shall take effect July 1, 2014.

(For text see House Journal 3/27/2013 & 3/28/2013 )

#### **For Informational Purposes**

The Joint Fiscal Committee recently received the following items:

**JFO #2668** – \$36,931,076 grant from the U.S. Department of Education to the Vermont Agency of Human Services. This award is a federal Race to the Top Early Learning Challenge grant. Funds will be used to improve the quality of early learning opportunities and close the achievement gap for children with high needs. Sixteen (16) limited service positions are associated with this request. In addition to the attached documents, over 400 pages of supporting documents were submitted with this request. This additional information is available on request from the Joint Fiscal Office. Expedited review of this item has been requested. Joint Fiscal Committee members will be contacted by March 14 with a request to waive the balance of the review period and approve this item.

#### **Public Hearings**

March 12, 2014 - Room 10 - DR14-742 - Governance Structure for Education  
- House Education Committee

#### **Information Notice**

Deadline for Introducing Bills

Pursuant to Rule 40(c) during the second year of the biennium, except with the prior consent of the Committee on Rules, no committee, except the Committees on Appropriations, Ways and Means or Government Operations, may introduce a bill drafted in standard form after the last day of March (March 31, 2014). The Committees on Appropriations and Ways and Means bill may be drafted in standard form at any time, and Government Operations

bills pertaining to city or town charters, may be drafted in standard form at any time.