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ACTION CALENDAR

UNFINISHED BUSINESS OF FRIDAY, MARCH 15, 2013

Committee Bills for Second Reading

S. 150.

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

By the Committee on Transportation. (Senator Flory for the Committee.)

S. 151.

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

By the Committee on Transportation. (Senator Westman for the Committee.)

Second Reading

Favorable with Proposal of Amendment

J.R.H. 1.

Joint resolution relating to the history and legacy of the Vermont State Hospital and the preservation of its cemetery.

Reported favorably with recommendation of proposal of amendment by Senator Cummings for the Committee on Institutions.

The Committee recommends that the Senate propose to the House that the resolution be stricken in its entirety after the title and that the following be inserted in lieu thereof:

Whereas, in 1888, the trustees of the Vermont Asylum for the Insane in Brattleboro (renamed the Brattleboro Retreat in 1892 to avoid confusion with the Waterbury facility) reported that the facility was beyond its designed capacity, and Dr. Don D. Grout, the member from Stowe and a future superintendent of the Vermont State Asylum for the Insane (renamed the Vermont State Hospital for the Insane in 1898), introduced legislation that became Act 94, "An act providing for the care, custody and treatment of the insane poor and insane criminals of the state," and

Whereas, the state purchased 500 acres of land in Waterbury for the new facility, and after initial construction, the first 25 patients arrived by train from Brattleboro on August 8, 1891, and

Whereas, during its 120 years of service, the Vermont State Hospital played a powerful role in the lives of many Vermonters, including many patients and staff, and

Whereas, from early on, the Vermont State Hospital confronted a continuing struggle to secure sufficient financing to provide the best quality of care, and in recent decades, it had been recognized that the facilities in Waterbury no longer allowed for state-of-the-art care, and the existing hospital needed to be closed, and

Whereas, in November 1927, and again at the end of August 2011, the staff and patients at the Vermont State Hospital undertook extraordinary measures to respond to devastating floods, and

Whereas, the severe damage that the Vermont State Hospital sustained in Tropical Storm Irene required an immediate relocation or replacement of services previously provided at the Vermont State Hospital, and

Whereas, as a new chapter in mental health care in Vermont begins, it should be one that integrates mental health care with other health care services, focuses on community supports and treatment close to home, avoids unnecessary hospitalization, and never abandons those with mental health needs, and

Whereas, with the closure of the historic Vermont State Hospital Waterbury campus, it is important to remember those individuals buried at the hospital's cemetery in use from the hospital's inception until 1912 and which includes a memorial stone with an inscription that reads:

> This beautiful knoll overlooking the grounds of the Vermont State Hospital is matched in splendor only by the twenty or so residents of the Hospital who were buried here between 1891 and 1912. May their spirits soar, you are remembered, and

Whereas, the preservation of this cemetery and of the memory of those individuals is of lasting importance, and

Whereas, the names of those buried there have been gathered in the past, and may still be able to be located and preserved so that these individuals will not be left unknown, and

Whereas, there is evidence that at least two and perhaps more patients from the Vermont State Hospital were buried at different locations on the grounds in unmarked graves that are likely to never be identified which would be a grievous indication of past indifference to the lives of these individuals, a practice that should never again be permitted to occur in this state, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly observes the powerful role that the Vermont State Hospital played in the history of mental health treatment in Vermont and requests the State to maintain and preserve perpetually the hospital's cemetery, and be it further

Resolved: That the Department of Mental Health is requested to seek to identify from past records those individuals who were buried at different locations, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioner of Mental Health, to the Commissioner of Buildings and General Services, and to the Commissioner of Forests, Parks and Recreation.

(Committee vote: 5-0-0)

(No House amendments)

NEW BUSINESS

Third Reading

S. 85.

An act relating to workers' compensation for firefighters and rescue or ambulance workers.

S. 130.

An act relating to encouraging flexible pathways to secondary school completion.

S. 148.

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

Second Reading

Favorable with Recommendation of Amendment

S. 41.

An act relating to water and sewer service.

Reported favorably with recommendation of amendment by Senator Pollina for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 24 V.S.A. § 5143 is amended to read:

§ 5143. DISCONNECTION OF SERVICE

* * *

(c) The tenant of a rental dwelling noticed for disconnection due to the delinquency of the ratepayer shall have the right to request and pay for continued service from the utility or reconnection of water and sewer service for the rental dwelling, which the utility shall provide. The tenant may deduct the cost of any water and sewer service charges or fees from his or her rent pursuant to 9 V.S.A. § 4459. Under such circumstances, the utility shall not require the tenant to pay any arrearage.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

S. 70.

An act relating to the sale of raw milk at farmers' markets.

Reported favorably with recommendation of amendment by Senator French for the Committee on Agriculture.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 6 V.S.A. § 2776 is amended to read:

§ 2776. DEFINITIONS

In this chapter:

(1) "Consumer" means a customer who purchases, barters for, receives delivery of, or otherwise acquires unpasteurized milk ~~from the farm or delivered from the farm~~ according to the requirements of this chapter.

* * *

Sec. 2. 6 V.S.A. § 2777 is amended to read:

§ 2777. STANDARDS FOR THE SALE OF UNPASTEURIZED (RAW) MILK

(a) Unpasteurized milk shall be sold directly from the producer to the consumer for personal consumption only and shall not be resold.

(b) Unpasteurized milk shall be sold only from the farm on which it was produced except when delivery is arranged in conformance with section 2778 of this chapter. Unpasteurized milk shall not be sold or offered as free samples at any location other than on the farm on which the milk was produced.

(c) Unpasteurized milk operations shall conform to reasonable sanitary standards, including:

(1) Unpasteurized milk shall be derived from healthy animals which are subject to appropriate veterinary care, including tuberculosis and brucellosis testing and rabies vaccination, according to accepted testing and vaccinations standards as established by the agency. Test results and verification of vaccinations shall be posted on the farm in a prominent place and be easily visible to customers.

(2) The animal's udders and teats shall be cleaned and sanitized prior to milking.

(3) The animals shall be housed in a clean, dry environment.

(4) Milking equipment shall be of sanitary construction, cleaned after each milking, and sanitized prior to the next milking.

(5) Milking shall be conducted in a clean environment appropriate for maintaining cleanliness.

(6) The farm shall have a potable water supply which is sampled for bacteriological examination according to agency standards every three years and whenever any alteration or repair of the water supply has been made.

(7) If an animal is treated with antibiotics, that animal's milk shall be tested for and found free of antibiotics before its milk is offered for sale.

(d) Unpasteurized milk shall conform to the following production and marketing standards:

(1) Record keeping and reporting.

(A) A producer shall collect one composite sample of unpasteurized milk each day and keep the previous 14 days' samples frozen. The producer shall provide samples to the ~~agency~~ Agency if requested.

(B) A producer shall maintain a current list of all customers, including addresses, telephone numbers, and email addresses when available.

(C) The producer shall maintain a list of transactions for at least one year which shall include customer names, the date of each purchase, and the amount purchased.

(D) A producer shall register with the Agency of Agriculture, Food and Markets on a form provided by the Agency.

(2) Labeling. Unpasteurized (raw) milk shall be labeled as such, and the label shall contain:

(A) The date the milk was obtained from the animal.

(B) The name, address, zip code, and telephone number of the producer.

(C) The common name of the type of animal producing the milk (e.g. cattle, goat, sheep) or an image of the animal.

(D) The words "Unpasteurized (Raw) Milk. Not pasteurized. Keep Refrigerated." on the container's principal display panel, and these words shall be clearly readable in letters at least one-eighth inch in height and prominently displayed.

(E) The words "This product has not been pasteurized and therefore may contain harmful bacteria that can cause illness particularly in children, the elderly, and persons with weakened immune systems and in pregnant women can cause illness, miscarriage or fetal death, or death of a newborn." on the container's principal display panel and clearly readable in letters at least one-sixteenth inch in height.

(3) Temperature. Unpasteurized milk shall be cooled to 40 degrees Fahrenheit within two hours of the finish of milking and so maintained until it is obtained by the consumer.

(4) Customer inspection and notification.

(A) Prior to selling milk to a new customer, the producer shall provide the customer with a tour of the farm and any area associated with the milking operation. Customers are encouraged and shall be permitted to return to the farm at a reasonable time and at reasonable intervals to re-inspect any areas associated with the milking operation.

(B) A sign with the words "Unpasteurized (Raw) Milk. Not pasteurized. Keep Refrigerated." and "This product has not been pasteurized and therefore may contain harmful bacteria that can cause illness particularly in children, the elderly, and persons with weakened immune systems and in pregnant women can cause illness, miscarriage or fetal death, or death of a newborn." shall be displayed prominently on the farm in a place where it can be easily seen by customers. The lettering shall be at least one inch in height and shall be clearly readable.

(e) Producers selling 12.5 or fewer gallons (50 quarts) of unpasteurized milk per day shall meet the requirements of subsections (a) through (d) of this section and shall sell unpasteurized milk only from the farm on which it was produced. A producer selling 12.5 or fewer gallons of unpasteurized milk may choose to meet the requirements of subsection (f) of this section, in which case the producer may deliver in accordance with section 2778 of this ~~chapter~~ title.

(f) Producers selling 12.6 to 40 gallons (50.4 to 160 quarts) of unpasteurized milk per day shall meet the requirements of subsections (a) through (d) of this section as well as the following standards:

(1) Inspection. The ~~agency~~ Agency shall annually inspect the producer's facility and determine that the producer is in compliance with the sanitary standards listed in subsection (c) of this section.

(2) Bottling. Unpasteurized milk shall be sold in containers which have been filled by the producer. Containers shall be cleaned by the producer except that the producer may allow customers to clean their own containers only if each customer's container is labeled with the customer's name and address and the customers use their own containers. Producers shall ensure that only clean bottles are filled and distributed.

(3) Testing.

(A) A producer shall have unpasteurized milk tested twice per month by a U.S. Food and Drug Administration accredited laboratory. Milk shall be tested for the following and the results shall be below these limits:

(i) Total bacterial (aerobic) count: 15,000 cfu/ml (cattle and goats);

(ii) Total coliform count: 10 cfu/ml (cattle and goats);

(iii) Somatic cell count: 225,000/ml (cattle); 500,000/ml (goats).

(B) The producer shall assure that all test results are forwarded to the agency, by the laboratory, upon completion of testing or within five days of receipt of the results by the producer.

(C) The producer shall keep test results on file for one year and shall post results on the farm in a prominent place that is easily visible to customers. The producer shall provide test results to the farm's customers if requested.

(4) ~~Registration~~ License. Each producer operating under this subsection shall ~~register with~~ be licensed by the ~~agency~~ Agency.

(5) Reporting. On or before March 1 of each year, each producer shall submit to the ~~agency~~ Agency a statement of the total gallons of unpasteurized milk sold in the previous 12 months.

(6) Prearranged delivery. Prearranged delivery of unpasteurized milk is permitted and shall be in compliance with section 2778 of this ~~chapter~~ title.

(g) The sale of more than 40 gallons (160 quarts) of unpasteurized milk in any one day is prohibited.

Sec. 3. 6 V.S.A. § 2778 is amended to read:

§ 2778. DELIVERY OF UNPASTEURIZED (RAW) MILK

(a) Delivery of unpasteurized milk is permitted only within the state of Vermont and only of milk produced by those producers meeting the requirements of subsection 2777(f) of this chapter.

(b) Delivery shall conform to the following requirements:

(1) Delivery shall be to customers who have:

(A) visited the farm as required under subdivision 2777(d)(4) of this title; and

(B) purchased milk in advance either by a one-time payment or through a subscription.

(2) Delivery shall be directly to the customer:

(A) at the customer's home or into a refrigerated unit at the customer's home if such unit is capable of maintaining the unpasteurized milk at 40 degrees Fahrenheit until obtained by the customer;

(B) at a farmers' market, as that term is defined in section 5001 of this title.

(3) During delivery, milk shall be protected from exposure to direct sunlight.

(4) During delivery, milk shall be kept at 40 degrees Fahrenheit or lower at all times. For purposes of delivery of milk at a farmers' market under this section, milk shall be kept in a refrigerated until capable of maintaining the unpasteurized milk at 40 degrees Fahrenheit at all times while the milk is stored in the unit.

(c) A producer may contract with another individual to deliver the milk in accordance with this section. The producer shall be jointly and severally liable for the delivery of the milk in accordance with this section.

(d) Prior to delivery at a farmers' market under this section, a producer shall submit to the Agency of Agriculture, Food and Markets, on a form provided by the Agency, notice of intent to deliver unpasteurized milk at a farmers' market. The notice shall:

(1) include the producer's name and license number;

(2) identify the farmers' market or markets where the producer will deliver milk; and

(3) specify the day of the week on which delivery will be made at a farmers' market.

(e) A producer delivering unpasteurized milk at a farmers' market under this section shall:

(1) display the license required under subdivision 2777(f)(4) of this title on the farmers' market stall or stand in a prominent manner that is clearly visible to consumers; and

(2) provide a brochure or handout to consumers receiving delivery of unpasteurized milk that contains the words required for signs under subdivision 2777 (d)(4)(B) of this title in a easily visible and clearly readable manner.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

and that after passage the title of the bill be amended to read: "An act relating to the delivery of raw milk at farmers' markets"

(Committee vote: 5-0-0)

NOTICE CALENDAR

Committee Bills for Second Reading

S. 154.

An act relating to classification of crimes.

By the Committee on Judiciary. (Senator Sears for the Committee.)

S. 156.

An act relating to home visiting standards.

By the Committee on Health and Welfare. (Senator Ayer for the Committee.)

Second Reading

Favorable

S. 20.

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

Reported favorably by Senator White for the Committee on Judiciary.

(Committee vote: 4-1-0)

Favorable with Recommendation of Amendment

S. 7.

An act relating to social networking privacy protection.

Reported favorably with recommendation of amendment by Senator Collins for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SOCIAL NETWORKING PRIVACY PROTECTION STUDY COMMITTEE

(a) A Committee is established to study the issue of prohibiting employers from requiring employees or applicants for employment to disclose a means of accessing the employee's or applicant's social network account.

(b) The Committee shall examine:

(1) existing social networking privacy laws and proposed legislation in other states;

(2) the interplay between state law and existing or proposed federal law on the subject of social networking privacy and employment; and

(3) any other issues relevant to social networking privacy or employment.

(c) The Committee shall make recommendations, including proposed legislation.

(d) The Committee shall consist of the following members:

(1) two representatives of employers, one appointed by the Speaker of the House and one by the Committee on Committees;

(2) two representatives from labor organizations, one appointed by the Speaker and one by the Committee on Committees;

(3) the Attorney General or designee;

(4) the Commissioner of Labor or designee;

(5) the Commissioner of Financial Regulation or designee;

(6) the Commissioner of Human Resources or designee;

(7) the Commissioner of Public Safety or designee;

(8) the Executive Director of the Human Rights Commission or designee; and

(9) a representative of the American Civil Liberties Union of Vermont.

(e) The Committee shall convene its first meeting on or before September 1, 2013. The Commissioner of Labor or designee shall be

designated Chair of the Committee and shall convene the first and subsequent meetings.

(f) The Committee shall report its findings and recommendations on or before January 15, 2014 to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs.

(g) The Committee shall cease to function upon transmitting its report.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

S. 18.

An act relating to automated license plate recognition systems.

Reported favorably with recommendation of amendment by Senator Campbell for the Committee on Transportation.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 23 V.S.A. § 1607 is added to read:

§ 1607. AUTOMATED LICENSE PLATE RECOGNITION SYSTEMS

(a) Definitions. As used in this section:

(1) "Active data" is distinct from historical data as defined in subdivision (3) of this subsection and means data uploaded to individual automated license plate recognition system units before operation as well as data gathered during the operation of an ALPR system. Any data collected by an ALPR system shall be considered collected for a legitimate law enforcement purpose.

(2) "Automated license plate recognition system" (ALPR) means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data.

(3) "Historical data" means any data collected by an ALPR system and stored on the statewide ALPR server operated by the Vermont Justice Information Sharing System of the Department of Public Safety. Any data collected by an ALPR system shall be considered collected for a legitimate law enforcement purpose. Entry of any data into the system other than data collected by the ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(4) "Law enforcement officer" means a state police officer, municipal police officer, motor vehicle inspector, capitol police officer, constable, sheriff, or deputy sheriff certified by the Vermont Criminal Justice Training Council as having satisfactorily completed the approved training programs required to meet the minimum training standards applicable to that person under 20 V.S.A. § 2358.

(5) "Legitimate law enforcement purpose" applies to access to active or historical data and means crime investigation, detection, and analysis or operation of AMBER alerts or missing or endangered person searches.

(6) "Vermont Information and Analysis Center Analyst" means any sworn or civilian employee who through his or her employment with the Vermont Information and Analysis Center (VTIAC) has access to secure databases that support law enforcement investigations.

(b) Operation. A Vermont law enforcement officer shall be certified in ALPR operation by the Vermont Criminal Justice Training Council in order to operate an ALPR system.

(c) Confidentiality and access to ALPR data.

(1)(A) Active ALPR data may only be accessed by a law enforcement officer operating the ALPR system who has a legitimate law enforcement purpose for the data. Entry of any data into the system other than data collected by the ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(B) Deployment of ALPR equipment is intended to provide access to stolen and wanted files and to further legitimate law enforcement purposes. Use of ALPR systems and access to active data are restricted to these purposes.

(C)(i) Requests to review active data shall be in writing and include the name of the requester, the law enforcement agency the requester is employed by, and the law enforcement agency's Originating Agency Identifier (ORI) number. The request shall describe the legitimate law enforcement purpose. The written request and the outcome of the request shall be transmitted to VTIAC and retained for not less than three years.

(ii) In each department operating an ALPR system, access to active data shall be limited to designated personnel who have been provided account access by the department to conduct authorized ALPR stored data queries. Access to active data shall be restricted to data collected within the past seven days.

(2) Requests for historical data, whether from Vermont or out-of-state law enforcement officers, shall be made in writing to an analyst at VTIAC. The request shall include the name of the requester, the law enforcement

agency the requester is employed by, and the law enforcement agency's ORI number. The request shall describe the legitimate law enforcement purpose. VTIAC shall retain all requests as well as the outcome of the request and shall record in writing any information that was provided to the requester or why the request was denied or not fulfilled. ALPR requests shall be retained by VTIAC for not less than three years.

(d) Retention.

(1) Any ALPR information gathered by a Vermont law enforcement agency shall be sent to the Department of Public Safety to be retained pursuant to the requirements of subdivision (2) of this subsection. The Department of Public Safety shall maintain the ALPR storage system for Vermont law enforcement agencies.

(2) Except as provided in section 1608 of this title, information gathered through use of an ALPR system shall only be retained for 18 months after the date it was obtained. When the permitted 18-month period for retention of the information has expired, the Department of Public Safety and any local law enforcement agency with custody of the information shall destroy it and cause to have destroyed any copies or back-ups made of the original data. Data may be retained beyond the 18-month period pursuant to a preservation request made or disclosure order issued under Section 1608 of this title, or pursuant to a warrant issued under Rule 41 of the Vermont or Federal Rules of Criminal Procedure.

(e) Oversight; rulemaking.

(1) The Department of Public Safety shall establish a review process to ensure that information obtained through use of ALPR systems is used only for the purposes permitted by this section. The Department shall report the results of this review annually on or before January 15 to the Senate and House Committees on Judiciary and on Transportation. The report shall contain the following information based on prior calendar year data:

(A) The total number of ALPR units being operated in the State and the number of units submitting data to the statewide ALPR database.

(B) The total number of ALPR reads each agency submitted to the statewide ALPR database.

(C) The 18-month accumulative number of ALPR reads being housed on the statewide ALPR database.

(D) The total number of requests made to VTIAC for ALPR data.

(E) The total number of requests that resulted in release of information from the statewide ALPR database.

(F) The total number of out-of-state requests.

(G) The total number of out-of-state requests that resulted in release of information from the statewide ALPR database.

(2) The Department of Public Safety may adopt rules to implement this section.

Sec. 2. 23 V.S.A. § 1608 is added to read:

§ 1608. PRESERVATION OF DATA

(a) Preservation request.

(1) A governmental entity may apply to the Criminal Division of the Superior Court for an extension of up to 90 days of the 18-month retention period established under subdivision 1607(d)(2) of this title if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the captured plate data are relevant and material to an ongoing criminal or missing persons investigation, or to a pending proceeding in the Judicial Bureau. Requests for additional 90-day extensions or for longer periods may be made to the Superior Court subject to the same standards applicable to an initial extension request under this subdivision.

(2) A governmental entity making a preservation request under this section shall submit an affidavit stating:

(A) the particular camera or cameras for which captured plate data must be preserved, or the particular license plate for which captured plate data must be preserved; and

(B) the date or dates and time frames for which captured plate data must be preserved.

(b) Captured plate data shall be destroyed on the schedule specified in section 1607 of this title if the preservation request is denied, or 14 days after the denial of the application for disclosure, whichever is later.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee vote: 5-0-0)

S. 27.

An act relating to respectful language in the Vermont Statutes Annotated.

Reported favorably with recommendation of amendment by Senator Pollina for the Committee on Government Operations.

The Committee recommends that the bill be amended as set forth in the Addendum to the Senate Calendar for March 19, 2013.

Committee Vote: 4-0-1

S. 30.

An act relating to siting of electric generation plants.

Reported favorably with recommendation of amendment by Senator Snelling for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Findings * * *

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Climate change from the emission of greenhouse gases such as carbon dioxide (CO_2) is one of the most serious issues facing Vermont today. In this State, the change in climate already has resulted in significant damage from increased heavy rain events and flooding and in fundamental alterations to average annual temperatures and the length and characteristics of the seasons. As climate change accelerates, the hazards to human health and safety and the environment in Vermont will rise, including an increased frequency of violent storm events, heat waves, and one- to two-month droughts; threats to the productivity of cold-weather crops and dairy cows and to cold-water fish and wildlife species; reduced seasons for skiing, snowmobiling, and sugaring; and increasing risks to infrastructure such as roads and bridges near streams and rivers.

(2) Vermont currently encourages the in-state siting of renewable electric generation projects in order to contribute to reductions in global climate change caused by greenhouse gas emissions. Yet significant controversy exists over whether in-state development of renewable energy actually reduces Vermont's greenhouse gas emissions, since these projects typically sell renewable energy credits to utilities in other states, and those credits are netted against the greenhouse gas emissions of those states.

(3) Vermont's electric energy consumption does not contribute significantly to the State's carbon footprint. In 2010, CO_2 and equivalent emissions from Vermont energy consumption totaled approximately eight million metric tons ($MMTCO_2$). Of this total, transportation fuel use accounted for approximately 3.5, nonelectric fuel use by homes and businesses for approximately 2.5 and, in contrast, electric energy use for approximately 0.04 $MMTCO_2$.

(4) The in-state siting of renewable electric generation projects carries the potential for significant adverse impacts. For example, in Vermont,

developers site industrial wind generation projects and wind meteorological stations on ridgelines, which often contain sensitive habitat and important natural areas. Vermont's ridgelines also define and enhance the State's natural and scenic beauty. Vermont has invested substantial time and effort to develop regulatory policy and programs to protect its ridgelines.

(5) Ridgeline wind generation plants have potential impacts on natural resources, scenic beauty, and quality of life, including effects on endangered and threatened species, wildlife habitat, and aesthetics and impacts from blasting and turbine noise. Residents near installed wind generation plants have raised concerns about health impacts, including sleep loss. Significant controversy has arisen over whether the Public Service Board review process adequately protects the public and the environment from the negative impacts caused by these and other electric generation projects.

(6) Vermont has a long history of supporting community-based land use planning. Under 24 V.S.A. chapter 117, Vermont's 11 regional planning commissions and its municipal planning commissions are enabled and encouraged to adopt plans to guide development, including energy and utility facilities. These plans are adopted through a public hearing and comment process after substantial effort by the regions and the municipalities, often with extensive involvement of citizens in the affected communities. Yet under current law, the Public Service Board when reviewing an electric generation project may set aside the results of this planning process for any reason the Board considers to affect the general good of the State, even if the project is not needed for reliability of the electric system.

(7) No statewide analysis and planning is performed to address the environmental, land use, and health impacts of siting wind generation projects in Vermont. Instead, the Public Service Board examines the impacts on a case-by-case basis only.

(8) The current case-by-case system of regulating electric generation projects must be revised to ensure the best possible siting of these projects. To achieve this goal, the siting of electric generation projects must be directed by community-based land use planning. Each electric generation project must comply with the same environmental and land use criteria as other development projects unless the generation project is for the purpose of system reliability. A statewide assessment must be made and a process must be developed that integrates and strengthens the role of community-based land use planning and supports effective review and optimal siting of all electric generation projects. This assessment also must evaluate whether encouraging in-state siting of renewable electric generation is the most appropriate means at Vermont's disposal to reduce its carbon footprint.

Sec. 2. ELECTRIC GENERATION SITING; ASSESSMENT; REPORT

(a) Charge. On or before November 15, 2013, the Department of Public Service, in consultation with and assisted by the Agencies of Commerce and Community Development and of Natural Resources, the Natural Resources Board, and the state's regional planning commissions, shall conduct and complete the assessment and submit the report to the General Assembly required by this section.

(b) Definitions. In this section:

(1) "ACCD" means the Agency of Commerce and Community Development.

(2) "ANR" means the Agency of Natural Resources.

(3) "Board" means the Natural Resources Board.

(4) "Department" means the Department of Public Service.

(5) "Electric generation plant" means a plant that produces electricity and has a plant capacity that exceeds 500 kilowatts.

(6) "Plant" and "plant capacity" shall have the same meaning as in 30 V.S.A. § 8002, except that they shall not be limited to renewable energy.

(7) "Regional planning commission" shall have the meaning as in 24 V.S.A. § 4303.

(8) "Wind generation plant" means an electric generation plant that captures the energy of the wind and converts it into electricity. The term includes all associated facilities and infrastructure such as wind turbines, towers, guy wires, power lines, roads, and substations.

(9) "Wind meteorological station" means any tower, and associated guy wires and attached instrumentation, constructed to collect and record wind speed, wind direction, and atmospheric conditions.

(c) Governor's Siting Policy Commission. In performing its tasks under this section, the Department shall use the information and data collected by the Governor's Energy Siting Policy Commission (the Siting Policy Commission) created by Executive Order No. 10-12 dated October 2, 2012 (the Executive Order) and shall consider the recommendations of that Commission.

(d) Assessment. The Department, assisted by ACCD, ANR, the Board, and the regional planning commissions, shall assess each of the following:

(1) the appropriateness and economic efficiency of investing or encouraging investment in renewable electric generation plants to reduce Vermont's greenhouse gas emissions in comparison to other measures to

reduce those emissions such as transportation fuel efficiency and thermal energy efficiency;

(2) the current policy and practice of selling renewable energy credits from renewable electric generation plants in Vermont to utilities in other jurisdictions and the effect of this policy and practice on reducing Vermont's greenhouse gas emissions;

(3) methods to integrate state energy planning and local and regional land use planning as they apply to electric generation plants;

(4) methods to strengthen the role of local and regional plans in the siting review process for electric generation plants and to assure that the siting review process reflects the outcome of the local and regional planning processes;

(5) methods to fund intervenors in the siting review process for electric generation projects; and

(6) with respect to wind generation plants and wind meteorological stations:

(A) health impacts of plants and stations located in and outside Vermont;

(B) sound and infrasound emitted from plants and stations located in and outside Vermont as they affect public health and quality of life;

(C) setback requirements on such plants and stations adopted by other jurisdictions in and outside the United States;

(D) the impacts on the environment, natural resources, and quality of life of the plants and stations in Vermont in existence or under construction as of the effective date of this section; and

(E) the economic and environmental costs and benefits of such plants and stations, including the value of any ecosystem services affected by them.

(e) Report; proposed legislation. On or before November 15, 2013, the Department, assisted by ACCD, ANR, the Board, and the regional planning commissions, shall submit a report to the House and Senate Committees on Natural Resources and Energy and the Electric Generation Oversight Committee created under subsection (g) of this section that contains each of the following:

(1) The results of each assessment to be conducted under subsection (d) of this section.

(2) Recommendations and proposed legislation to:

(A) establish a comprehensive planning process for the siting of electric generation plants that integrates state energy and local and regional land use planning;

(B) ensure that the outcome of this integrated planning process directs the siting review process for electric generation plants and that local and regional land use plans have a determinative role in this siting review process;

(C) establish a method to fund intervenors participating in the siting review process for electric generation plants;

(D) maximize the reductions in Vermont's greenhouse gas emissions supported by revenues raised from Vermont taxpayers and ratepayers;

(E) establish standards applicable to all wind generation plants and wind meteorological stations to address their impacts on the public health, environment, land use, and quality of life, including standards to protect natural areas and wildlife habitat and to establish noise limits and setback requirements applicable to such plants and stations; and

(F) establish a procedure to measure a property owner's loss of value, if any, due to proximity to a wind generation plant and to propose a method to compensate the property owner for the loss in value, including a determination of who shall pay for such loss.

(f) Public notice and participation.

(1) The Department shall give widespread public notice of the assessment and report required by this section and shall maintain on its website a prominent page concerning this process that provides notice of all public meetings held and posts relevant information and documents.

(2) In performing the assessment and developing the report required by this section, the Department shall provide an opportunity for local legislative bodies, local planning commissions, affected businesses and organizations, and members of the public to submit relevant factual information, analysis, and comment. This opportunity shall include meetings conducted by the DPS at locations that are geographically distributed around the State to receive such information, analysis, and comment.

(g) Oversight committee. There is created the Electric Generation Oversight Committee (the Committee). The purpose of the Committee shall be to perform legislative oversight of the conduct of the assessment and report required by this section and to discuss potential legislation on planning for and siting of electric generation plants.

(1) Membership. The Committee shall be composed of six members who shall be appointed within 30 days of this section's effective date. Three of

the members shall be members of the Senate Committee on Natural Resources and Energy appointed by the Committee on Committees of the Senate. Three of the members shall be members of the House Committee on Natural Resources and Energy appointed by the Speaker of the House.

(2) Meetings. During adjournment of the General Assembly, the Committee shall be authorized to conduct up to three meetings. at which meetings the Committee may:

(A) direct the Department, ACCD, ANR, the Board, and one or more regional planning commissions to appear and provide progress reports on the assessment and report required by this section and discuss proposals of draft legislation on planning for and siting of electric generation plants; and

(B) direct members of the Siting Policy Commission to appear and provide information and testimony related to the Commission's report and recommendations issued pursuant to the Executive Order and to the siting of electric generation plants in Vermont. This authority shall continue for the duration of the Committee's term whether or not the Siting Policy Commission ceases to exist prior to the end of the Committee's term.

(3) Reimbursement. For attendance at authorized meetings during adjournment of the General Assembly, members of the Committee shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406.

(4) For the purpose of its tasks under this subsection, the Committee shall have the administrative and legal assistance of the Office of Legislative Council.

(5) Term of committee. The Committee shall cease to exist on February 1, 2014.

Sec. 3. APPROPRIATION

For fiscal year 2014, the sum of $75,000.00 is appropriated to the Department of Public Service from the General Fund for the purpose of Sec. 2 of this act (electric generation siting; assessment; report).

* * * Regional Planning for Electric Generation Plants * * *

Sec. 4. 24 V.S.A. § 4348a is amended to read:

§ 4348a. ELEMENTS OF A REGIONAL PLAN

(a) A regional plan shall be consistent with the goals established in section 4302 of this title and shall include ~~but need not be limited to~~ the following:

* * *

(3) An energy element, which:

(A) may include an analysis of energy resources, needs, scarcities, costs, and problems within the region, a statement of policy on the conservation of energy and the development of renewable energy resources, and a statement of policy on patterns and densities of land use and control devices likely to result in conservation of energy; and

(B) shall include the electric energy siting plan under section 4348c of this title;

* * *

Sec. 5. 24 V.S.A. § 4348c is added to read:

§ 4348c. ELECTRIC ENERGY SITING PLAN

(a) In this section:

(1) "Electric generation plant" means a plant that produces electricity and has a plant capacity that exceeds 500 kilowatts.

(2) "Plant" and "plant capacity" shall have the same meaning as in 30 V.S.A. § 8002, except that they shall not be limited to renewable energy.

(b) Each regional planning commission shall adopt a plan concerning the siting of electric generation plants within the region. This plan shall be adopted as part of or an amendment to the regional plan.

(c) The plan shall state the region's specific policies on the siting of electric generation plants and identify the appropriate locations within the region, if any, for the siting of electric generation plants.

(d) In developing the siting plan, the regional planning commission shall apply the resource maps developed by the Secretary of Natural Resources under 10 V.S.A. § 127, protect the resources under 10 V.S.A. § 6086(a), and consider the energy policy set forth in 30 V.S.A. §§ 202a and 8001 and the state energy plans adopted under 30 V.S.A. §§ 202 and 202b.

(e) Notwithstanding section 4350 of this title, the plan for a municipality shall not be considered incompatible with the regional plan for the reason that the municipal plan prohibits the siting of an electric generation plant that the regional plan would allow within the municipality.

Sec. 6. IMPLEMENTATION

On or before December 15, 2014, each regional planning commission shall adopt a renewable electric energy siting plan under Sec. 5 of this act, 24 V.S.A. § 4348c.

* * * Municipal Officers; Ethics Disclosure * * *

Sec. 7. 24 V.S.A. § 873 is added to read:

§ 873. DISCLOSURE; FINANCIAL INTEREST; WIND GENERATION PLANTS

A member of a municipality's legislative body or other municipal officer shall not participate in any meeting or proceeding or take any official action concerning a wind generation plant proposed to be located within the municipality the member or officer may have in the construction or operation of the plant, including the retention of the member or officer by the plant developer an agreement under which the plant developer will compensate the member or officer for potential impacts to land of the member or officer.

(1) In this section, a financial interest of a member or officer shall include a financial interest in the construction or operation of the plant of any natural person to which the member or officer is related within the fourth degree of consanguinity or affinity or of any corporation of which an officer, director, trustee, or agent is related to the member or officer within such degree.

(2) This section shall not require disclosure of a financial interest shared generally by the residents of the municipality such as the municipality's receipt of property taxes or other payments from the plant.

Sec. 8. 24 V.S.A. § 4461 is amended to read:

§ 4461. DEVELOPMENT REVIEW PROCEDURES

(a) Meetings; rules of procedure and ethics. An appropriate municipal panel shall elect its own officers and adopt rules of procedure, subject to this section and other applicable state statutes, and shall adopt rules of ethics with respect to conflicts of interest.

(1) Meetings of any appropriate municipal panel shall be held at the call of the chairperson and at such times as the panel may determine. The officers of the panel may administer oaths and compel the attendance of witnesses and the production of material germane to any issue under review. All meetings of the panel, except for deliberative and executive sessions, shall be open to the public. The panel shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating this, and shall keep records of its examinations and other official actions, all of which shall be filed immediately in the office of the clerk of the municipality as a public record. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of the members of the panel, and any action of the panel shall be taken by the concurrence of a majority of the panel.

(2) The provisions of section 873 of this title (disclosure; financial interest; wind generation plant) shall apply to each member of an appropriate municipal panel.

* * *

* * * Electric Generation Siting Jurisdiction; Public Service Board * * *

Sec. 9. 30 V.S.A. § 248 is amended to read:

§ 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND FACILITIES; CERTIFICATE OF PUBLIC GOOD

(a)(1) No company, as defined in section 201 of this title, may:

(A) In any way purchase electric capacity or energy from outside the ~~state~~ State:

(i) for a period exceeding five years, that represents more than three percent of its historic peak demand, unless the purchase is from a plant as defined in subdivision 8002(14) of this title that produces electricity from renewable energy as defined under subdivision 8002(17); or

(ii) for a period exceeding ten years, that represents more than ten percent of its historic peak demand, if the purchase is from a plant as defined in subdivision 8002(14) of this title that produces electricity from renewable energy as defined under subdivision 8002(17); or

(B) invest in an electric generation or transmission facility located outside this ~~state~~ State unless the ~~public service board~~ Public Service Board first finds that the same will promote the general good of the ~~state~~ State and issues a certificate to that effect.

(2) Except for the replacement of existing facilities with equivalent facilities in the usual course of business, and except for electric generation facilities that are operated solely for on-site electricity consumption by the owner of those facilities:

(A) no company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may begin site preparation for or construction of an electric generation facility or electric transmission facility within the ~~state~~ State which is designed for immediate or eventual operation at any voltage; and

(B) no such company may exercise the right of eminent domain in connection with site preparation for or construction of any such transmission or generation facility, unless the ~~public service board~~ Public Service Board first finds that the same will promote the general good of the ~~state~~ State and issues a certificate to that effect.

* * *

(b) Before the ~~public service board~~ Public Service Board issues a certificate of public good as required under subsection (a) of this section, it shall find that the purchase, investment, or construction:

(1)(A) with respect to an in-state electric generation facility exceeding 500 kilowatts, will be in conformance with the duly adopted plans under 24 V.S.A. chapter 117 for the municipality and region in which the facility is located, and due consideration has been given to the land conservation measures contained in the plan of any other affected municipality. Notwithstanding subsection (a) of this section, the Board shall not issue a certificate under this section for such an in-state facility without finding that this subdivision (1)(A) is met. However, this subdivision (1)(A) shall not apply to an electric generation facility the principal effect of which, if approved, would be to remediate a constraint in the electric transmission or distribution system;

(B) with respect to ~~an~~ any other in-state facility subject to this section, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. However, with respect to a natural gas transmission line subject to board review, the line shall be in conformance with any applicable provisions concerning such lines contained in the duly adopted regional plan; and, in addition, upon application of any party, the ~~board~~ Board shall condition any certificate of public good for a natural gas transmission line issued under this section so as to prohibit service connections that would not be in conformance with the adopted municipal plan in any municipality in which the line is located;

* * *

(5) with respect to an in-state facility, will not have an undue adverse effect on esthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety~~, with~~ and:

(A) with respect to an in-state electric generation facility exceeding 500 kilowatts, will comply with the criteria of 10 V.S.A. § 6086(a)(1)–(9)(L). Notwithstanding subsection (a) of this section, the Board shall not issue a certificate under this section for such an in-state facility without finding that this subdivision (5)(A) is met. However, this subdivision (5)(A) shall not apply to an electric generation facility the principal effect of which, if approved, would be to remediate a constraint in the electric transmission or distribution system;

(B) with respect to any other in-state facility subject to this section, due consideration ~~having~~ has been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K) and greenhouse gas impacts.

* * *

(q) When reviewing a facility under this section pursuant to the criteria of 10 V.S.A. § 6086(a), the Public Service Board shall consider the relevant precedents of the former Environmental Board and of the Environmental Division of the Superior Court and shall apply the relevant precedents of the Vermont Supreme Court.

Sec. 10. RETROACTIVE APPLICATION

Notwithstanding 1 V.S.A. §§ 213 and 214, Sec. 9 (new gas and electric purchases, investments, and facilities; certificate of public good) of this act shall apply to applications that are filed on and after March 1, 2013 and are pending as of this section's effective date.

* * * State Lands * * *

Sec. 11. 10 V.S.A. chapter 88 is added to read:

CHAPTER 88. PROHIBITION; COMMERCIAL CONSTRUCTION; CERTAIN PUBLIC LANDS

§ 2801. POLICY

Vermont's state parks, state forests, natural areas, wilderness areas, wildlife management areas, and wildlife refuges are intended to remain in a natural or wild state forever and shall be protected and managed accordingly.

§ 2802. PROHIBITION

(a) Construction for any commercial purpose, including the generation of electric power, shall not be permitted within any state park or forest, wilderness area designated by law, or natural area designated under section 2607 of this title.

(b) This section shall not prohibit:

(1) the construction of a concession or other structure for the use of visitors to state parks or forests;

(2) a modification or improvement to a dam in existence as of the effective date of this section, if the modification or improvement is:

(A) to ensure public safety; or

(B) to allow the dam's use for the generation of electricity, and the construction of any power lines and facilities necessary for such use;

(3) the construction of telecommunications facilities, as defined in 30 V.S.A. § 248a(b) (certificate of public good; communications facilities), in accordance with all other applicable state law;

(4) a temporary structure or road for forestry purposes as may be permitted on a state land;

(5) tapping of maple trees and associated activities on state forestland authorized under a license pursuant to section 2606b of this title; or

(6) construction on state land that is permitted under a lease or license that was in existence on this act's effective date and, in the case of a ski area, the renewal of such a lease or license or its modification to allow expansion of the ski area.

Sec. 12. REPEAL

10 V.S.A. § 2606(c) (state forests; parks; leases for mining or quarrying) is repealed.

* * * Effective Date * * *

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage, except Sec. 3 (appropriation) of this act shall take effect on July 1, 2013.

(Committee vote: 4-1-0)

Reported favorably by Senator Ashe for the Committee on Finance.

(Committee vote: 3-2-2)

Reported favorably with recommendation of amendment by Senator Starr for the Committee on Appropriations.

The Committee recommends that the bill be amended as recommended by the Committee on Natural Resources and Energy with the following amendment thereto:

In Sec. 3 (appropriation) by striking out the words "the General Fund" and inserting in lieu thereof: Special Fund No. 21698 (Department of Public Service; Energy and Regulation Fund)

(Committee vote: 7-0-0)

S. 40.

An act relating to establishing an interim committee that will develop policies to restore the 1980 ratio of state funding to student tuition at Vermont State Colleges and to make higher education more affordable.

Reported favorably with recommendation of amendment by Senator McCormack for the Committee on Education.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) In 1980, 51 percent of the revenue supporting our Vermont State Colleges came from state appropriations and 49 percent came from student tuition. Now, after decades of underfunding, state appropriations provide less than 20 percent of the Vermont State Colleges' revenue and over 80 percent comes from student tuition. This is a huge cost shift onto students and families, many of whom simply cannot afford it.

(2) On a per-capita basis, Vermont now provides less state support to its public colleges than almost any other state.

(3) In FY 2011–2012, Vermont ranked 49th among the states, next to last, in state appropriations per $1,000.00 of personal income.

(4) In the 21 years between 1990 and 2011, the state appropriation per full-time Vermont student at Vermont State Colleges fell from $3,342.00 to $3,231.00.

(5) Eighty-one percent of the students at Vermont State Colleges are from Vermont, and 54 percent of these students are the first in their families to attend college. Eighty-four percent of Vermont State College graduates stay in Vermont.

Sec. 2. INTERIM STUDY OF HIGHER EDUCATION FUNDING

(a) The higher education subcommittee of the Prekindergarten-16 Council established in 16 V.S.A. § 2905 shall study and develop policies to make the State Colleges and the University of Vermont more affordable for Vermont residents by lowering costs and restoring the 1980 ratio of state funding to tuition costs.

(b) In addition to the members of the higher education subcommittee identified in 16 V.S.A. § 2905(d), the following individuals shall be members of the subcommittee solely for purposes of this interim study:

(1) one faculty member of the University of Vermont to be appointed by United Professions American Federation of Teachers Vermont;

(2) one faculty member and one staff member of the Vermont State Colleges to be appointed by United Professions American Federation of Teachers Vermont; and

(3) two students, one from the University of Vermont and one from the Vermont State Colleges, appointed by their respective student government associations.

(c) Powers and duties.

(1) The higher education subcommittee shall develop policies to:

(A) lower student and family costs and debt so that Vermont colleges are more affordable for Vermonters; and

(B) return to the 1980 level of state funding to student tuition support ratio.

(2) In developing these policies, the subcommittee shall consider:

(A) higher education funding for state colleges and universities in other states, with a particular focus on tuition ratios and funding methods;

(B) the best policies for increasing the enrollment of Vermont students and keeping students in Vermont after they graduate from college;

(C) administrative as compared to instructional costs;

(D) the portability of Vermont Student Assistance Corporation funds; and

(E) any information available from the state colleges and universities regarding the impact of Vermont State College graduates on Vermont's economy and on job creation and retention.

(d) On or before November 15, 2013, the subcommittee shall report to the General Assembly on its findings and any recommendations for legislative action.

(e) The subcommittee may meet no more than six times between July 1, 2013 and November 15, 2013 for the purposes of this interim study. For attendance at meetings during adjournment of the General Assembly, legislative members of the subcommittee shall be entitled to compensation and reimbursement for expenses under 2 V.S.A. § 406, and other members of the subcommittee who are not employees of the State of Vermont shall be reimbursed at the per diem rate under 32 V.S.A. § 1010.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee vote: 5-0-0)

S. 47.

An act relating to protection orders and second degree domestic assault.

Reported favorably with recommendation of amendment by Senator Ashe for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. § 5135 is amended to read:

§ 5135. SERVICE

(a) A complaint or ex parte temporary order or final order issued under this chapter shall be served in accordance with the Vermont Rules of Civil Procedure and may be served by any law enforcement officer. Orders against stalking or sexual assault shall be served at the earliest possible time and shall take precedence over other summonses and orders, with the exception of abuse prevention orders issued pursuant to 15 V.S.A. chapter 21. Orders shall be served in a manner calculated to ensure the safety of the plaintiff. Methods of service which include advance notification to the defendant shall not be used. The person making service shall file a return of service with the court stating the date, time, and place that the order was delivered personally to the defendant. A defendant who attends a hearing held under section 5133 or 5134 of this title at which a temporary or final order is issued and who receives notice from the court on the record that the order has been issued shall be deemed to have been served.

* * *

Sec. 2. 33 V.S.A. § 6935 is amended to read:

§ 6935. FINDINGS AND ORDER

(a) If the court finds that the defendant has abused, neglected, or exploited the vulnerable adult, the court shall make such order as it deems necessary to protect the vulnerable adult. The plaintiff shall have the burden of proving abuse, neglect, or exploitation by a preponderance of the evidence. Relief shall be granted for a fixed period of time, at the expiration of which the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the vulnerable adult from abuse, neglect, or exploitation. The court may modify its order at any subsequent time upon motion by either party and a showing of a substantial change in circumstances. If the motion for extension or modification of the order is made by an interested person, notice shall be provided to the vulnerable adult, and the

court shall determine whether the vulnerable adult is capable of expressing his or her wishes with respect to the motion and, if so, whether the vulnerable adult wishes to request an extension or modification. If the court determines the vulnerable adult is capable of expressing his or her wishes and does not wish to pursue the motion, the court shall dismiss the motion.

(b) Every order under this subchapter shall contain the name of the court, the names of the parties, the date of the petition, the date and time of the order, and shall be signed by the judge.

(c) Form complaints and form orders shall be provided by the court administrator and shall be maintained by the clerks of the courts.

(d) Every order issued under this subchapter shall bear the following language: "VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH."

(e) A defendant who attends a hearing under this section at which a protective order is issued and who receives notice from the court on the record that the order has been issued shall be deemed to have been served with notice of the order.

Sec. 3. 12 V.S.A. § 5136 is amended to read:

§ 5136. PROCEDURE

(a) Except as otherwise specified in this chapter, proceedings commenced under this chapter shall be in accordance with the Vermont Rules of Civil Procedure and shall be in addition to any other available civil or criminal remedies.

(b) The ~~court administrator~~ Court Administrator is authorized to contract with public or private agencies to assist plaintiffs to seek relief and to gain access to superior court. Law enforcement agencies shall assist in carrying out the intent of this section.

(c) The ~~office~~ Office of the ~~court administrator~~ Court Administrator shall ensure that the superior court has procedures in place so that the contents of orders and pendency of other proceedings can be known to all courts for cases in which an order against stalking or sexual assault proceeding is related to a criminal proceeding.

(d) Notwithstanding any provision of law to the contrary, an order issued pursuant to sections 5133 and 5134 of this title shall not be stayed pending an appeal.

Sec. 4. 15 V.S.A. § 1103 is amended to read:

§ 1103. REQUESTS FOR RELIEF

(a) Any family or household member may seek relief from abuse by another family or household member on behalf of him or herself or his or her children by filing a complaint under this chapter. The plaintiff shall submit an affidavit in support of the order.

* * *

(c)(1) The court shall make such orders as it deems necessary to protect the plaintiff or the children, or both, if the court finds that the defendant has abused the plaintiff, and:

* * *

(2) The court order may include the following:

(A) an order that the defendant refrain from abusing the plaintiff, his or her children, or both and from interfering with their personal liberty, including restrictions on the defendant's ability to contact the plaintiff or the children in person, by phone, or by mail and restrictions prohibiting the defendant from coming within a fixed distance of the plaintiff, the children, the plaintiff's residence, or other designated locations where the plaintiff or children are likely to spend time;

(B) an order that the defendant immediately vacate the household and that the plaintiff be awarded sole possession of a residence;

(C) a temporary award of parental rights and responsibilities in accordance with the criteria in section 665 of this title;

(D) an order for parent-child contact under such conditions as are necessary to protect the child or the plaintiff, or both, from abuse. An order for parent-child contact may if necessary include conditions under which the plaintiff may deny parent-child contact pending further order of the court;

(E) if the court finds that the defendant has a duty to support the plaintiff, an order that the defendant pay the plaintiff's living expenses for a fixed period of time not to exceed three months;

(F) if the court finds that the defendant has a duty to support the child or children, a temporary order of child support pursuant to chapter 5 of this title, for a period not to exceed three months. A support order granted under this section may be extended if the relief from abuse proceeding is consolidated with an action for legal separation, divorce, or parentage;

(G) an order concerning the possession, care, and control of any animal owned, possessed, leased, kept, or held as a pet by either party or a minor child residing in the household.;

(H) an order that the defendant return all of the plaintiff's or plaintiff's children's personal documentation in his or her possession, including immigration documentation, birth certificates, and identification cards.

* * *

Sec. 5. 15 V.S.A. § 1104 is amended to read:

§ 1104. EMERGENCY RELIEF

(a) In accordance with the rules of civil procedure, temporary orders under this chapter may be issued ex parte, without notice to defendant, upon motion and findings by the court that defendant has abused plaintiff, his or her children, or both. The plaintiff shall submit an affidavit in support of the order. Relief under this section shall be limited as follows:

(1) ~~upon~~ Upon a finding that there is an immediate danger of further abuse, an order may be granted requiring the defendant:

(A) to refrain from abusing the plaintiff, his or her children, or both, or from cruelly treating as defined in 13 V.S.A. § 352 or 352a or killing any animal owned, possessed, leased, kept, or held as a pet by either party or a minor child residing in the household; ~~and~~

(B) to refrain from interfering with the plaintiff's personal liberty, the personal liberty of plaintiff's children, or both; and

(C) to refrain from coming within a fixed distance of the plaintiff, the plaintiff's children, or the plaintiff's residence.

(2) ~~upon~~ Upon a finding that the plaintiff, his or her children, or both have been forced from the household and will be without shelter unless the defendant is ordered to vacate the premises, the court may order the defendant to vacate immediately the household and may order sole possession of the premises to the plaintiff~~;~~.

(3) ~~upon~~ Upon a finding that there is immediate danger of physical or emotional harm to minor children, the court may award temporary custody of these minor children to the plaintiff or to other persons.

* * *

Sec. 6. 15 V.S.A. § 1152 is amended to read:

§ 1152. ADDRESS CONFIDENTIALITY PROGRAM; APPLICATION; CERTIFICATION

* * *

(f) The Civil or Family Division of Washington County Superior Court shall have jurisdiction over petitions for protective orders filed by program participants pursuant to 12 V.S.A. §§ 5133 and 5134, to sections 1103 and 1104 of this title, and to 33 V.S.A. § 6935. A program participant may file a petition for a protective order in the county in which he or she resides or in Washington County to protect the confidentiality of his or her address.

Sec. 7. 13 V.S.A. § 1044 is amended to read:

§ 1044. SECOND DEGREE AGGRAVATED DOMESTIC ASSAULT

(a) A person commits the crime of second degree aggravated domestic assault if the person:

(1) commits the crime of domestic assault and such conduct violates:

(A) specific conditions of a criminal court order in effect at the time of the offense imposed to protect that other person;

(B) a final abuse prevention order issued under ~~section~~ 15 V.S.A. § 1103 ~~of Title 15~~ or a similar order issued in another jurisdiction.

(C) ~~an~~ a final order against stalking or sexual assault issued under ~~chapter 178 of Title~~ 12 V.S.A. § 5133 or a similar order issued in another jurisdiction; or

(D) ~~an~~ a final order against abuse of a vulnerable adult issued under ~~chapter 69 of Title~~ 33 V.S.A. § 6935 or a similar order issued in another jurisdiction.

(2) commits the crime of domestic assault; and

(A) has a prior conviction within the last 10 years for violating an abuse prevention order issued under section 1030 of this title; or

(B) has a prior conviction for domestic assault under section 1042 of this title.

(3) For the purpose of this subsection, the term "issued in another jurisdiction" means issued by a court in any other state, in a federally recognized Indian tribe, territory, or possession of the United States, in the Commonwealth of Puerto Rico, or in the District of Columbia.

* * *

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee vote: 5-0-0)

S. 55.

An act relating to increasing efficiency in state government finance and lending operations.

Reported favorably with recommendation of amendment by Senator Pollina for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. STATE FINANCIAL SERVICES TASK FORCE

(a) Creation of task force. There is created a State Financial and Lending Efficiency Task Force to evaluate state government operations relating to finance and lending, grant-making, investing, and banking.

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

(1) The Secretary of Commerce and Community Development or designee.

(2) The President of the Vermont Community Foundation or designee.

(3) A business entrepreneur with relevant financial services experience, appointed by the Senate President Pro Tempore.

(4) A current officer or executive of a Vermont-based banking institution, appointed by the Speaker of the House of Representatives.

(5) The Vermont State Treasurer or designee.

(6) One member of the Vermont House of Representatives, appointed by the Speaker of the House of Representatives.

(7) One member of the Vermont Senate, appointed by the Senate President Pro Tempore.

(8) The Executive Director of the Vermont Economic Development Authority or designee.

(9) The executive director of a nonprofit with expertise in designing lending and banking services, appointed by the Senate President Pro Tempore.

(10) A municipal employee whose official duties involve local economic development, appointed by the Speaker of the House of Representatives.

(11) The Director of the Gund Institute for Ecological Economics or designee.

(12) An academic economist appointed jointly by the Speaker of the House of Representatives and the Senate President Pro Tempore.

(13) The president of the Vermont Student Assistance Corporation or designee.

(14) The executive director of the Vermont Housing Finance Agency or designee.

(c) Powers and duties.

(1) The Task Force shall study ways to increase efficiency and reduce costs in government financial operations, including:

(A) The number, nature, and scope of lending, loan servicing, investing, grant-making, and related operations performed by the State and its instrumentalities.

(B) The costs and benefits of contracting out banking services, including fees, transaction costs, debt service, lost profit opportunities, opportunities to increase local investing, and administrative savings.

(C) The costs and benefits of consolidating Vermont tax receipts, fees, or other revenues, including impacts on debt service, and on access to capital for Vermont economic development activities, education lending, and other lending activities:

(i) into one or more Vermont-based private banking institutions; or

(ii) into an existing or new public institution.

(D) How a new public institution can work in partnership with Vermont financial institutions:

(i) to increase access to capital for Vermont citizens and businesses; and

(ii) to provide lower cost capital to municipalities to meet infrastructure needs and other expenditures.

(2) For purposes of its study of these issues, the Task Force shall have administrative, policy, and legal support from the legislative Joint Fiscal Office and the Office of Legislative Council.

(d) Report. On or before January 15, 2014, the Task Force shall report to the House and Senate Committees on Government Operations its findings and any recommendations for legislative action.

(e) Reimbursement. For attendance at meetings during adjournment of the General Assembly, legislative members of the Task Force shall be entitled to

compensation and reimbursement for expenses as provided in 2 V.S.A. § 406; and other members of the Task Force who are not employees of the State of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010(b) plus mileage reimbursement.

(f) Appropriation. The sum of $5,000.00 is appropriated from the General Fund in fiscal year 2014 to the Department of Finance and Management for per diem and expenses of the State Financial and Lending Efficiency Task Force under this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

S. 58.

An act relating to Act 250 and oil pipelines.

Reported favorably with recommendation of amendment by Senator Rodgers for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended as follows:

First: In Sec. 2, 10 V.S.A. § 6081, in subsection (b), by striking out the last sentence and inserting in lieu thereof:

Subsection (a) of this section also shall apply to an oil or petroleum transmission pipeline and associated facilities excepted under this subsection if there is any change to the pipeline or associated facilities, unless the change is solely for the purpose of repair in the usual course of business.

Second: By striking out Secs. 3 and 4 in their entirety and inserting in lieu thereof new Secs. 3 and 4 to read:

Sec. 3. 10 V.S.A. § 6086 is amended to read:

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

* * *

(g) When applying the criteria of this section to an oil or petroleum transmission pipeline, the district commission shall not consider the safety of the pipeline and shall issue no permit condition that regulates pipeline safety or has an effect on pipeline safety that is not permitted under the Pipeline Safety Act, 49 U.S.C. §§ 60101–60137.

Sec. 4. APPLICATION

Notwithstanding 1 V.S.A. §§ 213 and 214, this act shall apply to any change to an oil or petroleum pipeline and associated facilities that is made

after the act's effective date regardless of whether a jurisdictional opinion under 10 V.S.A. chapter 151 (Act 250) was issued prior to that date concerning the applicability of that chapter to the change.

(Committee vote: 4-0-1)

S. 73.

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

Reported favorably with recommendation of amendment by Senator Lyons for the Committee on Health and Welfare.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 2. CERTIFICATE OF NEED WORK GROUP; MORATORIUM

* * *

(d) Notwithstanding any other provision of law, no CON shall be granted for the offering of home health services, which includes hospice, or for a new home health agency during the period beginning on the effective date of this act and continuing through ~~June 30, 2013~~ January 1, 2017, or until the ~~general assembly~~ General Assembly lifts the moratorium after considering ~~and acting on the work group's recommendations as it deems appropriate~~ a progress report on the Green Mountain Care Board's implementation of its health planning function and how it relates to home health agencies, whichever occurs first; provided, however, that the moratorium established pursuant to this subsection shall not apply to a continuing care retirement community that has been issued a certificate of authority.

(e) Notwithstanding the moratorium established in subsection (d) of this section, a CON application for a new home health agency may be considered and granted during the moratorium if the ~~commissioners of banking, insurance, securities, and health care administration~~ Green Mountain Care Board and ~~of disabilities, aging, and independent living~~ the Commissioner of Disabilities, Aging, and Independent Living have each first certified that a serious and substantial lack of access to home health services exists in a particular county and the agencies presently serving that county have been given notice and a reasonable opportunity to either challenge that certification or remediate the problem.

(f) Nothing in this section shall be construed to prevent existing home health agencies from seeking approval from the ~~department of banking, insurance, securities, and health care administration~~ Green Mountain Care Board or ~~of disabilities, aging, and independent living~~ the Department of

Disabilities, Aging, and Independent Living to expand or contract their designated geographical regions or from merging.

(g) Nothing in this section shall be construed to prevent the ~~commissioner of banking, insurance, securities, and health care administration~~ Green Mountain Care Board from granting a certificate of need to a home health agency that had filed a letter of intent or had a certificate of need application pending prior to ~~the effective date of this act~~ April 21, 2010.

Sec. 2. PERIODIC HEALTH PLANNING FUNCTION PROGRESS REPORTS

For as long as the moratorium continues for certificates of need for the offering of home health services, as established in 2010 Acts and Resolves No. 83, Sec. 2, as amended by this act, the Green Mountain Care Board shall provide to the House committees on Health Care and on Human Services and the Senate Committee on Health and Welfare any progress reports the Board generates on its implementation of its health planning function and how it relates to home health agencies.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee vote: 6-0-0)

S. 81.

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

Reported favorably with recommendation of amendment by Senator Lyons for the Committee on Health and Welfare.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. chapter 80 is amended to read:

CHAPTER 80. FLAME RETARDANTS

§ 2971. ~~BROMINATED FLAME RETARDANTS~~

~~(a) As used in this section:~~

~~(1) "Brominated flame retardant" means any chemical containing the element bromine that is added to plastic, foam, or textile to inhibit flame formation.~~

~~(2) "Congener" means a specific PBDE molecule.~~

~~(3) "DecaBDE" means decabromodiphenyl ether or any technical mixture in which decabromodiphenyl ether is a congener.~~

~~(4) "Flame retardant" means any chemical that is added to a plastic, foam, or textile to inhibit flame formation.~~

~~(5) "Manufacturer" means any person who manufactures a final product containing a regulated brominated flame retardant or any person whose brand name is affixed to a product containing a regulated brominated flame retardant.~~

~~(6) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways, and shall include farm tractors and other machinery used in the production, harvesting, and care of farm products.~~

~~(7) "OctaBDE" means octabromodiphenyl ether or any technical mixture in which octabromodiphenyl ether is a congener.~~

~~(8) "PentaBDE" means pentabromodiphenyl ether or any technical mixture in which a pentabromodiphenyl ether is a congener.~~

~~(9) "PBDE" means polybrominated diphenyl ether.~~

~~(10) "Technical mixture" means a PBDE mixture that is sold to a manufacturer. A technical mixture is named for the predominant congener in the mixture, but is not exclusively made up of that congener.~~

~~(b) As of July 1, 2010, no person may offer for sale, distribute for sale, distribute for promotional purposes, or knowingly sell at retail a product containing octaBDE or pentaBDE in a concentration greater than 0.1 percent by weight.~~

~~(c) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2010, manufacture, offer for sale, distribute for sale, or knowingly sell at retail the following products containing decaBDE in a concentration greater than 0.1 percent by weight:~~

~~(1) A mattress or mattress pad; or~~

~~(2) Upholstered furniture.~~

~~(d) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2012, manufacture, offer for sale, distribute for sale, or knowingly sell at retail a television or computer with a plastic housing containing decaBDE in a concentration greater than 0.1 percent by weight.~~

~~(e) This section shall not apply to:~~

~~(1) the sale or resale of used products; or~~

~~(2) motor vehicles or parts for use on motor vehicles.~~

~~(f) As of July 1, 2010, a manufacturer of a product that contains decaBDE and that is prohibited under subsection (c) or (d) of this section shall notify persons that sell the manufacturer's product of the requirements of this section.~~

~~(g) A manufacturer shall not replace decaBDE, pursuant to this section, with a chemical that is:~~

~~(1) Classified as "known to be a human carcinogen" or "reasonably anticipated to be a human carcinogen" in the most recent report on carcinogens by the National Toxicology Program in the U.S. Department of Health and Human Services;~~

~~(2) Classified as "carcinogenic to humans" or "likely to be carcinogenic to humans" in the U.S. Environmental Protection Agency's most recent list of chemicals evaluated for carcinogenic potential; or~~

~~(3) Identified by the U.S. Environmental Protection Agency as causing birth defects, hormone disruption, or harm to reproduction or development.~~

~~(h) A violation of this section shall be deemed a violation of the Consumer Protection Act, chapter 63 of this title. The attorney general has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions, and private parties have the same rights and remedies as provided under subchapter 1 of chapter 63 of this title.~~

~~(i) In addition to any other remedies and procedures authorized by this section, the attorney general may request a manufacturer of upholstered furniture, mattresses, mattress pads, computers, or televisions offered for sale or distributed for sale in this state to provide the attorney general with a certificate of compliance with this section with respect to such products. Within 30 days of receipt of the request for a certificate of compliance, the manufacturer shall:~~

~~(1) Provide the attorney general with a certificate declaring that its product complies with the requirements of this section; or~~

~~(2) Notify persons who sell in this state a product of the manufacturer's which does not comply with this section that sale of the product is prohibited, and submit to the attorney general a list of the names and addresses of those notified.~~

~~(j) The attorney general shall consult with retailers and retailer associations in order to assist retailers in complying with the requirements of this section.~~ [Repealed.]

§ 2972. DEFINITIONS

(a) As used in this chapter:

(1) "Brominated flame retardant" means any chemical containing the element bromine that is added to plastic, foam, or textile to inhibit flame formation.

(2) "Children's product" means a consumer product:

(A) marketed for use by children under 12 years of age; or

(B) the substantial use of which by a child under 12 years of age is reasonably foreseeable.

(3) "Congener" means a specific PBDE molecule.

(4) "DecaBDE" means decabromodiphenyl ether or any technical mixture in which decabromodiphenyl ether is a congener.

(5) "Flame retardant" means any chemical that is added to a plastic, foam, or textile to inhibit flame formation.

(6) "Manufacturer" means any person:

(A) who manufactures a final product containing a flame retardant regulated under this chapter; or

(B) whose brand name is affixed to a final product containing a flame retardant regulated under this chapter.

(7) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways and shall include farm tractors and other machinery used in the production, harvesting, and care of farm products.

(8) "OctaBDE" means octabromodiphenyl ether or any technical mixture in which octabromodiphenyl ether is a congener.

(9) "PentaBDE" means pentabromodiphenyl ether or any technical mixture in which pentabromodiphenyl ether is a congener.

(10) "PBDE" means polybrominated diphenyl ether.

(11) "Residential upholstered furniture" means furniture intended for personal use that includes cushioning material covered by fabric or similar material.

(12) "Technical mixture" means a PBDE mixture that is sold to a manufacturer. A technical mixture is named for the predominant congener in the mixture but is not exclusively made up of that congener.

(13) "Tris" means tris(1,3-dichloro-2-propyl) phosphate (TDCPP), chemical abstracts service number 13674-87-8 (as of the effective date of this section); tris(2-chloroethyl) phosphate (TCEP), chemical abstracts service number 115-96-8 (as of the effective date of this section); or tris(2-chloro-1-

methylethyl) phosphate (TCPP) chemical abstracts service number 13674-84-5, (as of the effective date of this section).

§ 2973. BROMINATED FLAME RETARDANTS; PROHIBITION

(a) As of July 1, 2010, no person may offer for sale, distribute for sale, distribute for promotional purposes, or knowingly sell at retail a product containing octaBDE or pentaBDE in a concentration greater than 0.1 percent by weight.

(b) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2010, manufacture, offer for sale, distribute for sale, or knowingly sell at retail the following products containing decaBDE in a concentration greater than 0.1 percent by weight:

(1) a mattress or mattress pad; or

(2) upholstered furniture.

(c) Except for inventory purchased prior to July 1, 2009, a person may not, as of July 1, 2012, manufacture, offer for sale, distribute for sale, or knowingly sell at retail a television or computer with a plastic housing containing decaBDE in a concentration greater than 0.1 percent by weight.

(d)(1) Except as provided in subdivision (2) of this subsection, beginning July 1, 2013, no person may manufacture, sell or offer for sale, or distribute for sale or use in the State plastic shipping pallets that contain decaBDE in a concentration greater than 0.1 percent by weight.

(2) Subdivision (1) of this subsection shall not apply to the sale, lease, distribution, or use in the State of:

(A) plastic shipping pallets manufactured prior to January 1, 2011; or

(B) plastic shipping pallets manufactured from recycled shipping pallets that contain decaBDE in a concentration that is no greater than the concentration of decaBDE in the recycled pallets from which the plastic pallets were manufactured.

§ 2974. CHLORINATED FLAME RETARDANTS

(a) Except for inventory manufactured prior to January 1, 2014, no person, other than a retailer, shall, as of January 1, 2014, manufacture, offer for sale, distribute for sale, or knowingly sell in or into this State any children's product or residential upholstered furniture that contains Tris in any product component in an amount greater than 50 parts per million.

(b) A retailer shall not, as of July 1, 2014, knowingly sell or offer for sale in or into this State any children's product or residential upholstered furniture

containing Tris in any product component in an amount greater than 50 parts per million.

§ 2975. NOTICE TO RETAILERS; DISCLOSURE OF PRODUCT CONTENT; CONSULTATION

(a) As of July 1, 2010, a manufacturer of a product that contains decaBDE and that is prohibited under subsection 2973(c) or (d) of this chapter shall notify persons that sell the manufacturer's product of the requirements of this chapter.

(b) As of July 1, 2013, a manufacturer of a product that contains Tris and that is prohibited under subsection 2974(a) or (b) of this chapter shall notify persons that sell the manufacturer's product of the requirements of this chapter.

(c) As of March 31, 2014, a person other than a retailer who, since July 1, 2010, has manufactured, distributed, or sold in or into this State any product containing Tris that is prohibited under subsection 2974(a) or (b) of this chapter shall notify persons who sell the manufacturer's product of the fact that the product sold to the person selling the manufacturer's product contains Tris. The notification shall be sent by mail and shall notify the person selling the manufacturer's product of the concentration of Tris in the product sold in parts per million of each product component.

(d) The Attorney General shall consult with retailers and retailer associations to assist retailers in complying with the requirements of this chapter.

§ 2976. REPLACEMENT OF REGULATED FLAME RETARDANTS

A manufacturer shall not replace decaBDE or Tris with a chemical that is:

(1) classified as "known to be a human carcinogen" or "reasonably anticipated to be a human carcinogen" in the most recent report on carcinogens by the National Toxicology Program in the U.S. Department of Health and Human Services;

(2) classified as "carcinogenic to humans" or "likely to be carcinogenic to humans" in the U.S. Environmental Protection Agency's most recent list of chemicals evaluated for carcinogenic potential; or

(3) identified by the U.S. Environmental Protection Agency as causing birth defects, hormone disruption, or harm to reproduction or development.

§ 2977. EXEMPTIONS

The requirements and prohibitions of this chapter shall not apply to:

(1) the sale or resale of used products;

(2) motor vehicles or parts for use on motor vehicles;

(3) building insulation materials;

(4) internal components of personal computers, audio and video equipment, calculators, wireless phones, game consoles, handheld devices incorporating a screen that are used to access interactive software and their associated peripherals, and cables and other similar connecting devices; or

(5) interactive software intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks.

§ 2978. VIOLATIONS; ENFORCEMENT

A violation of this chapter shall be considered a violation of the Consumer Protection Act, chapter 63 of this title. The Attorney General has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions and private parties have the same rights and remedies as provided under subchapter 1 of chapter 63 of this title.

§ 2979. PRODUCTION OF INFORMATION

In addition to any other remedies and procedures authorized by this chapter, the Attorney General may request a manufacturer of upholstered furniture, mattresses, mattress pads, computers, televisions, children's products, or residential upholstered furniture offered for sale or distributed for sale in this State to provide the Attorney General with a certificate of compliance with this chapter with respect to such products. Within 30 days of receipt of the request for a certificate of compliance, the manufacturer shall:

(1) provide the Attorney General with a certificate declaring that its product complies with the requirements of this chapter; or

(2) notify persons who sell in this State a product of the manufacturer's which does not comply with this chapter that sale of the product is prohibited and submit to the Attorney General a list of the names and addresses of those notified.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

and that after passage the title of the bill be amended to read: "An act relating to the regulation of octaBDE, pentaBDE, decaBDE, and the flame retardant known as Tris in consumer products"

(Committee vote: 5-0-0)

S. 88.

An act relating to telemedicine services delivered outside a health care facility.

Reported favorably with recommendation of amendment by Senator Ayer for the Committee on Health and Welfare.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. TELEMEDICINE PILOT PROJECTS

Notwithstanding 8 V.S.A. chapter 107, subchapter 14, the Department of Vermont Health Access and the Green Mountain Care Board shall consider implementation of one or more pilot projects using telemedicine in order to expand access to health care services in a cost-efficient manner as part of payment and delivery system reform. In designing pilot projects, the Department and Board shall consider the appropriate scope of services that should be provided through telemedicine outside of a health care facility, the potential costs and changes in access to those services relative to current service delivery, and safeguards to ensure quality of care, patient confidentiality, and information security needed for the pilot projects.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee vote: 5-0-0)

S. 104.

An act relating to expedited partner therapy.

Reported favorably with recommendation of amendment by Senator Pollina for the Committee on Health and Welfare.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 1095 is added to read:

§ 1095. TREATMENT OF PARTNER OF PATIENT DIAGNOSED WITH A SEXUALLY TRANSMITTED DISEASE

(a) As used in this section:

(1) "Expedited partner treatment" means the practice of treating the sexual partner or partners of a patient diagnosed with a sexually transmitted disease for the sexually transmitted disease by providing a prescription or medication to the patient for the sexual partner or partners without the

prescribing or dispensing health care professional examining the sexual partner or partners.

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

(b) A health care professional may provide expedited partner treatment to a patient's sexual partner or partners for the treatment of chlamydia or gonorrhea and for any other sexually transmitted disease designated by the Commissioner by rule.

(c) A health care professional who prescribes or dispenses prescription drugs for a patient's sexual partner or partners without an examination pursuant to subsection (b) of this section shall do so in accordance with guidance published by the Centers for Disease Control and Prevention (CDC) and shall include with each prescription and medication dispensed a letter that:

(1) cautions the sexual partner not to take the medication if he or she is allergic to the medication prescribed or dispensed; and

(2) recommends that the sexual partner visit a health care professional for evaluation.

(d) The Commissioner may establish by rule additional treatment standards for expedited partner treatment and authorize expedited partner treatment for additional sexually transmitted diseases provided that expedited partner treatment for those additional diseases conforms to the best practice recommendations of the CDC.

Sec. 2. 18 V.S.A. § 1095 is amended to read:

§ 1095. TREATMENT OF PARTNER OF PATIENT DIAGNOSED WITH A SEXUALLY TRANSMITTED DISEASE

* * *

(b) A health care professional may provide expedited partner treatment to a patient's sexual partner or partners for the treatment of ~~chlamydia or gonorrhea and for any other~~ a sexually transmitted disease designated by the Commissioner by rule.

* * *

(d) The Commissioner ~~may~~ shall establish by rule additional treatment standards for expedited partner treatment and authorize expedited partner treatment for ~~additional~~ any sexually transmitted diseases provided that

expedited partner treatment for those ~~additional~~ diseases conforms to the best practice recommendations of the CDC.

Sec. 3. REPEAL

26 V.S.A. § 1369 (treatment of partner of patient diagnosed with chlamydia infection) is repealed.

Sec. 4. EFFECTIVE DATES

(a) This section and Secs. 1 (treatment of partner of patient with a sexually transmitted disease) and 3 (repeal) of this act shall take effect on July 1, 2013.

(b) Sec. 2 of this act shall take effect on March 1, 2014, except that the Commissioner of Health may commence rulemaking prior to that date in order to ensure that rules are in place by that date.

(Committee vote: 5-0-0)

S. 119.

An act relating to amending perpetual conservation easements.

Reported favorably with recommendation of amendment by Senator Hartwell for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 155 is redesignated to read:

CHAPTER 155. ACQUISITION OF INTERESTS IN LAND BY PUBLIC AGENCIES AND QUALIFIED ORGANIZATIONS

Sec. 2. DESIGNATION

10 V.S.A. §§ 6301–6311 are designated as 10 V.S.A. chapter 155, subchapter 1 to read:

Subchapter 1. General Provisions

Sec. 3. 10 V.S.A. § 6301 is amended to read:

§ 6301. PURPOSE

It is the purpose of this chapter to encourage and assist the maintenance of the present uses of Vermont's agricultural, forest, and other undeveloped land and to prevent the accelerated residential and commercial development thereof; to preserve and to enhance Vermont's scenic natural resources; to strengthen the base of the recreation industry and to increase employment, income, business, and investment; to enable the citizens of Vermont to plan its orderly growth in the face of increasing development pressures in the interests of the public health, safety, and welfare; and to encourage the use of conservation

and preservation ~~tools~~ easements and related instruments to support farm, forest, and related enterprises, thereby strengthening Vermont's economy to improve the quality of life for Vermonters, and to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

Sec. 4. 10 V.S.A. § 6301a is amended to read:

§ 6301a. DEFINITIONS

As used in this chapter:

(1) "State agency" means the ~~agency of natural resources~~ Agency of Natural Resources or any of its departments, ~~agency of transportation~~ Agency of Transportation, ~~agency of agriculture, food and markets~~ Agency of Agriculture, Food and Markets, or ~~Vermont housing and conservation board~~ Vermont Housing and Conservation Board.

(2) "Qualified organization" means:

(A) an organization qualifying under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which is not a private foundation as defined in Section 509(a) of the Internal ~~Revenuw~~ Revenue Code, and which has been certified by the ~~commissioner of taxes~~ Commissioner of Taxes as being principally engaged in the preservation of undeveloped land for the purposes expressed in section 6301 of this title.

(B) an organization qualifying under Section 501(c)(2) of the Internal Revenue Code of 1986, as amended, provided such organization is controlled exclusively by an organization or organizations described in subdivision (2)(A) of this section.

(3) "Taxation" and "tax" means ad valorem taxes levied by the ~~state~~ State and its municipalities.

(4) "Adequate compensation to the holder" means the increase, if any, in the value of a landowner's estate by reason of an amendment to a conservation easement that applies to the estate.

(5) "Adjoining landowner" means a person who owns land in fee simple, if that land either:

(A) shares a property boundary with a tract of land where an easement amendment is proposed; or

(B) is adjacent to a tract of land where an easement amendment is proposed and the two properties are separated by only a river, stream, or public highway.

(6) "Amend" or "amendment" means a modification of an existing conservation easement, the substitution of a new easement for an existing conservation easement, or the whole or partial termination of an existing conservation easement.

(7) "Conservation easement" means a conservation right or interest that is less than a fee simple interest and that restricts the landowner's use or development of land in order to protect the land's natural, scenic, agricultural, recreational, or cultural qualities or resources or other public values. The term excludes interests in fee simple, leases, restrictive covenants not held by a qualified organization, rights-of-way, spring rights, timber harvesting rights, and similar affirmative rights to use or extract resources from the land. The term also excludes trail easements and other public recreational rights unless those easements or rights are included in the stated purposes of a conservation easement.

(8) "Conservation right or interest" means a right or interest described in sections 823 and 6303 of this title.

(9) "Holder" means a state agency, a qualified organization, or a municipality that possesses a conservation right or interest. The term "holder" includes all coholders of a conservation right or interest.

(10) "Holder's public review process" means the public review process conducted by an easement holder for a proposed amendment, as set forth in subchapter 2 of this chapter.

(11) "Landowner" means an owner of the fee interest in land that is subject to a conservation easement.

(12) "Panel" means the Easement Amendment Panel of the Natural Resources Board **e**stablished in subchapter 2 of this chapter.

(13) "Person" shall have the same meaning as in 1 V.S.A. § 128.

(14) "Protected property" means real property that is subject to a conservation right or interest.

(15) "Protected qualities" means natural, scenic, agricultural, recreational, or cultural qualities and resources and other public values protected by a conservation easement.

(16) "Public conservation interest" means the benefits to the public, the environment, and Vermont's working landscape afforded by conserving land for its natural, scenic, or agricultural qualities, its recreational or cultural resources, or other public values, and also includes investments in a conservation easement made by a state agency, a municipality, and a qualified organization.

Sec. 5. 10 V.S.A. § 6310 is added to read:

§ 6310. EASEMENT HOLDER; FEE INTEREST; NONMERGER

If a holder of a conservation easement is or becomes the owner in fee simple of property subject to the easement, the easement shall continue in effect and shall not be extinguished.

Sec. 6. 10 V.S.A. § 6311 is added to read:

§ 6311. CONSERVATION RIGHTS AND INTERESTS; TAX LIENS

Conservation rights and interests shall not be affected by any tax lien which attaches to the subject property under 32 V.S.A. § 5061 subsequent to the recording of the conservation rights and interests in the municipal land records.

Sec. 7. 10 V.S.A. chapter 155, subchapter 2 is added to read:

Subchapter 2. Amendment of Perpetual Conservation Easements

§ 6321. PURPOSE

The purpose of this subchapter is to set forth a process and establish the criteria for determining if an amendment of a conservation easement may be appropriate and authorized and to provide that in all cases in which an amendment would materially alter the terms of an existing conservation easement, the proposed amendment is reviewed and approved following public notice, disclosure of the circumstances and reasons for the amendment, and an opportunity for the public to comment.

§ 6322. APPLICABILITY; EXEMPTIONS

(a) This subchapter applies to the amendment of conservation easements. As set forth in section 6301a of this title, whole or partial terminations of conservation easements constitute amendments within the meaning of this chapter.

(b) A conservation easement shall not be amended without the written approval of the landowner and each holder.

(c) Except for the easements identified in subsection (d) of this section, conservation easements shall be amended only in accordance with this chapter, and this chapter shall constitute the exclusive means under law by which an amendment to a conservation easement may be contested or appealed.

(d) The following easement amendments shall be exempt from sections 6324–6333 of this title unless, for a particular easement amendment, the landowner and each holder elect to employ and be bound by those provisions:

(1) any amendment of a conservation easement that requires the approval of the General Assembly or is part of a land transaction that requires such approval;

(2) any amendment of a conservation easement that was originally required by a federal, state, or local regulatory body, including a district environmental commission under 10 V.S.A. chapter 151, the Public Service Board, or an appropriate municipal panel under 24 V.S.A. chapter 117, by issuance of a state or municipal land use permit, an environmental permit or other environmental approval, a certificate of public good, or other regulatory approval under the terms of which any amendment of the easement must be approved by the body issuing the permit, certificate, or other approval; and

(3) any amendment that is the result of the exercise of a right of eminent domain granted under the Vermont Constitution, Chapter I, Art. 2.

§ 6323. EASEMENT AMENDMENT PANEL

(a) An Easement Amendment Panel consisting of five members is created as a panel of the Vermont Natural Resources Board established under section 6021 of this title.

(1) The regular members of the Panel shall be:

(A) The Chair of the Natural Resources Board, who shall serve as Chair of the Easement Amendment Panel.

(B) Two members of the Natural Resources Board, chosen by the Governor, whose terms on this Panel shall be contemporaneous with their terms on the Board.

(C) One member appointed by the Governor for a term of four years from a list of no fewer than five candidates submitted by qualified organizations. The Vermont Housing and Conservation Board shall provide a list of qualified organizations to the Governor from which the Governor shall receive nominations.

(D) One member appointed by the Governor for a term of four years from a list of five candidates submitted by the Vermont Housing and Conservation Board.

(2) There shall be the following alternate members of the Panel, who may be appointed to serve by the Chair on a particular matter before the Panel when a regular Panel member is unable to serve:

(A) One alternate member appointed by the Governor for a term of four years from the list submitted to the Governor by qualified organizations under subdivision (1)(C) of this subsection.

(B) One alternate member appointed by the Governor for a term of four years from the list submitted to the Governor by the Vermont Housing and Conservation Board under subdivision (1)(D) of this subsection.

(3) Each member of the Natural Resources Board not appointed to the Panel shall be an alternate to the Panel and may be designated by the Chair to serve on a particular matter before the Panel if a regular or alternate member under subdivision (1) or (2) of this subsection is unable to serve.

(b) The Governor shall seek to appoint members to the Panel who are knowledgeable about agriculture, forestry, and environmental science. A person shall not be eligible for appointment to the Panel if that person has been employed as a staff member of or consultant to or has served on the governing board of a holder during the 12 months preceding the appointment.

(c) Other departments and agencies of state government shall cooperate with the Panel and make available to the Panel data, facilities, and personnel as may be needed to assist the Panel in carrying out its duties and functions.

(d) A Panel member shall not participate in a particular matter before the Panel if the member has a personal or financial interest in the matter or is related to the petitioner, if a natural person, within the fourth degree of consanguinity or affinity or, if a corporation, to any officer, director, trustee, or agent of the corporation within the same degree.

(e) Decisions by the Panel shall be made as promptly as possible, consistent with the degree of review required by the proposed amendment.

(f) The Panel shall keep a record of its proceedings, and any decision by the Panel shall be in writing and shall provide an explanation of the reasons and bases for the decision.

(g) Members of the Panel shall receive per diem pay and all necessary and actual expenses in accordance with 32 V.S.A. § 1010.

(h) Powers. The Panel shall have the power, with respect to any matter within its jurisdiction, to:

(1) allow members of the public to enter upon the lands under or proposed to be under the conservation easement, at times designated by the Panel, for the purpose of inspecting and investigating conditions related to the matter before the Panel;

(2) enter upon or authorize others to enter upon the lands under or proposed to be under the conservation easement for the purpose of conducting inspections, investigations, examinations, tests, and site evaluations as it deems necessary to verify information presented in any matter within its jurisdiction;

(3) adopt rules of procedure and substantive rules, in accordance with the provisions of 3 V.S.A. chapter 25, that interpret and carry out the provisions of this subchapter that pertain to easement amendments; and

(4) establish a schedule of filing fees to be paid by petitioners.

§ 6324. AMENDMENT CATEGORIES

(a) This subchapter divides amendments of conservation easements into three categories, which are:

(1) Category 1 amendments under section 6325 of this title, which may be made by the holder without a public review process;

(2) Category 2 amendments under section 6326 of this title, which are amendments that require a procedural determination by an independent entity concerning whether they may be made without a public review process in accordance with this subchapter or whether they should undergo such a process.

(3) Category 3 amendments under section 6327 of this title, which are amendments that require a public review process in accordance with this subchapter.

(b) Except for those amendments that are expressly exempt from the provisions of this subchapter, a person shall not approve or execute an amendment to a conservation amendment other than a Category 1 amendment without complying with sections 6326 through 6331 of this title.

§ 6325. CATEGORY 1 AMENDMENTS; APPROVAL BY HOLDER WITHOUT REVIEW

(a) A Category 1 amendment is an amendment to an existing conservation easement that has a beneficial, neutral, or not more than a de minimis negative impact on the protected qualities under the existing easement. The holder and landowner may approve a Category 1 amendment without notice to or review by an independent entity. Category 1 amendments shall be limited to the following:

(1) placing additional land under the protection of the easement;

(2) adding, expanding, or enhancing the protected qualities under the easement;

(3) including, for the benefit of a holder, a right of first refusal, an option to purchase at agricultural value, or another right to acquire an ownership interest in the property in the future;

(4) amending the easement to protect areas that were excluded from the easement or to further restrict rights and uses that were retained by the landowner under the existing easement;

(5) correcting typographical or clerical errors without altering the intent of or the protected qualities or the uses permitted under the easement;

(6) modernizing or clarifying the language of the easement without changing its intent or the protected qualities or the uses permitted under the easement;

(7) permitting additional uses under the easement that will have no more than a de minimis negative impact on the protected qualities under the easement;

(8) merging conservation easements on two or more protected properties into a single easement, adjusting the boundaries between two or more protected properties, or adjusting the boundaries of areas excluded from the easement resulting from the merger, provided that the merger does not:

(A) remove land covered by the easement;

(B) permit new uses under the easement that will have more than a de minimis negative impact on protected qualities on the property; or

(C) reduce the existing safeguards of the protected qualities on the property;

(9) modifying the legal description of the protected property to reference a subsequent survey of the area covered by or excluded from the easement; or

(10) relocating an existing recreational trail without materially detracting from the public's access or quality of experience.

(b) In the event a holder or landowner of a protected property seeks a recordable document from the Panel establishing that an amendment constitutes a Category 1 amendment, the holder shall follow the procedures for a Category 2 amendment under section 6326 of this title.

§ 6326. CATEGORY 2 AMENDMENTS; CRITERIA; REVIEW

(a) A Category 2 amendment is an amendment that:

(1) the holder reasonably believes will have not more than a de minimis negative impact on the protected qualities under an existing easement but that does not clearly meet the definition of a Category 1 amendment; or

(2) adjusts the boundaries of the land protected by the easement or adjusts the boundaries of areas excluded from the easement, but only if:

(A) the adjustment does not reduce the area covered by the easement by more than the greater of:

(i) two acres; or

(ii) one percent of the land protected by the easement, not to exceed five acres; and

(B) the holder reasonably believes the amendment will have no more than a de minimis negative impact on the protected qualities under the existing easement.

(b) A holder seeking review of a Category 2 amendment shall submit a request for review to the Panel, together with a copy of the amendment, a description of the protected property and easement, and an explanation of the purpose and effect of the amendment. The request for review shall include the applicant's and landowner's names and addresses, and the address of the applicant's principal office in this State and, if the applicant is not a municipality or state agency, a statement of its qualifications as a holder. The request to the Panel shall be signed by each holder and the landowner or the landowner's representative. In addition, the holder shall certify and demonstrate that the amendment:

(1) is consistent with the public conservation interest;

(2) is consistent with the conservation purpose and intent of the easement;

(3) complies with all applicable federal, state, and local laws;

(4) does not result in private inurement or confer impermissible private benefit under 26 U.S.C. § 501(c)(3);

(5) has a net beneficial, neutral, or not more than a de minimis negative impact on the protected qualities under the existing easement. In determining such net beneficial, neutral, or de minimis negative impact, the holder shall address the degree to which the amendment will balance the stated goals and purposes of the easement and shall identify whether these goals and purposes are ranked by the terms of the easement and demonstrate that the proposed amendment is consistent with that ranking; and

(6) is consistent with the documented intent of the donor, grantor, and all persons that directly funded the acquisition of the easement.

(c) Within a reasonable time after receiving a request for review of a Category 2 amendment and after providing 10 days' notice to all other panel members, the Chair of the Panel shall make a determination and promptly notify the holder and landowner of the subject easement that:

(1) no further review of the amendment is required because it satisfies all of the criteria listed under subsection (b) of this section;

(2) the holder must submit further information before a review can be completed; or

(3) the holder must seek approval of the amendment as a Category 3 amendment because the amendment fails one or more of the criteria listed under subsection (b) of this section.

(d) If two or more members of the Panel believe that the proposed amendment fails one or more of the criteria listed under subsection (b) of this section and those members notify the Chair either individually or collectively within 10 days of the date of the Chair's notice to the Panel members, the amendment shall be subject to review as a Category 3 amendment.

(e) If the determination under this section is that no further information or approval is required, the Chair shall, upon the holder's request, send a notice of this determination in a recordable form to the holder.

(f) The Panel may adopt rules allowing certain Category 2 amendments to proceed as Category 1 amendments, provided the Panel establishes reasonable limitations to ensure that any such amendment will have not more than a de minimis negative impact on the protected qualities under the easement.

§ 6327. CATEGORY 3 AMENDMENTS; REVIEW OPTIONS

(a) A Category 3 amendment is an amendment to an existing conservation easement that:

(1) removes a protected quality from the easement or changes the hierarchy of the easement's stated purposes;

(2) materially reduces the safeguards afforded to the protected qualities under the easement; or

(3) is not a Category 1 or Category 2 amendment.

(b) A holder shall not execute or record a Category 3 amendment without first:

(1) filing a petition for approval and obtaining the approval of the Panel for a Category 3 amendment in accordance with section 6328 of this title;

(2) filing a petition for approval and obtaining the approval of the Environmental Division of the Superior Court for a Category 3 amendment in accordance with section 6329 of this title. If an easement provides that the proposed amendment may only be approved by court order, then a holder may seek to amend the easement only by filing a petition for approval with the Environmental Division; or

(3) notifying the Panel that the holder will be conducting a holder's public review process under section 6330 of this title and completing that review process and any review by the Panel under section 6331 of this title.

(c) Having elected one of the review options described in this section for a given amendment, a holder may not elect to use one of the other options for the same amendment, except as provided in subsection 6330(h) of this title.

§ 6328. CATEGORY 3 PETITION TO PANEL; PROCEDURE; CRITERIA

(a) Petition. A petition to the Panel to seek approval of a Category 3 amendment shall comply with each of the following:

(1) The petition shall include:

(A) a copy of the existing easement and proposed amendment;

(B) a map and description of the protected property and easement;

(C) an explanation of the purpose and effect of the amendment;

(D) the same certification and demonstration required for Category 2 amendments by subdivisions 6326(b)(1)–(4) of this title;

(E) the landowner's name and address;

(F) the applicant's name and address, the address of the applicant's principal office in this State, and, if the applicant is not a municipality or state agency, a statement of its qualifications as a holder;

(G) the filing fee in accordance with the schedule established by the Panel;

(H) a statement as to whether the easement was originally conveyed with any donor-imposed restriction accepted by the holder in exchange for the easement.

(2) The petition shall be signed by each holder of the subject easement, the landowner or landowner's representative, and any person who holds an executory interest that allows assumption of the ownership of the property or the easement if the amendment is approved.

(b) Service of petition. Immediately on filing with the Panel, the petitioner shall send a copy of the petition to:

(1) the Attorney General, the Vermont Housing and Conservation Board, and the Agencies of Agriculture, Food and Markets and of Natural Resources;

(2) the legislative body, the planning commission, and the conservation commission, if any, of the municipality in which the property is located;

(3) the executive director of the regional planning commission within whose region the property is located;

(4) any person holding an executory interest in the conservation easement; and

(5) all persons who originally conveyed or amended the conservation easement, unless the existing easement was conveyed or amended more than 25 years before the filing of the petition or the Panel determines that the addresses cannot be reasonably ascertained under the circumstances or that notification of such persons is otherwise impracticable; however, if the original conveyance of the easement contained any donor-imposed restrictions accepted by the holder in exchange for the easement, the Panel shall require the petitioner to demonstrate that it has made reasonable efforts to provide a copy of the petition to all persons who originally conveyed the conservation easement.

(c) Online posting. At the time a petition for a Category 3 amendment is filed, the holder shall post on its website or on another website designated by the Panel a copy of the petition and accompanying materials and information required under subsection (a) of this section.

(d) Notice of petition and proposed hearing by Panel.

(1) On receipt of a complete petition, the Panel shall promptly publish, at the expense of the petitioner, a notice of the petition in at least one area newspaper reasonably calculated to reach members of the public in the area where the protected property is located. The Panel also shall post the notice of public hearing on the Natural Resources Board website. The Panel shall send copies of the hearing notice to the petitioners, to the persons listed in subsection (b) of this section, and to adjoining landowners who may be affected by the amendment to the easement, unless it determines that the number of adjoining landowners is so large that direct notification is not practicable.

(2) The Panel's notice shall include each of the following:

(A) a description of the property subject to the existing conservation easement, the name of each petitioner, and a summary of the proposed amendment;

(B) the date, time, and place of the public hearing that the Panel proposes to hold. The date of the proposed public hearing shall be not less than 25 days and not more than 40 days from the date of publication of the notice in the newspaper. The place of the public hearing shall be in the vicinity of the protected property subject to the easement;

(C) a link to the website on which the petition for the amendment and accompanying materials and information can be found;

(D) a statement that the Panel may waive the proposed public hearing, if no request for a hearing is received by the Panel within 15 days of the date on which the notice is published in the newspaper;

(E) information on how a person may request a public hearing; and

(F) information on how a person may confirm whether the proposed public hearing will be held.

(e) Request for hearing. Any person may request that the Panel hold a public hearing on the proposed amendment. The request for a hearing shall be submitted to the Panel and state the reasons why a hearing is warranted. On receipt by the Panel of a request for hearing, the Panel promptly shall send a copy of the request to the petitioners and to all persons listed in subsection (b) of this section.

(f) Public hearing; process; subpoena authority. The Panel shall conduct a public hearing on a petition under this section if a request for a public hearing is timely filed or it determines that a hearing is necessary.

(1) Any petition and any hearing on a petition for amendment of an easement shall not be considered a contested case under 3 V.S.A. chapter 25.

(2) Any person may participate in any hearing on any petition for amendment of an easement and shall have an opportunity to provide written or oral testimony to the Panel.

(3) The Panel shall have the power to issue a subpoena under the Vermont Rules of Civil Procedure to compel a petitioner to make available all relevant records pertaining to the conservation easement and the proposed amendment. The Environmental Division of the Superior Court shall have jurisdiction over any motion to quash or enforce such a subpoena.

(A) A petitioner may request that the Panel not disclose personal or confidential information contained in records subject to a subpoena under this section that the petitioner demonstrates is not directly and substantially related to the criteria of subsection (h) of this section. On a determination that the petitioner has made such a demonstration, the records shall be exempt from inspection and copying under the Public Records Act and the Panel shall keep the records confidential from all persons except the Panel's members and staff unless a court of competent jurisdiction orders disclosure of the records.

(B) Any person who believes that additional information is needed from the easement holder before or during the hearing may direct a request to the Panel, which may then require the petitioner to produce the requested information.

(C) If the petitioner fails to respond to a subpoena in a timely fashion, the Panel may deny the petition for amendment.

(g) Information considered. In any proceeding under this section, the Panel shall consider all circumstances and information that may reasonably bear upon the public conservation interest in upholding or amending the conservation easement, including each of the following:

(1) any material change in circumstances that has taken place since the easement was conveyed or last amended, including changes in applicable laws or regulations, in the native flora or fauna, or in community conditions and needs, or the development of new technologies or new agricultural and forestry enterprises;

(2) whether the circumstances leading to the proposed amendment were anticipated at the time the easement was conveyed or last amended;

(3) the existence or lack of reasonable alternatives to address the changed circumstances;

(4) whether the amendment changes an easement's stated purpose or hierarchy of purposes;

(5) the certification requirements for Category 2 amendments listed in subdivisions 6326(b)(1)–(4) of this title;

(6) the documented intent of the donor, grantor, and all direct funding sources and any donor-imposed restrictions accepted by the holder in exchange for the easement, if applicable; and

(7) any other information or issue that the Panel considers relevant.

(h) Criteria for approval.

(1) The Panel shall approve an amendment if it finds, by clear and convincing evidence, that the amendment:

(A) is consistent with the public conservation interest;

(B) is consistent with the purposes stated in section 6301 of this chapter;

(C) will not result in private inurement or confer impermissible private benefit under 26 U.S.C. § 501(c)(3);

(D) will result in adequate compensation to the holder. Any such compensation shall be paid to the holder of the easement and shall be used by the holder for the conservation of lands in a manner consistent, as nearly as possible, with the public conservation interest stated in the easement; and

(E) meets at least one of the following:

(i) the amendment promotes or enhances the conservation purposes of the easement or the protected qualities under the easement, even though it may be inconsistent with a strict interpretation of the terms of the existing easement;

(ii) enforcement of the easement term proposed for amendment would result in significant financial burdens to the easement holder or landowner and result in minimal conservation benefit to the public; or

(iii) the amendment clearly enhances the public conservation interest, even though it may allow the diminution of one or more conservation purposes or protected qualities on the property protected by the existing easement.

(2) In the event the conservation easement subject to the petition requires that an amendment comply with more restrictive conditions than the criteria listed in this subsection, the Panel must also find that those conditions have been met in order to approve the amendment.

(i) Decision. Following the hearing, or after a determination without a hearing, the Panel shall issue a written decision approving, approving with conditions, or denying the amendment request and stating the reasons for the Panel's decision.

(1) The Panel shall post its written decision on the Board's website and shall distribute a copy to each holder of the subject easement, the landowner, the Attorney General, and to any other person who participated in the public hearing, if one was held.

(2) If the decision approves an amendment that terminates an easement in whole or in part, the Panel shall require that the holder apply any monetary compensation to achieve a conservation purpose similar to that stated in the easement and shall require, as a condition of approval, the holder to identify such purpose and provide documentation proving that the compensation has been applied in accordance with this subdivision (2).

(j) The Attorney General may request reconsideration of a decision by the Panel. Such a request shall be filed within 30 days of the decision and shall identify each specific issue to be reconsidered. The request shall not be governed by the Vermont Rules of Civil Procedure and shall address the merits of each specific issue. In its decision, the Panel shall address the merits of each such issue under subsection (h) of this section.

§ 6329. PETITION TO ENVIRONMENTAL DIVISION

(a) A holder may file a petition for approval of a Category 3 amendment with the Environmental Division of the Superior Court. A holder shall file a petition for approval of an easement amendment with the Environmental

Division of the Superior Court, pursuant to the requirements of this section, if, by its express terms, an easement provides that the proposed amendment may only be approved by court order.

(1) The petition shall be signed by each holder, the landowner or landowner's representative, and any person who holds an executory interest that allows assumption of ownership of the property or the easement, if the amendment is approved.

(2) The petitioner shall serve the petition on the persons described in subdivisions 6328(b)(1)–(5) of this title.

(A) As to a petition under this section, the Division shall determine which persons who originally conveyed or amended the easement shall be notified under subdivision 6328(b)(5) of this title.

(B) The petitioner shall serve the petition on adjoining landowners who may be affected by the amendment to the easement, unless on motion of the petitioner the Division determines that the number of adjoining landowners is so large that such service is not practicable. The Division may direct the petitioner to provide a list of adjoining landowners.

(3) A petition under this section shall include the content required by subdivision 6328(a)(1)(A) through (F) of this title and such other information as the Division's rules may direct.

(b) A petition under this section shall be a matter of original jurisdiction before the Environmental Division. The Division shall provide notice of the first status conference or hearing, whichever is earlier, to the persons signing the petition and the persons on whom service of the petition is required. The Vermont Rules of Environmental Court Proceedings shall apply to petitions under this section. The Attorney General shall have a statutory right to intervene in a petition under this section and may appear at his or her discretion.

(c) In deciding a petition under this section, the Division shall consider the information described under subsection 6328(g) of this title and apply the criteria enumerated under subdivision 6328(h) of this title. However, if the terms of the conservation easement proposed for an amendment provide one or more criteria for amendment that are more stringent than those applied by the Panel, the Division shall apply the more stringent criteria set forth in the easement in making its decision.

(d) Unless otherwise agreed, the holder or holders who file a petition under this section shall bear the costs and expenses of review of the petition.

§ 6330. HOLDER'S PUBLIC REVIEW AND HEARING PROCESS

(a) A holder may adopt and conduct a holder's public review process for a Category 3 amendment. Such a process may only be used if all holders agree to use the process and one of the holders is publicly identified in the initial notice as responsible for the publication by newspaper and on its website of all notices and documents required under this section.

(b) A holder's public review process shall include each of the following:

(1) Creation of an easement amendment proposal containing the same information described in subdivision 6328(a)(1)(A)–(F) of this title, except that a holder may defer the certification requirements referenced in subdivision 6328(a)(1)(D) of this title until after it completes the public hearing;

(2) Posting of the easement amendment proposal on the website of the holder publicly identified under subsection (a) of this section;

(3) Publication of a notice of the petition in at least one area newspaper reasonably calculated to reach members of the public in the area where the protected property is located. The notice also shall be placed on the website of the holder publicly identified under subsection (a) of this section. The notice shall include each of the following:

(A) A description of the property subject to the existing conservation easement, the name of each petitioner, and a summary of the proposed amendment;

(B) The date, time, and place of the public hearing. The date of the public hearing shall be not less than 25 days and not more than 40 days from the date of publication of the notice in the newspaper. The place of the public hearing shall be in the vicinity of the protected property subject to the easement;

(C) A link to the website where the easement amendment proposal and accompanying materials and information may be found;

(4) Sending a copy of the easement amendment proposal and notice to the persons described in subdivisions 6328(b)(1)–(5) of this title;

(5) Sending a copy of the notice to all adjoining landowners who may be affected by the amendment to the easement, unless all holders of the subject easement agree that the number of adjoining landowners is so large that direct notification is not practicable.

(c) Any person may participate in the holder's public review process and public hearing by submitting written comments or oral comments, or both, at the public hearing. The holder may require each participant in the public hearing to sign a register noting their presence at the hearing and providing their electronic or other mailing address.

(d) If following the public review and hearing process the holder approves the amendment, the holder shall prepare a written decision that:

(1) Explains the changes to the easement that have been approved;

(2) Considers the information described under subsection 6328(g) of this title in relation to the easement amendment proposal;

(3) Applies the criteria enumerated under subdivision 6328(h) of this title to the easement amendment proposal;

(4) Lists all persons who submitted written or oral comments during the public review and hearing process;

(5) Summarizes the nature of any objection made to the amendment during the public review and hearing process and explains how the objection was addressed or why it was rejected.

(e) All holders of an easement shall conduct a single, combined holder's public review process that complies with this section for any particular amendment that has been proposed to the easement. The holders may prepare a written decision to which they all agree. If all holders do not agree to the written decision, the amendment shall not be approved.

(f) The holder shall file the decision with the Panel, together with a certification that the holder has conducted a public hearing and complied with this section. At the time of this filing, the holder shall post on its website:

(1) a copy of the written decision and certification filed with the Panel;

(2) the date that the decision and certification were filed with the Panel; and

(3) the notice described in subsection (g) of this section.

(g) Immediately on filing the decision with the Panel, the holder shall send a notice of the decision to all persons listed in subdivisions 6328(b)(1)–(5) of this title and shall provide a link to the holder's website where the decision, certification, and other information may be found. The notice shall:

(1) state the date on which the decision was filed with the Panel;

(2) list the persons who have the right to file a request for review with the Panel under subsection 6331(a) of this title and state that any request for review must be submitted to the Panel within 30 days of the date the holder filed its decision with the Panel; and

(3) state that any such request for review must state the bases for the appeal, include a statement of issues, and make a prima facie showing that the holder's decision is not in the public conservation interest.

(h) If at any time prior to the issuance of a final decision by the holder, any holder or the landowner decides to terminate the holder's public review process, the amendment shall not be approved. However, at the option of the landowner and holder, the proposed amendment may be submitted and approved as a Category 3 amendment by the Panel or the Environmental Division of the Superior Court in accordance with this subchapter.

§ 6331. PANEL REVIEW OF HOLDER'S DECISION FOLLOWING PUBLIC REVIEW AND HEARING

(a) The following persons have the right to request that the Panel review the holder's decision under section 6330 of this title:

(1) the Attorney General;

(2) the person who originally conveyed the easement, if the easement was donated or provided through a bargain sale or other mechanism in which the person who conveyed the easement received a tax deduction;

(3) the legislative body of the municipality in which the property subject to the easement is located;

(4) any person who provided an oral or written comment during the holder's public review and hearing process.

(b) A request to review under this section must be filed with the Panel within 30 days of the date the holder files the decision and certification with the Panel.

(c) A request for review of a holder's decision must be in writing, state the bases for the request to review, contain a statement of issues, and make a prima facie showing that the holder's decision is not in the public conservation interest.

(1) A person who originally conveyed the easement may also make a prima facie case that the amendment fails to comply with conditions concerning amendments that may be contained in the original easement.

(2) In this section, the term "prima facie" means an initial showing of specific facts which, if proven, would show that the easement amendment is not in the public conservation interest or, if the request was filed by a person who originally conveyed the easement, does not comply with conditions concerning amendments that may be contained in the original easement. A prima facie showing also shall include the reasons why the facts prove that the amendment is not in the public conservation interest or does not comply with the original easement's conditions.

(d) The Panel, on its own initiative or by written request of the holder, may dismiss a request for review without further hearing if the person requesting

the review is not eligible to request review under this section or the request for review fails to comply with subsection (c) of this section.

(e) With respect to an amendment for which the holder's public review and hearing under section 6330 of this title was completed, the Panel shall, at the request of the landowner or holder, issue a certificate in recordable form that the holder has made the required certifications and that no further approval of the amendment is required if:

(1) no request for review was filed within the time permitted under subsection (b) of this section; or

(2) such a request was filed and dismissed under subsection (d) of this section.

(f) In the event that a timely request for review is filed and not dismissed under subsection (d) of this section, the Panel shall review the amendment as a Category 3 amendment in accordance with section 6328 of this title, provided that:

(1) the request for review shall be limited to the statement of issues raised in the request for review, unless the Panel determines that a request to amend the statement of issues is timely filed and will not result in prejudice to any party to the proceeding; and

(2) the decision of the holder shall be presumed to be in the public conservation interest. This presumption shall be rebutted if the Panel finds that there was a substantial violation of the procedural requirements of section 6330 of this title or if the amendment does not meet the criteria of section 6328(h) of this title.

§ 6332. REVOCATION OF EASEMENT AMENDMENTS

(a) Revocation by the Panel. On its own initiative or at the request of the Attorney General or a person who participated in the Panel's or holder's review process, the Panel may revoke easement amendments approved under section 6328, 6330, or 6331 of this title.

(1) A revocation petition before the Panel shall be a contested case under 3 V.S.A. chapter 25, and the Panel shall comply with 3 V.S.A. § 814(c) (notice; opportunity to show compliance).

(2) The Panel may revoke an easement amendment approved under section 6328, 6330, or 6331 of this title if finds one or more of the following:

(A) noncompliance with the easement amendment decision of the Panel or any condition of that decision;

(B) noncompliance with the holder's decision following the holder's public review and hearing process under section 6330 of this title, concerning

which decision the Panel has issued a certificate to the holder pursuant to section 6331 of this title;

(C) failure of a holder of the easement to disclose all relevant and material facts in the petition or during the review process;

(D) misrepresentation by a holder of the easement of any relevant and material fact at any time.

(b) The Attorney General or the Panel may petition the Environmental Division to revoke an easement amendment approved by the Division under section 6329 of this title.

(1) Each holder of the easement amendment subject to the petition shall be given notice and an opportunity to show compliance.

(2) The Division may revoke an easement amendment approved by the Division under section 6329 of this title if it finds one or more of the following:

(A) noncompliance with the easement amendment decision of the Division or any condition of that decision;

(B) failure of a holder of the easement to disclose all relevant and material facts in the petition or during the review process;

(C) misrepresentation by a holder of the easement of any relevant and material fact at any time.

(c) This section shall not be applied to alter the rights of a good faith purchaser who, subsequent to approval of an amendment under this chapter, purchased property affected by the amendment without notice of the misrepresentation or failure to disclose and was not responsible for and had no knowledge or constructive notice of the conditions imposed by the Panel or Environmental Division.

§ 6333. APPEALS

(a) Appeals. A final decision of the Panel or the Environmental Division of the Superior Court under this subchapter may be appealed to the Supreme Court within 30 days of the decision's issuance.

(b) Persons eligible to appeal. Only the following persons shall have the right to appeal to the Vermont Supreme Court under this section:

(1) a holder of the subject easement;

(2) the landowner;

(3) the Attorney General;

(4) the Panel, but only of a decision of the Environmental Division on a revocation petition brought by the Panel under section 6332 of this title; or

(5) the persons who originally conveyed the easement if the conservation easement contained any donor-imposed restriction accepted by the holder in exchange for the easement.

(c) Appeal by fewer than all holders. If the appeal is filed by fewer than all of the holders, the holder or holders filing the appeal shall bear the holder's cost and expenses of the appeal. However, the decision on appeal shall be binding on all holders and on all other parties.

(d) Preservation. An objection that has not been raised before the Panel or the Environmental Division may not be considered by the Supreme Court, unless the failure or neglect to raise that objection is excused by the Supreme Court because of extraordinary circumstances.

(e) Standard of review. The Supreme Court may reverse a decision appealed under this section only if the decision is clearly erroneous or the Panel or Environmental Division clearly abused its discretion.

§ 6334. CONTRIBUTOR RESTITUTION ACTIONS; DAMAGE LIMITATION

A decision by the Panel or the Environmental Division on an amendment under this subchapter shall not affect any right of a person who has personally or directly contributed to the holder's acquisition of the easement to seek restitution in a court of competent jurisdiction of the contribution based upon misrepresentation or breach of contract on the part of the easement holder. However, such restitution shall be only for the amount contributed or granted, and shall not include interest, damages, attorney's fees, or other costs, unless the reviewing court finds that the holder has acted in bad faith.

§ 6335. REPORT TO GENERAL ASSEMBLY

Each state agency shall provide to the General Assembly a report of any easement amendments made during the previous year. The report shall summarize each easement amendment and describe both the reasons for the amendment and how the amendment promotes the public conservation interest. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this section.

Sec. 8. 4 V.S.A. § 34 is amended to read:

§ 34. JURISDICTION; ENVIRONMENTAL DIVISION

The ~~environmental division~~ Environmental Division shall have:

(1) jurisdiction of matters arising under 10 V.S.A. chapters 201 and 220 ~~of Title 10~~;

(2) jurisdiction of matters arising under 24 V.S.A. chapter 61, subchapter 12, and chapter 117 ~~and subchapter 12 of chapter 61 of Title 24~~; ~~and~~

(3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151 ~~of Title 10~~; and

(4) such original jurisdiction to approve or deny and to revoke amendments of conservation easements as is provided by 10 V.S.A. chapter 155, subchapter 2.

Sec. 9. 10 V.S.A. § 324 is amended to read:

§ 324. STEWARDSHIP

(a) The Board shall amend or terminate conservation easements held pursuant to this chapter only in accordance with chapter 155, subchapter 2 of this title.

(b) If an activity funded by the ~~board~~ Board involves acquisition by the ~~state~~ State of an interest in real property for the purpose of conserving and protecting agricultural land or forestland, important natural areas, or recreation lands, the ~~board~~ Board, in its discretion, may make a one-time grant to the appropriate state agency, qualified organization, or municipality. The grant shall not exceed ten percent of the current appraised value of that property interest and shall be used to support its proper management or maintenance or both.

Sec. 10. 10 V.S.A. § 823 is amended to read:

§ 823. INTERESTS IN REAL PROPERTY

Conservation and preservation rights and interests shall be deemed to be interests in real property and shall run with the land. A document creating such a right or interest shall be deemed to be a conveyance of real property and shall be recorded under 27 V.S.A. chapter 5. ~~Such a right or interest shall be subject to the requirement of filing a notice of claim within the 40-year period as provided in 27 V.S.A. § 603.~~ Such a right or interest shall be enforceable in law or in equity. Any subsequent transfer, mortgage, lease, or other conveyance of the real property or an interest in the real property shall reference the grant of conservation rights and interests in the real property, provided, however, that the failure to include a reference to the grant shall not affect the validity or enforceability of the conservation rights and interests.

Sec. 11. 27 V.S.A. § 604 is amended to read:

§ 604. FAILURE TO FILE NOTICE

(a) This subchapter shall not bar or extinguish any of the following interests, by reason of failure to file the notice provided for in section 605 of this title:

* * *

(8) Any conservation rights or interests created pursuant to 10 V.S.A. chapter 34 or 155.

* * *

Sec. 12. EASEMENT AMENDMENT PANEL; INITIAL APPOINTMENTS

By October 1, 2013, the Governor shall appoint the members of the Easement Amendment Panel under Sec. 7 of this act, 10 V.S.A. § 6323(a)(2)–(4) (members; easement amendment panel). The initial term of the members appointed under 10 V.S.A. § 6323(a) from a list submitted by qualified organizations shall expire on February 1, 2017. The initial term of the members appointed under 10 V.S.A. § 6323(a) from a list submitted by the Vermont Housing and Conservation Board shall expire on February 1, 2015.

Sec. 13. EFFECTIVE DATES

(a) This section, Sec. 12 of this act, and, in Sec. 7 of this act, 10 V.S.A. § 6323 shall take effect on passage.

(b) The remainder of the act shall take effect on January 1, 2014.

(Committee vote: 4-0-1)

S. 128.

An act relating to updating mental health judicial proceedings.

Reported favorably with recommendation of amendment by Senator Fox for the Committee on Health and Welfare.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 171 is amended to read:

CHAPTER 171. GENERAL PROVISIONS

§ 7101. DEFINITIONS

As used in this part of this title, the following words, unless the context otherwise requires, shall have the following meanings:

* * *

(4) "Designated hospital" means a public or private hospital, other facility, or part of a hospital or facility designated by the ~~commissioner~~ Commissioner as adequate to provide appropriate care for ~~the mentally ill patient~~ persons with mental illness.

(5) "Elopement" means the leaving of a designated hospital or designated program ~~or training school~~ without lawful authority.

* * *

(9) "Interested party" means a guardian, spouse, parent, adult child, close adult relative, a responsible adult friend, or person who has the individual in his or her charge or care. It also means a mental health professional, a law enforcement officer, or a licensed physician~~, a head of a hospital, a selectman, a town service officer, or a town health officer~~.

* * *

(15) "Patient" means a resident of or person in Vermont ~~qualified under this title for hospitalization or treatment as a mentally ill or mentally retarded individual~~ who is subject to involuntary or voluntary mental health treatment or evaluation.

* * *

(26) "No refusal system" means a system of designated hospitals ~~and~~, intensive residential recovery facilities, secure residential recovery facilities, and residential treatment programs under contract with the ~~department of mental health~~ 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~~ Commissioner in contract.

(27) "Participating hospital" means a designated hospital under contract with the ~~department of mental health~~ Department of Mental Health to participate in the no refusal system.

(28) "Secure," when describing a residential recovery facility, means that the residents can be physically prevented from leaving the facility by means of locking devices or other mechanical or physical mechanisms.

(29) "Secure residential recovery facility" means a residential facility owned and operated by the State and licensed as a therapeutic community residence, as defined in 33 V.S.A. § 7102(11), for an individual who no longer requires acute inpatient care but who remains in need of treatment within a secure setting for an extended period of time or for an individual transferred pursuant to 28 V.S.A. § 705a.

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

* * *

§ 7104. WRONGFUL ~~HOSPITALIZATION~~ PLACEMENT IN CUSTODY OR DENIAL OF RIGHTS; FRAUD~~; ELOPEMENT~~

Any person who ~~wilfully~~ willfully causes, or conspires with, or assists another to cause any of the following shall be fined not more than $500.00 or imprisoned not more than one year, or both:

(1) the hospitalization of an individual knowing that the individual is not mentally ill or in need of hospitalization or treatment as a ~~mentally ill or mentally retarded individual~~ person with a mental illness; ~~or~~

(2) the denial to any individual of any rights granted to him or her under this part of this title; ~~or~~

(3) the voluntary admission to a hospital of an individual knowing that he or she is not mentally ill or eligible for treatment thereby attempting to defraud the ~~state~~ State; or

(4) the elopement of any patient ~~or student~~ from a hospital ~~or training school,~~ or who knowingly harbors any ~~sick person~~ patient who has eloped from a hospital, or who aids in abducting a patient ~~or student~~ who has been conditionally discharged from the person or persons in whose care and service that patient ~~or student~~ has been legally placed~~; shall be fined not more than $500.00 or imprisoned not more than one year, or both~~.

§ 7105. ~~ARREST~~ APPREHENSION OF ELOPED PERSONS

Any sheriff, deputy sheriff, ~~constable,~~ or officer of ~~state~~ State or local police, and any officer or employee of any designated hospital~~, designated program,~~ or ~~training school~~ a secure residential recovery facility may ~~arrest any~~ take into custody and return to a designated hospital or a secure residential recovery facility a person in the custody of the Commissioner who has eloped ~~from a designated hospital or designated program or training school and return such person~~.

§ 7106. NOTICE OF ~~HOSPITALIZATION~~ CUSTODY AND DISCHARGE

Whenever a patient has been admitted to a designated hospital other than upon his or her own application, the head of the designated hospital shall immediately notify the patient's legal guardian~~, spouse, parent or parents, or nearest known relative or interested party, if known~~ and agent as defined in section 9701 of this title, if any, or if a minor, the patient's parent or legal guardian. If the involuntary hospitalization or admission was without court

order, notice shall also be given to the superior court judge for the ~~family division of the superior court~~ Family Division of the Superior Court in the unit wherein the designated hospital is located. If the hospitalization or admission was by order of any court, the head of the designated hospital admitting or discharging ~~an individual~~ the patient shall forthwith make a report thereof to the ~~commissioner~~ Commissioner and to the court which entered the order for hospitalization or admission.

§ 7107. ~~EXTRAMURAL WORK~~

~~Any hospital or training school in the state dealing with mental health may do, or procure to be done, extramural work in the way of prevention, observation, care, and consultation with respect to mental health.~~ [Repealed.]

§ 7108. ~~CANTEENS~~

~~The chief executive officer of the Vermont State Hospital or its successor in interest may conduct a canteen or commissary, which shall be accessible to patients, employees, and visitors of the Vermont State Hospital or its successor in interest at designated hours and shall be operated by employees of the hospital. A revolving fund for this purpose is authorized. The salary of an employee of the hospital shall be charged against the canteen fund. Proceeds from sales may be used for operation of the canteen and the benefit of the patients and employees of the hospital under the direction of the chief executive officer and subject to the approval of the commissioner. All balances of such funds remaining at the end of any fiscal year shall remain in such fund for use during the succeeding fiscal year. An annual report of the status of the funds shall be submitted to the commissioner.~~ [Repealed.]

§ 7109. ~~SALE OF ARTICLES; REVOLVING FUND~~

~~(a) The superintendent of a hospital or training school may sell articles made by the patients or students in the handiwork or occupational therapy departments of the institution and the proceeds thereof shall be credited to a revolving fund. When it is for their best interest, the superintendent may, with the consent of the patients or their legal representatives, employ patients or students or permit them to be employed on a day placement basis.~~

~~(b) The consent of the patient or the legal representative of the patient or student shall, in consideration of the undertaking of the superintendent, contain the further agreement that one-half the earnings of the patient or student shall be credited to the personal account of the patient or student so employed at interest for benefit of the patient or student and the balance shall be credited to the fund. The superintendent shall hold and expend the fund for the purchase of equipment and materials for the handicraft or group therapy departments and for the educational and recreational welfare of the patient or student group. He or she shall submit an annual report of the fund to the commissioner.~~

~~Balances remaining in it at the end of a fiscal year shall be carried forward and be available for the succeeding fiscal year.~~

~~(c) For purposes of this section the legal representative of the patient or student shall be the duly appointed guardian, the spouse, the parents or the next of kin legally responsible for the patient or student. In their absence, the commissioner shall be the legal representative.~~ [Repealed.]

* * *

§ 7111. RIGHT TO LEGAL COUNSEL

In any proceeding before~~,~~ or notice to~~,~~ a court of this ~~state~~ State involving a patient ~~or student,~~ or a proposed patient ~~or student~~, that person shall be afforded counsel, and if the patient ~~or student~~ or proposed patient ~~or student~~ is unable to pay for counsel, compensation shall be paid by the ~~state~~ State to counsel assigned by the court; however, this section shall not apply to a proceeding under section 7505 of this title.

* * *

§ 7113. INDEPENDENT EXAMINATION: PAYMENT

Whenever a court orders an independent examination by a mental health professional ~~or a qualified mental retardation professional~~ pursuant to this title or 13 V.S.A. § 4822, the cost of the initial examination shall be paid by the ~~department of disabilities, aging, and independent living or of health~~ Department of Mental Health. The mental health professional ~~or qualified mental retardation professional~~ may be selected by the court but the ~~commissioner of disabilities, aging, and independent living or the commissioner of mental health~~ Commissioner of Mental Health may adopt a reasonable fee schedule for examination, reports, and testimony.

Sec. 2. 18 V.S.A. § 7205 is amended to read:

§ 7205. SUPERVISION ~~OF INSTITUTIONS~~

(a) The ~~department of mental health~~ Department of Mental Health shall operate the Vermont State Hospital or its successor in interest and a secure residential recovery facility. The Department shall be responsible for patients receiving involuntary treatment.

(b) The ~~commissioner of the department of mental health~~ Commissioner of Mental Health, in consultation with the ~~secretary~~ Secretary, shall appoint a chief executive officer of the Vermont State Hospital or its successor in interest and a facility director of the secure residential recovery facility to oversee the operations of the hospital and the secure residential recovery facility, respectively. The chief executive officer position shall be an exempt position.

Sec. 3. PURPOSE OF THE MENTAL HEALTH CARE OMBUDSMAN

Due to the State's unique role in coordinating and providing services for Vermonters with one or more diagnosed mental health conditions, the General Assembly created the Office of the Mental Health Care Ombudsman, and now finds it necessary to clarify the Office's role, which is to safeguard access to services and those rights and protections that may be at risk. Due to the fact that the Office of the Mental Health Care Ombudsman addresses methods of care that are not as prevalent as among other health conditions, the Office's existence remains consistent with the principles of parity and achieving integration throughout Vermont's health care system.

Sec. 4. 18 V.S.A. chapter 178 is added to read:

CHAPTER 178. MENTAL HEALTH CARE OMBUDSMAN

§ 7451. DEFINITIONS

As used in this chapter:

(1) "Agency" means the organization designated by the Governor as the protection and advocacy system for the State pursuant to 42 U.S.C. § 10801 et seq.

(2) "Department" means the Department of Mental Health.

(3) "Intensive residential recovery facility" shall have the same meaning as in section 7252 of this title.

(4) "Mental Health Care Ombudsman" or "Ombudsman" means an individual providing protection and advocacy services pursuant to this chapter.

(5) "Office" means the Office of the Mental Health Care Ombudsman.

(6) "Secure residential recovery facility" shall have the same meaning as in section 7620 of this title.

(7) "State agency" means any office, department, board, bureau, division, agency, or instrumentality of the State.

§ 7452. OFFICE OF THE MENTAL HEALTH CARE OMBUDSMAN

(a) The Department of Mental Health shall establish the Office of the Mental Health Care Ombudsman within the Agency by executing a memorandum of designation between the Department and the Agency.

(b) The Office shall represent the interests of Vermonters with one or more diagnosed mental health conditions, including individuals receiving services at designated hospitals, emergency rooms, correctional facilities, intensive residential recovery facilities, secure residential recovery facilities, or within a community setting.

(c) The Office shall be directed by an individual, to be known as the Mental Health Care Ombudsman, who shall be selected from among individuals within the Agency executing the memorandum of designation with the Department of Mental Health.

§ 7453. RESPONSIBILITIES OF THE OFFICE

(a) The Office may:

(1) investigate individual cases of abuse, neglect, and other serious violations of individuals in Vermont with diagnosed mental health conditions;

(2) analyze, monitor, and aim to reduce the use of seclusion, restraint, coercion, and involuntary mental health procedures;

(3)(A) review emergency involuntary procedure reports provided by the Department;

(B) confer with the Department at least twice annually regarding any findings or recommendations for improvement made by the Office in response to the emergency involuntary procedure reports;

(4)(A) review any reports provided by the Department of untimely deaths of individuals with a diagnosed mental health condition in designated hospitals, intensive residential recovery facilities, secure residential recovery facilities, or community settings;

(B) confer with the Department regarding any findings or recommendations for improvement made by the Office in response to the untimely death reports;

(5) participate on state panels reviewing the treatment of individuals with a diagnosed mental health condition;

(6) integrate efforts with the Health Care Ombudsman's Office established under 8 V.S.A. chapter 107, subchapter 1A and the Long-Term Care Ombudsman's Office established under 33 V.S.A. chapter 75 to minimize duplication of efforts; and

(7) annually, on or before January 15th, submit a report to the Department and General Assembly detailing all activities performed pursuant to this chapter and recommending improvements to the mental health system.

(b)(1) A person shall not impose any additional duties on the Office in excess of the requirements set forth in subsection (a) of this section or otherwise imposed on agencies under federal law.

(2) Nothing in this chapter shall supersede the authorities or responsibilities granted to the Agency under Protection and Advocacy for Individuals with Mental Illness, 42 U.S.C. §§ 10801–10851.

(3) The General Assembly may at any time allocate funds it deems necessary to supplement federal funding used to maintain the Office.

§ 7454. AUTHORITY OF THE MENTAL HEALTH CARE OMBUDSMAN

In fulfilling the responsibilities of the Office, the Mental Health Care Ombudsman may:

(1) Hire or contract with persons or organizations to fulfill the purposes of this chapter.

(2) Communicate and visit with any individual with a diagnosed mental health condition, provided that the Ombudsman shall discontinue interactions with any individual when requested to do so by that individual. Toward that end, designated hospitals, emergency rooms, correctional facilities, intensive residential recovery facilities, secure residential recovery facilities, and other community treatment facilities shall provide the Ombudsman access to their facilities and to individuals for whom they provide mental health services. If the individual with a diagnosed mental health condition has a guardian, the Office shall take no formal action without consent of the guardian or a court order, unless an emergency situation arises.

(3) Delegate to employees any part of the Mental Health Care Ombudsman's authority.

(4) Take such further actions as are necessary in order to fulfill the purpose of this chapter.

§ 7455. COOPERATION OF STATE AGENCIES

(a) All state agencies shall comply with requests of the Mental Health Care Ombudsman for information and assistance necessary to carry out the responsibilities of the Office.

(b) The Secretary of Human Services may adopt rules necessary to ensure that departments within the Agency of Human Services cooperate with the Office.

§ 7456. CONFIDENTIALITY

In the absence of written consent by an individual with a diagnosed mental health condition about whom a report has been made, or by his or her guardian or legal representative, or a court order, the Mental Health Care Ombudsman shall not disclose the identity of such person, unless otherwise provided for under Protection and Advocacy for Individuals with Mental Illness, 42 U.S.C. §§ 10801–10851.

§ 7457. IMMUNITY

Civil liability shall not attach to the Mental Health Care Ombudsman or his or her employees for good faith performance of the duties imposed by this chapter.

§ 7458. INTERFERENCE AND RETALIATION

(a) A person who intentionally hinders a representative of the Office acting pursuant to this chapter shall be imprisoned not more than one year or fined not more than $5,000.00, or both.

(b) A person who takes discriminatory, disciplinary, or retaliatory action against an employee, a resident, or a volunteer of a designated hospital, correctional facility, intensive residential recovery facility, secure residential recovery facility, community treatment facility, or state agency for any communication made, or information disclosed, to aid the Office in carrying out its duties and responsibilities shall be imprisoned not more than one year or fined not more than $5,000.00, or both. An employee, a resident, or a volunteer of such facilities or state agencies may seek damages in superior court against a person who takes an action prohibited by this subsection.

§ 7459. CONFLICT OF INTEREST

The Mental Health Care Ombudsman, an employee of the Ombudsman, or an immediate family member of the Ombudsman or of an employee shall not have any financial interest in or authority over a designated hospital, correctional facility, intensive residential recovery facility, secure residential recovery facility, or community treatment facility and from providing mental health services, which creates a conflict of interest in carrying out the Ombudsman's responsibilities under this chapter.

Sec. 5. 18 V.S.A. § 7505 is amended to read:

§ 7505. WARRANT FOR IMMEDIATE EXAMINATION

(a) In emergency circumstances ~~where a certification by a physician is not available without serious and unreasonable delay, and when personal observation of the conduct of a person constitutes reasonable grounds to believe that the person is a person in need of treatment, and he or she presents an immediate risk of serious injury to himself or herself or others if not restrained~~, a law enforcement officer or mental health professional may make an application~~, not accompanied by a physician's certificate,~~ to any district or superior court judge for a warrant for an immediate examination when:

(A) a certification by a physician is not available without serious and unreasonable delay;

(B) personal observation of the conduct of a person constitutes reasonable grounds to believe that the person is a person in need of treatment; and

(C) the person presents an immediate risk of serious injury to himself or herself or others if not restrained.

(b) The law enforcement officer or mental health professional, or both, may take the person into temporary custody and shall apply to the court without delay for the warrant.

(c) If the judge is satisfied that a physician's certificate is not available without serious and unreasonable delay, and that probable cause exists to believe that the person is in need of an immediate examination pursuant to subsection (a) of this section, ~~he or she~~ the judge may grant the warrant and order the person to submit to an immediate examination at a designated hospital.

(d) ~~If necessary~~ By granting a warrant, the court ~~may order the~~ authorizes a law enforcement officer or mental health professional to transport the person to a designated hospital for an immediate examination.

(e) Upon admission to a designated hospital pursuant to a warrant for immediate examination, the person shall be ~~immediately~~ examined by a licensed physician immmediately. If the physician certifies that the person is a person in need of treatment, the person shall be held for an emergency examination in accordance with section 7508 of this title. If the physician does not certify that the person is a person in need of treatment, ~~he or she~~ the physician shall immediately discharge the person and cause him or her to be returned to the place from which he or she was taken, or to such place as the person reasonably directs.

Sec. 6. 18 V.S.A. chapter 181 is amended to read:

CHAPTER 181. JUDICIAL PROCEEDINGS

* * *

§ 7612. APPLICATION FOR INVOLUNTARY TREATMENT

(a) An interested party may, by filing a written application, commence proceedings for the involuntary treatment of an individual by judicial process.

(b) The application shall be filed in the ~~criminal division of the superior court of~~ Family Division of the Superior Court for the district in which the proposed ~~patient's residence~~ patient resides or, in the case of a nonresident, in any ~~district~~ superior court.

(c) If the application is filed under section 7508 or 7620 of this title, it shall be filed in the ~~criminal division of the superior court~~ Family Division of the Superior Court in which the hospital is located.

(d) The application shall contain:

(1) The name and address of the applicant; and

(2) A statement of the current and relevant facts upon which the allegation of mental illness and need for treatment is based. The application shall be signed by the applicant under penalty of perjury.

(e) The application shall be accompanied by:

(1) A certificate of a licensed physician, which shall be executed under penalty of perjury stating that he or she has examined the proposed patient within five days of the date the petition is filed, and is of the opinion that the proposed patient is a person in need of treatment, including the current and relevant facts and circumstances upon which the physician's opinion is based; or

(2) A written statement by the applicant that the proposed patient refused to submit to an examination by a licensed physician.

(f) Before an examining physician completes the certificate of examination, he or she shall consider available alternative forms of care and treatment that might be adequate to provide for the person's needs, without requiring hospitalization.

§ 7613. NOTICE—APPOINTMENT OF COUNSEL

(a) When the application is filed, the court shall appoint counsel for the proposed patient, and transmit a copy of the application, the physician's certificate, if any, and a notice of hearing to the proposed patient, his or her attorney, guardian, ~~or any person having custody and control of the proposed patient,~~ if any, the ~~state's attorney,~~ State's Attorney or the ~~attorney general~~ Attorney General, and any other person the court believes has a concern for the proposed patient's welfare. A copy of the notice of hearing shall also be transmitted to the applicant and certifying physician.

* * *

§ 7617. FINDINGS; ORDER

(a) If the court finds that the proposed patient was not a person in need of treatment at the time of admission or application or is not a patient in need of further treatment at the time of the hearing, the court shall enter a finding to that effect and shall dismiss the application.

(b)(1) If the proposed patient is found to have been a person in need of treatment at the time of admission or application and a patient in need of further treatment at the time of the hearing, the court may order the person:

~~(1)~~(A) hospitalized in a designated hospital;

~~(2)~~(B) hospitalized in any other public or private hospital if he or she and the hospital agree; or

~~(3)~~(C) to undergo a program of treatment other than hospitalization.

(2) If the application for treatment was made in accordance with 28 V.S.A. § 705a and the proposed patient is found to be a person in need of treatment at the time of application and at the time of the hearing, the only order for treatment other than hospitalization that a court may enter is an order of nonhospitalization at a secure residential recovery facility.

(c) Prior to ordering any course of treatment, the court shall determine whether there exists an available program of treatment for the person which is an appropriate alternative to hospitalization. The court shall not order hospitalization without a thorough consideration of available alternatives.

(d) Before making its decision, the court shall order testimony by an appropriate representative of a hospital, a community mental health agency, public or private entity or agency, or a suitable person, who shall assess the availability and appropriateness for the individual of treatment programs other than hospitalization.

* * *

§ 7620. APPLICATION FOR CONTINUED TREATMENT

(a) If, prior to the expiration of any order issued in accordance with section 7623 of this title, the ~~commissioner~~ Commissioner believes that the condition of the patient is such that the patient continues to require treatment, the ~~commissioner~~ Commissioner shall apply to the court for a determination that the patient is a patient in need of further treatment and for an order of continued treatment.

(b) An application for an order authorizing continuing treatment shall contain a statement setting forth the reasons for the ~~commissioner's~~ Commissioner's determination that the patient is a patient in need of further treatment, a statement describing the treatment program provided to the patient, and the results of that course of treatment.

(c) Any order of treatment issued in accordance with section 7623 of this title shall remain in force pending the court's decision on the application.

(d) If the ~~commissioner~~ Commissioner seeks to have the patient receive the further treatment in a secure residential recovery facility, the application for an

order authorizing continuing treatment shall expressly state that such treatment is being sought. The application shall contain, in addition to the statements required by subsection (b) of this section, a statement setting forth the reasons for the ~~commissioner's~~ Commissioner's determination that clinically appropriate treatment for the patient's condition can be provided safely only in a secure residential recovery facility.

(e) As used in this chapter~~:~~

~~(1) "Secure," when describing a residential facility, means that the residents can be physically prevented from leaving the facility by means of locking devices or other mechanical or physical mechanisms.~~

~~(2) "Secure residential recovery facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual who no longer requires acute inpatient care but who does remain in need of treatment within a secure setting for an extended period of time. A~~, "secure residential recovery facility" shall have the same meaning as in section 7101 of this title. Except as provided in 28 V.S.A. § 705a, a secure residential recovery facility shall not be used for any purpose other than the purposes permitted by this section.

§ 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT; ORDERS

(a) The hearing on the application for continued treatment shall be held in accordance with the procedures set forth in sections 7613, 7614, 7615, and 7616 of this title.

(b) If the court finds that the patient is a patient in need of further treatment ~~and requires hospitalization~~, it shall order ~~hospitalization~~ continued treatment for up to one year.

* * *

Sec. 7. 18 V.S.A. § 7708 is amended to read:

§ 7708. ~~SURGICAL OPERATIONS~~

~~If the superintendent finds that a patient supported by the state requires a surgical operation or that a surgical operation would promote the possibility of his or her discharge from the hospital, the superintendent, with the consent of the patient, his or her attorney, or his or her legally appointed guardian, if any, or next of kin, if any be known, may make the necessary arrangements with some surgeon and hospital for the operation. The expense of the operation shall be borne by the state in the same proportion as the patient is supported by the state.~~ [Repealed.]

Sec. 8. 18 V.S.A. chapter 189 is amended to read:

CHAPTER 189. RELEASE AND DISCHARGE

§ 8003. PERSONAL NEEDS OF PATIENT

The ~~commissioner~~ Commissioner shall make any necessary arrangements to ensure:

(1) that no patient is discharged ~~or granted a conditional release~~ from a designated hospital without suitable clothing; and

(2) that any indigent patient discharged ~~or granted a conditional release~~ is furnished suitable transportation for his or her return home and an amount of money as may be prescribed by the head of ~~the~~ a designated hospital to enable the patient to meet his or her immediate needs.

* * *

§ 8006. VISITS

(a) ~~The head of a hospital may grant a visit permit of not more than 30 days to any patient under his or her charge.~~ [Repealed.]

(b) The granting and revocation of visits shall be made in accordance with rules and procedures adopted by the head of the designated hospital.

§ 8007. ~~CONDITIONAL DISCHARGES~~

~~(a) The board or the head of a hospital may conditionally discharge from a hospital any patient who may be safely and properly cared for in a place other than the hospital.~~

~~(b) A conditional discharge may extend for a term of six months, but shall not exceed 60 days unless the head of the hospital determines that a longer period will materially improve the availability of a program of treatment which is an alternative to hospitalization.~~

~~(c) Unless sooner revoked or renewed, a conditional discharge shall become absolute at the end of its term.~~

~~(d) A conditional discharge may be granted subject to the patient's agreement to participate in outpatient, after-care, or follow-up treatment programs, and shall be subject to such other conditions and terms as are established by the granting authority.~~

~~(e) Each patient granted a conditional discharge shall be provided, so far as practicable and appropriate, with continuing treatment on an outpatient or partial hospitalization basis.~~

~~(f) Each patient granted a conditional discharge shall be given a written statement of the conditions of his or her release, the violation of which can cause revocation.~~

~~(g) A conditional discharge may be renewed by the granting authority at any time before it becomes absolute if the head of a hospital first determines that such renewal will substantially reduce the risk that the patient will become a person in need of treatment in the near future.~~ [Repealed.]

§ 8008. ~~REVOCATION OF CONDITIONAL DISCHARGE~~

~~(a) The board or the head of the hospital may revoke a conditional discharge at any time before that discharge becomes absolute if the patient fails to comply with the conditions of the discharge.~~

~~(b) A revocation by the board or the head of the hospital shall authorize the return of the patient to the hospital and shall be sufficient warrant for a law enforcement officer or mental health professional to take the patient into custody and return him or her to the hospital from which he or she was conditionally discharged.~~

~~(c) Immediately upon his or her return to the hospital, the patient shall be examined by a physician who shall orally explain to the patient the purpose of the examination and the reasons why the patient was returned to the hospital.~~

~~(d) If the examining physician certifies in writing to the head of the hospital that, in his or her opinion, the patient is a person in need of treatment, setting forth the recent and relevant facts supporting this opinion, the revocation shall become effective and the patient shall be readmitted to the hospital. If the examining physician does not so certify, the revocation shall be cancelled and the patient shall be returned to the place from which he or she was taken.~~

~~(e) If the patient is readmitted to the hospital, he or she may apply immediately for a judicial review of his or her admission, and he or she shall be given a written notice of this right and of his or her right to legal counsel.~~ [Repealed.]

§ 8009. ADMINISTRATIVE DISCHARGE

(a) The head of ~~the~~ a designated hospital may at any time discharge a voluntary or judicially hospitalized patient whom he or she deems clinically suitable for discharge.

(b) The head of ~~the~~ a designated hospital shall discharge a judicially hospitalized patient when the patient is no longer a patient in need of further treatment. When a judicially hospitalized patient is discharged, the head of ~~the~~ a designated hospital shall notify the ~~applicant, the certifying physician~~ Commissioner, the ~~family division of the superior court~~ Family Division of the Superior Court, and anyone who was notified at the time the patient was hospitalized.

(c) ~~A person~~ An individual responsible for providing treatment other than hospitalization to ~~an individual~~ a person ordered to undergo a program of alternative treatment, under section 7618 or 7621 of this title, may terminate the alternative treatment to the ~~individual~~ person if the provider of this alternative treatment considers the ~~individual~~ person clinically suitable for termination of treatment. Upon termination of alternative treatment, the ~~family division of the superior court~~ the Commissioner and Family Division of the Superior Court shall be so notified by the provider of the alternative treatment. Upon receipt of the notice, the Court shall vacate the order.

* * *

Sec. 9. 18 V.S.A. chapter 197 is amended to read:

CHAPTER 197. MENTALLY ILL USERS OF ALCOHOL OR DRUGS

* * *

§ 8404. ~~CONDITIONAL DISCHARGE~~

~~The board of mental health, in its discretion, may grant a conditional discharge to a patient admitted under this chapter after the expiration of one month from the date of admission and may revoke any conditional discharge so granted. A revocation of a conditional discharge by the board of mental health at any time prior to the expiration of the original term of hospitalization shall be sufficient warrant for the return of the patient to the hospital from which he or she was discharged, there to remain until a subsequent conditional discharge or the expiration of the full term from the date of the original admission.~~ [Repealed.]

§ 8405. OUTSIDE VISITS

In the discretion of the head of a designated hospital, a patient admitted under this chapter may be permitted to visit a specifically designated place for a period not to exceed five days and return to the same hospital. The visit may be allowed to see a dying relative, to attend the funeral of a relative, to obtain special medical services, to contact prospective employers, or for any compelling reason consistent with the welfare or rehabilitation of the patient.

Sec. 10. 18 V.S.A. § 8847 is added to read:

§ 8847. INDEPENDENT EXAMINATION: PAYMENT

Whenever a court orders an independent examination by a qualified intellectual disabilities professional pursuant to this title or 13 V.S.A. § 4822, the cost of the examination shall be paid by the Department of Disabilities, Aging, and Independent Living. The qualified intellectual disabilities professional may be selected by the court but the Commissioner of Disabilities,

Aging, and Independent Living may adopt a reasonable fee schedule for examination, reports, and testimony.

Sec. 11. 18 V.S.A. § 8848 is added to read:

§ 8848. APPREHENSION OF ELOPED PERSONS

Any sheriff, deputy sheriff, or officer of the State or local police and any officer or employee of any designated program may arrest any person who has eloped from a designated program and return such person.

Sec. 12. 28 V.S.A. § 705a is added to read:

§ 705a. TRANSFER TO SECURE RESIDENTIAL RECOVERY FACILITY

(a) If in the discretion of the Commissioner of Mental Health it becomes necessary and appropriate, the Commissioner of Mental Health may file an application, in consultation with the Commissioner of Corrections, in the Family Division of the Superior Court for the involuntary treatment of an incarcerated person pursuant to 18 V.S.A. § 7612 which specifies admission to a secure residential recovery facility as the proposed plan of treatment for the person if it is determined that the person:

(1) has a mental illness as defined in 18 V.S.A. § 7101;

(2) poses a danger to himself or herself or others; and

(3) requires treatment at a secure residential recovery facility.

(b) If the Court finds that the person is in need of treatment pursuant to 18 V.S.A. § 7617(b), the only order of nonhospitalization that a court may order is for a program of treatment at a secure residential recovery facility. This limitation pertains only to applications filed by the Commissioner of Mental Health under this subsection.

(c)(1) When a person is transferred to a secure residential recovery facility pursuant to this section, he or she shall be subject to the supervision of the Commissioner of Mental Health except that the time during which the person is in the custody of the Commissioner of Mental Health shall be computed as part of the term for which he or she was sentenced. He or she shall continue to be eligible for good behavior reductions pursuant to section 811 of this title, and he or she shall continue to be eligible for parole pursuant to chapter 7 of this title.

(2) When the Commissioner of Mental Health determines that a person whose sentence has not expired no longer requires treatment at a secure residential recovery facility, the Commissioner of Mental Health shall return the person to the custody of the Commissioner of Corrections in accordance with 18 V.S.A. chapter 189.

(d) As used in this section, "secure residential recovery facility" shall have the same meaning as in 18 V.S.A. § 7101.

Sec. 13. MENTAL HEALTH LEGISLATIVE WORK GROUP

(a) On or before July 15, 2013, the Commissioner of Mental Health shall convene a work group of stakeholders to examine current Vermont statutes pertaining to judicial proceedings in Title 18, Part 8 and to make recommendations that would more closely align the statutes to the Department of Mental Health's current practices while respecting the rights of affected individuals. Members of the Work Group shall include:

(1) the Commissioner of Mental Health or designee;

(2) the Commissioner of Corrections or designee;

(3) a representative of the Vermont Association of Hospitals and Health Systems;

(4) the Mental Health Care Ombudsman;

(5) the Administrative Judge or designee;

(6) a representative of Vermont Legal Aid's Mental Health Law Project;

(7) a representative of the law enforcement community;

(8) a representative of a designated agency's emergency response team; and

(9) two representatives of the peer community.

(b) The Work Group shall consider:

(1) the Department's current preadmission practices through the time of hospital admission;

(2) emergency examination procedures, including temporary custody;

(3) immediate examination procedures, including reliable reports of conduct and warrants for entering residences;

(4) time limits for certification and judicial proceedings;

(5) processes for referral to and discharge from the secure residential recovery facility;

(6) manners of reducing wait times in emergency departments, including the use of technology and streamlined processes;

(7) a protocol that the Departments of Corrections and of Mental Health may use in serving individuals diverted from court-ordered inpatient treatment due to lack of available bed space; and

(8) any other topic the Commissioner of Mental Health deems appropriate.

(c) On or before November 15, 2013, the Commissioner shall submit a report containing the Work Group's recommendations for legislation to the Mental Health Oversight Committee, the Senate Committee on Health and Welfare, and the House Committee on Human Services.

Sec. 14. REPEAL

18 V.S.A. § 7259 (mental health care ombudsman) is repealed.

Sec. 15. REDESIGNATION

18 V.S.A. chapters 217 (genetic testing), 219 (health information technology), and 220 (Green Mountain Care Board) shall be redesignated to appear within 18 V.S.A. part 9 (unified health care system).

Sec. 16. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

(Committee vote: 5-0-0)

S. 129.

An act relating to workers' compensation liens.

Reported favorably with recommendation of amendment by Senator MacDonald for the Committee on Finance.

The Committee recommends that the bill be amended as follows:

First: by striking out Sec. 1 in its entirety

Second: In Sec. 2, 21 V.S.A. § 643a, after the sentence that reads: "The extension shall be specific as to the number of days needed and the reason for the extension and must be received by the Commissioner prior to the end of the 21-day limit." by inserting a new sentence to read as follows: No extension approved by the Commissioner shall exceed 21 days.

and by renumbering the remaining sections to be numerically correct.

(Committee vote: 5-1-1)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with

full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Heidi Pelletier of Montpelier – Member of Vermont State Colleges Board of Trustees – By Sen. Doyle for the Committee on Education. (3/13/13)

M. Jerome Diamond of Montpelier – Member of Vermont State Colleges Board of Trustees – By Sen. Doyle for the Committee on Education. (3/13/13)

Harlan Sylvester of Burlington – Chair of the Vermont Racing Commission – By Sen. Mullin for the Committee on Economic Development, Housing and General Affairs. (3/14/13)

Cheryl DeVos of North Ferrisburgh – Member of the Vermont Housing and Conservation Board – By Sen. Collins for the Committee on Economic Development, Housing and General Affairs. (3/19/13)

Megan Smith of Mendon – Commissioner, Tourism and Marketing - By Sen. Mullin for the Committee on Economic Development, Housing and General Affairs. (3/19/13)

Lawrence Miller of Montpelier – Secretary, Agency of Commerce and Community Development – By Sen. Doyle for the Committee on Economic Development, Housing and General Affairs. (3/19/13)

NOTICE OF JOINT ASSEMBLY

Thursday, March 28, 2013 - 10:30 A.M. – House Chamber - Retention of seven Superior Court Judges and one Magistrate Judge.

FOR INFORMATION ONLY

CROSSOVER DEADLINES

The following bill reporting deadlines are established for the 2013 session:

(1) From the standing committee of last reference (excluding the Committees on Appropriations and Finance), all Senate bills must be reported out of committee on or before March 15, 2013.

(2) Senate bills referred pursuant to Senate Rule 31, must be reported out of the Committees on Appropriations and Finance on or before March 22, 2013.

(3) These deadlines may be waived for any bill or committee **only** by consent given by the Committee on Rules.