

Journal of the House

Monday, May 13, 2013

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by the Rep. Canfield of Fair Haven.

Pledge of Allegiance

Page Elizabeth O'Hara of Ferrisburgh led the House in the Pledge of Allegiance.

Remarks Journalized

On motion of **Rep. Savage of Swanton**, the following remarks by **Rep. Canfield of Fair Haven** were ordered printed in the Journal:

“Mr. Speaker:

I intended to deliver this message on Saturday, the last day of the Organ Donor Awareness Week. So, I ask your indulgence.

I wear this small lapel pin. It is blue and green with black letters and says donate life. I received this pin from the New England Organ Donor Bank.

This past weekend I attended funeral services for a young man who was four months old. His parents donated his heart to the New England Organ Donor Bank. They felt that his big strong heart valves might prevent other families from suffering the pain they were going through.

Most of you have met my friend, Nancy Hay. When Nancy's husband, Whitney died suddenly she and her family donated his organs to the New England Organ Donor Bank.

Through unusual circumstances we all were allowed the opportunity to meet John and Patty. John is the recipient of one of Whitney's corneas. After much correspondence we did meet at an organ donor bank ceremony. John walked into the lobby carrying a gift. As he approached he said "Hello Nancy, thank you for my eyesight, I love you". He then also mentioned that he thought she might be taller.

We had quite a visit. John's wife Patty told of how, before his cornea surgery, every morning John's nose would be black from newsprint from holding the daily paper so close so he could see it.

We all remain close, like family. Friday we received a postcard as they were visiting – seeing - the Vatican. You can see that John is making the most out of Whitney's gift.

The New England Organ Donor Bank, from giving hope to a young family, to the satisfaction of knowing that part of your deceased loved one will live on, the gratification is beyond expression.

Mr. Speaker, I can only say good things about the New England Organ Donor Bank. I sincerely hope that each of us consider donating to this awesome organization.”

**Third Reading; Bill Passed in Concurrence
With Proposal of Amendment**

S. 37

Senate bill, entitled

An act relating to tax increment financing districts

Was taken up, read the third time and passed in concurrence with proposal of amendment.

Proposal of Amendment Agreed to; Third Reading Ordered

S. 41

Rep. Higley of Lowell, for the committee on Government Operations, to which had been referred Senate bill, entitled

An act relating to water and sewer service

Reported in favor of its passage in concurrence with proposal of amendment as follows:

TO THE HOUSE OF REPRESENTATIVES:

The Committee on Government Operations to which was referred Senate Bill No. 41 entitled “An act relating to water and sewer service” respectfully reports that it has considered the same and recommends that the House propose to the Senate 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) A municipality shall accept payment from any person for any bill or delinquent charge.

Sec. 2. INTENT

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

Sec. 3. REPEAL

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

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

Senate Proposal of Amendment Concurred in

H. 200

The Senate proposed to the House to amend House bill, entitled

An act relating to civil penalties for possession of marijuana

By striking all after the enacting clause and inserting in lieu thereof the following:

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

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

§ 4230. MARIJUANA

(a) Possession and cultivation.

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

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

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

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

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

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

(5) Prior to accepting a plea of guilty or a plea of nolo contendere from a defendant charged with a violation of this subsection, the court shall address the defendant personally in open court, informing the defendant and determining that the defendant understands that admitting to facts sufficient to warrant a finding of guilt or pleading guilty or nolo contendere to the charge may have collateral consequences such as loss of education financial aid, suspension or revocation of professional licenses, and restricted access to public benefits such as housing. If the court fails to provide the defendant with notice of collateral consequences in accordance with this subdivision and the

defendant later at any time shows that the plea and conviction may have or has had a negative consequence, the court, upon the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to vacate.

* * *

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

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

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

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

- (1) Not more than \$200.00 for a first offense.
- (2) Not more than \$300.00 for a second offense.
- (3) Not more than \$500.00 for a third or subsequent offense.

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

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

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

(2) This section is not intended to affect the search and seizure laws afforded to duly authorized law enforcement officers under the laws of this State. Marijuana is contraband pursuant to section 4242 of this title and

subject to seizure and forfeiture unless possessed in compliance with chapter 86 of this title (therapeutic use of cannabis).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

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

* * *

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

* * *

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

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

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

* * *

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

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

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

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

* * *

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

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

§ 3202. INTEREST AND PENALTIES

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

(b) Penalties.

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

penalty imposed under this subdivision exceed 25 percent of the tax liability unpaid on the prescribed date of payment. If the return is not filed within 60 days after the date prescribed therefor, there shall be assessed a minimum penalty of \$50.00 regardless of whether there is a tax liability.

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

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

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

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

unpaid on the prescribed date of payment or received as a refund subsequent to that date.

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

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

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

§ 5894. LIABILITY FOR FAILURE OR DELINQUENCY

(a) Failure to supply information. An individual, fiduciary, or officer or employee of any corporation or partner or employee of any partnership, who, with intent to evade any requirement of this chapter or any lawful requirement of the ~~commissioner~~ Commissioner hereunder, fails to supply any information required by or under this chapter shall be fined not more than \$1,000.00 or be imprisoned not more than one year, or both.

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

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

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

(e) False or fraudulent return. An individual, fiduciary, or officer or employee of a corporation or partner or employee of a partnership who knowingly makes, signs, verifies or files with the ~~commissioner~~ Commissioner a false or fraudulent tax return shall be imprisoned not more than one year or fined not more than \$1,000.00, or both. An individual, fiduciary, or officer or

employee of a corporation or partner or employee of a partnership, who with intent to evade a tax liability makes, signs, verifies or files with the ~~commissioner~~ Commissioner a false or fraudulent tax return shall, if the amount of tax evaded is more than \$500.00, be imprisoned not more than three years or fined not more than \$10,000.00, or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(2) When a person is issued a notice of violation under subdivision (1) of this subsection, the law enforcement officer shall complete a summons and complaint for the offense and send it to the diversion board in the county~~

~~where the offense occurred. The summons and complaint shall not be filed with the judicial bureau at that time.~~

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

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

~~(d) If a person fails to pay a penalty imposed under this section by the time ordered, the judicial bureau shall notify the commissioner of motor vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.~~

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

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

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

~~(B) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other conditions related to the offense imposed by the diversion board, the case will be referred to the judicial bureau, where the~~

~~person, if found liable for the violation, shall be assessed a penalty of \$300.00, the person's driver's license will be suspended for 90 days, and the person's automobile insurance rates may increase substantially.~~

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

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

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

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

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

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

~~(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other conditions related to the offense imposed by the diversion board, or if the person fails to pay the diversion board any required~~

~~program fees, the diversion board shall file the summons and complaint with the judicial bureau for adjudication under chapter 29 of Title 4. The diversion board shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation, and shall provide two copies to the person charged with the violation.~~

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

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

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

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

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

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

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

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

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

a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBSEQUENT OFFENSE; CRIME

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

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

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

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

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

~~(c) After the issuing officer issues a summons and complaint to the judicial bureau for a first offense pursuant to section 656 of this title, the state's attorney may withdraw the complaint filed with the judicial bureau and file an information charging a violation of this section in the criminal division of the superior court. The state may obtain a conviction under either this section or section 656 of this title, but not both.~~

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

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

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

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

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

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

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

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

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

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

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

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

* * * Task Force * * *

Sec. 11. TASK FORCE

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

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

(1) the Commissioner of Public Safety or designee;

(2) the Commissioner of Health or designee;

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

- (4) the Defender General or designee;
- (5) the Commissioner of Motor Vehicles or designee;
- (6) the Court Diversion Director or designee; and
- (7) a student assistance professional appointed by the Governor.

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

* * * Application and Effective Dates * * *

Sec. 12. APPLICATION

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

Sec. 13. EFFECTIVE DATES

- (a) This section and Secs. 12 and 13 of this act shall take effect on passage.
- (b) Sec. 6 of this act shall take effect on July 1, 2014.
- (c) The remaining sections of this act shall take effect on July 1, 2013.

Which proposal of amendment was considered and concurred in.

Rules Suspended; Proposal of Amendment Agreed to and Third Reading Ordered

S. 18

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Turner of Milton**, the rules were suspended and Senate bill, entitled

An act relating to automated license plate recognition systems

Was taken up for immediate consideration.

Rep. McCarthy of St. Albans City, for the committee on Transportation, to which the bill had been referred, reported in favor of its passage in concurrence with proposal of amendment as follows:

By striking 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 in accordance with this section shall be considered collected for a legitimate law enforcement purpose.

(2) “Automated license plate recognition system” or “ALPR system” 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 in accordance with this section shall be considered collected for 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 investigation, detection, analysis, or enforcement of a crime, traffic violation, or parking violation 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) ALPR use and data access; confidentiality.

(1)(A) Deployment of ALPR equipment is intended to provide access to law enforcement reports of wanted or stolen vehicles and wanted persons and to further other legitimate law enforcement purposes. Use of ALPR systems and access to active data are restricted to legitimate law enforcement purposes.

(B) Active ALPR data may be accessed by a law enforcement officer operating the ALPR system only if he or she 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.

(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 VTAC and retained by VTAC 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)(A) A VTAC analyst shall transmit historical data only to a Vermont or out-of-state law enforcement officer who has a legitimate law enforcement purpose for the data. A law enforcement officer to whom historical data are transmitted may use such data only for a legitimate law enforcement purpose. Entry of any data onto the statewide ALPR server other than data collected by an ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(B) Requests for historical data, whether from Vermont or out-of-state law enforcement officers, shall be made in writing to an analyst at VTAC. 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. VTAC shall retain all requests and shall record in writing the outcome of the request and any information that was provided to the requester or, if applicable, why a request was denied or not fulfilled. VTAC shall retain the information described in this subdivision (c)(2)(B) for no fewer 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 backups 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 readings each agency submitted to the statewide ALPR database.

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

(D) The total number of requests made to VTIAAC 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 law enforcement agency or the Department of Motor Vehicles 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 agency or Department 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 court or Judicial Bureau proceeding. 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, whichever is later.

Sec. 3. EFFECTIVE DATE AND SUNSET

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

(b) Secs. 1–2 of this act, 23 V.S.A. §§ 1607 and 1608, shall be repealed on July 1, 2015.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Savage of Swanton** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? was decided in the affirmative. Yeas, 132. Nays, 0.

Those who voted in the affirmative are:

Ancel of Calais	Burditt of West Rutland *	Conquest of Newbury
Bartholomew of Hartland	Burke of Brattleboro	Consejo of Sheldon
Batchelor of Derby	Campion of Bennington	Copeland-Hanzas of
Beyor of Highgate	Canfield of Fair Haven	Bradford
Bissonnette of Winooski	Carr of Brandon	Corcoran of Bennington
Botzow of Pownal	Cheney of Norwich	Cross of Winooski
Bouchard of Colchester	Christie of Hartford	Cupoli of Rutland City
Branagan of Georgia	Clarkson of Woodstock	Dakin of Chester
Brennan of Colchester	Cole of Burlington	Davis of Washington
Browning of Arlington	Condon of Colchester	Devereux of Mount Holly

Dickinson of St. Albans Town	Krebs of South Hero	Ralston of Middlebury
Donaghy of Poultney	Krowinski of Burlington	Ram of Burlington
Donahue of Northfield	Kupersmith of South Burlington	Russell of Rutland City
Donovan of Burlington	Lawrence of Lyndon	Savage of Swanton
Ellis of Waterbury	Lenes of Shelburne	Scheuermann of Stowe
Emmons of Springfield	Lippert of Hinesburg	Sharpe of Bristol
Evans of Essex	Macaig of Williston	Shaw of Pittsford
Fagan of Rutland City	Malcolm of Pawlet *	Shaw of Derby
Feltus of Lyndon	Manwaring of Wilmington	Smith of New Haven
Fisher of Lincoln	Marcotte of Coventry	South of St. Johnsbury
Frank of Underhill	Marek of Newfane	Spengler of Colchester
French of Randolph	Martin of Springfield	Stevens of Waterbury
Gage of Rutland City	Martin of Wolcott	Strong of Albany
Gallivan of Chittenden	Masland of Thetford	Sweaney of Windsor
Goodwin of Weston	McCarthy of St. Albans City	Taylor of Barre City
Grad of Moretown	McCormack of Burlington	Terenzini of Rutland Town
Greshin of Warren	McCullough of Williston	Toleno of Brattleboro
Haas of Rochester	Michelsen of Hardwick	Toll of Danville
Head of South Burlington	Miller of Shaftsbury	Townsend of Randolph
Heath of Westford	Mitchell of Fairfax	Townsend of South Burlington
Hebert of Vernon	Mook of Bennington	Turner of Milton
Helm of Fair Haven	Moran of Wardsboro	Van Wyck of Ferrisburgh
Higley of Lowell	Morrissey of Bennington	Vowinkel of Hartford
Hoopier of Montpelier	Myers of Essex	Waite-Simpson of Essex
Huntley of Cavendish	Nuovo of Middlebury	Weed of Enosburgh
Jerman of Essex	O'Brien of Richmond	Wilson of Manchester
Jewett of Ripton	O'Sullivan of Burlington	Winters of Williamstown
Johnson of South Hero	Partridge of Windham	Wizowaty of Burlington
Johnson of Canaan	Pearce of Richford	Woodward of Johnson
Juskiewicz of Cambridge	Pearson of Burlington	Wright of Burlington
Keenan of St. Albans City	Peltz of Woodbury	Yantachka of Charlotte
Kitzmiller of Montpelier	Poirier of Barre City	Young of Glover
Klein of East Montpelier	Potter of Clarendon	Zagar of Barnard
Koch of Barre Town	Quimby of Concord	
Komline of Dorset	Rachelson of Burlington	

Those who voted in the negative are: none

Those members absent with leave of the House and not voting are:

Buxton of Tunbridge	Lanpher of Vergennes	Stevens of Shoreham
Connor of Fairfield	Larocque of Barnet	Stuart of Brattleboro
Deen of Westminster	Lewis of Berlin	Till of Jericho
Fay of St. Johnsbury	McFaun of Barre Town	Trieber of Rockingham
Hubert of Milton	Mrowicki of Putney	Webb of Shelburne
Kilmartin of Newport City	Pugh of South Burlington	

Rep. Burditt of West Rutland explained his vote as follows:

“Mr. Speaker:

We regulate people, places, things and business. Even though I don’t believe this bill goes far enough, regulating government to stop infringing on citizens can’t go far enough.”

Rep. Malcolm of Pawlet explained his vote as follows:

“Mr. Speaker:

I vote yes for this bill to create some level of regulation to this situation. However, the issue of surveillance of the public and its potential for abuse needs much more discussion by this legislature than this bill provides.”

Rep. Lippert of Hinesburg explained his vote as follows:

“Mr. Speaker:

I vote yes for the additional regulations that this legislation imposes on law enforcement’s use of ALPR - automated license plate recognition systems - and look forward to this body’s more in depth consideration of privacy and civil liberties concerns before the 2015 sunset of this regulation.”

Recess

At twelve o'clock and five minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At one o'clock and fifty-five minutes in the afternoon, the Speaker called the House to order.

Message from the Senate No. 69

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has considered bills originating in the House of the following titles:

H. 534. An act relating to approval of amendments to the charter of the City of Winooski.

H. 535. An act relating to the approval of the adoption and to the codification of the charter of the Town of Woodford.

And has passed the same in concurrence.

The Senate has considered House proposal of amendment to Senate bill entitled:

S. 150. An act relating to miscellaneous amendments to laws related to motor vehicles.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The President announced the appointment as members of such Committee on the part of the Senate:

Senator Mazza
Senator Flory
Senator Campbell.

The Senate has considered House proposal of amendment to Senate proposal of amendment to House bill entitled:

H. 377. An act relating to neighborhood planning and development for municipalities with designated centers.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The President announced the appointment as members of such Committee on the part of the Senate:

Senator Mullin
Senator Campbell
Senator Collins.

**Rules Suspended; Bill Read Third Time and Passed in Concurrence
With Proposal of Amendment; Rules Suspended and Bill was Ordered
Messaged to the Senate Forthwith**

S. 41

Senate bill, entitled

An act relating to water and sewer service

On motion of **Rep. Turner of Milton**, the rules were suspended and the bill placed on all remaining stages of passage in concurrence with proposal of amendment. The bill was read the third time and passed in concurrence with proposal of amendment and, on motion of **Rep. Turner of Milton**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

**Rules Suspended; Bill Read Third Time and Passed in Concurrence
With Proposal of Amendment; Rules Suspended and Bill was Ordered
Messaged to the Senate Forthwith**

S. 18

Senate bill, entitled

An act relating to automated license plate recognition systems

On motion of **Rep. Turner of Milton**, the rules were suspended and the bill placed on all remaining stages of passage in concurrence with proposal of amendment. The bill was read the third time and passed in concurrence with proposal of amendment and, on motion of **Rep. Turner of Milton**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Rules Suspended; Bill Messaged to Senate Forthwith

On motion of **Rep. Turner of Milton**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

S. 37

House bill, entitled

An act relating to tax increment financing districts

Recess

At two o'clock in the afternoon, the Speaker declared a recess until the fall of the gavel.

At two o'clock and three minutes in the afternoon, the Speaker called the House to order.

Committee of Conference Appointed

H. 377

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on House bill, entitled

An act relating to neighborhood planning and development for municipalities with designated centers

The Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Botzow of Pownal
Rep. Dickinson of St. Albans Town
Rep. Sharpe of Bristol

Recess

At two o'clock and five minutes in the afternoon, the Speaker declared a recess until four o'clock in the afternoon.

At four o'clock and fifteen minutes in the afternoon, the Speaker called the House to order.

Member Replaced on Committee of Conference

S. 61

The Speaker announced that he has appointed **Rep. Moran of Wardsboro** to replace **Rep. Head of South Burlington** on the Committee of Conference on House bill, entitled

An act relating to alcoholic beverages

Rules Suspended; Report of Committee of Conference Adopted; Rules Suspended and the Bill was Ordered Messaged to the Senate Forthwith

S. 61

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Turner of Milton**, the rules were suspended and Senate bill, entitled

An act relating to alcoholic beverages

Was taken up for immediate consideration.

The Speaker placed before the House the following Committee of Conference report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon the bill respectfully reported that it has met and considered the same and recommended that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 7 V.S.A. § 2 is amended to read:

§ 2. DEFINITIONS

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

* * *

(19) "Second class license": a license granted by the ~~control commissioners~~ Control Commissioners permitting the licensee to export malt

or vinous beverages and to sell malt or vinous beverages to the public for consumption off the premises for which the license is granted.

* * *

(28) “Fourth class license” or “farmers’ market license”: the license granted by the ~~liquor control board~~ Liquor Control Board permitting a manufacturer or rectifier of malt or vinous beverages or spirits to sell by the unopened container and distribute, by the glass with or without charge, beverages manufactured by the licensee. No more than a combined total of ten fourth class and farmers’ market licenses may be granted to a licensed manufacturer or rectifier. At only one fourth class license location, a manufacturer or rectifier of vinous beverages, malt beverages, or spirits may sell by the unopened container and distribute by the glass, with or without charge, vinous beverages, malt beverages, or spirits produced by no more than five additional manufacturers or rectifiers, provided these beverages are purchased on invoice from the manufacturer or rectifier. A manufacturer or rectifier of vinous beverages, malt beverages, or spirits may sell its product to no more than five additional manufacturers or rectifiers. A fourth class licensee may distribute by the glass no more than two ounces of malt or vinous beverage with a total of eight ounces to each retail customer and no more than one-quarter ounce of spirits with a total of one ounce to each retail customer for consumption on the manufacturer’s premises or at a farmers’ market. A farmers’ market license is valid for all dates of operation for a specific farmers’ market location.

* * *

(32) “Art gallery or bookstore permit”: a permit granted by the liquor control board permitting an art gallery or bookstore to conduct an event at which malt or vinous beverages or both are served by the glass to the public, provided that the event is approved by the local licensing authority. A permit holder may purchase malt or vinous beverages directly from a licensed retailer. A permit holder shall be subject to the provisions of this title and the rules of the board regarding the service of alcoholic beverages. A request for a permit shall be submitted to the department in a form required by the ~~department~~ Department at least five days prior to the event and shall be accompanied by the permit fee required by subdivision 231(a)(22) of this title. As used in this section, “art gallery” means a fixed establishment whose primary purpose is to exhibit or offer for sale works of art; and “bookstore” means a fixed establishment whose primary purpose is to offer books for sale.

* * *

Sec. 2. 7 V.S.A. § 66 is amended to read:

§ 66. MALT AND VINOUS BEVERAGE SHIPPING LICENSE; IN STATE; OUT OF STATE; PROHIBITIONS; PENALTIES

(a) A manufacturer or rectifier of vinous beverages or malt beverages licensed in Vermont may be granted an in-state consumer shipping license by filing with the ~~department of liquor control~~ Department of Liquor Control an application in a form required by the ~~department~~ Department accompanied by a copy of the applicant's current Vermont manufacturer's license and the fee as required by subdivision 231(7)(A) of this title. This consumer shipping license may be renewed annually by filing the renewal fee as required by subdivision 231(7)(A) of this title accompanied by a copy of the licensee's current Vermont manufacturer's license.

(b) A manufacturer or rectifier of vinous beverages or malt beverages licensed in another state that operates a winery or brewery in the United States and holds valid state and federal permits and licenses may be granted an out-of-state consumer shipping license by filing with the ~~department of liquor control~~ Department an application in a form required by the ~~department~~ Department accompanied by copies of the applicant's current out-of-state manufacturer's license and the fee as required by subdivision 231(7)(B) of this title. This consumer shipping license may be renewed annually by filing the renewal fee as required by subdivision 231(7)(B) of this title accompanied by the licensee's current out-of-state manufacturer's license. For the purposes of this subsection and subsection (c) of this section, "out-of-state" means any state other than Vermont, any territory or possession of the United States, and does not include a foreign country.

* * *

(d) Pursuant to a consumer shipping license granted under subsection (a) or (b) of this section, the licensee may ship vinous beverages or malt beverages produced by the licensee:

(1) Only to private residents for personal use and not for resale.

(2) No more than 12 cases containing no more than 29 gallons of vinous beverages or no more than 12 cases of malt beverages containing no more than 36 gallons of malt beverages to any one Vermont resident in any calendar year.

(3) Only by common carrier certified by the ~~department~~ Department. The common carrier shall comply with all the following:

(A) ~~Deliver~~ deliver ~~vinous~~ beverages pursuant to an invoice that includes the name of the licensee and the name and address of the purchaser.;

(B) ~~On~~ on delivery, require a valid form of photographic identification from a recipient who appears to be under ~~the~~ age of 30-;

(C) ~~Require~~ require the recipient to sign an electronic or paper form or other acknowledgement of receipt.

(e) A holder of any shipping license granted pursuant to this section shall:

(1) ~~Ensure~~ ensure that all containers of alcoholic beverages shipped under this section are clearly labeled: "contains alcohol; signature of individual age 21 or older required for ~~delivery.~~" delivery";

(2) ~~Not~~ not ship to any address in a municipality that the ~~department~~ Department identified as having voted to be "~~dry.~~" dry";

(3) ~~Retain~~ retain a copy of each record of sale for a minimum of five years from the date of shipping-;

(4) ~~Report~~ report at least twice a year to the ~~department of liquor control~~ Department of Liquor Control if the holder of a direct consumer shipping license and once a year if the holder of a retail shipping license in a manner and form required by the ~~department~~ Department all the following information:

(A) ~~The~~ the total amount of vinous beverages or malt beverages shipped into or within the ~~state~~ State for the preceding six months if a holder of a direct consumer shipping license or every 12 months if a holder of a retail shipping license-;

(B) ~~The~~ the names and addresses of the purchasers to whom the ~~vinous~~ beverages were shipped-;

(C) ~~The~~ the date purchased, if appropriate, the name of the common carrier used to make each delivery, and the quantity and value of each shipment.

(5) ~~Pay~~ pay directly to the ~~commissioner of taxes~~ Commissioner of Taxes the amount of tax on the vinous beverages or malt beverages shipped under this section pursuant to subsection 421(a) of this title, and comply with the provisions of 32 V.S.A. chapter 233, 24 V.S.A. § 138, and any other legally authorized local sales taxes. Delivery in this ~~state~~ State shall be deemed to constitute a sale in this ~~state~~ State at the place of delivery and shall be subject to all appropriate taxes levied by the ~~state~~ State of Vermont-;

(6) ~~Permit the state treasurer~~ permit the State Treasurer, the ~~department of liquor control~~ Department of Liquor Control, and the ~~department of taxes~~ Department of Taxes, separately or jointly, upon request, to perform an audit of its records-;

(7) ~~If~~ if an out-of-state license holder, be deemed to have consented to the jurisdiction of the ~~department of liquor control~~ Department of Liquor Control or any other state agency and the Vermont state courts concerning enforcement of this or other applicable laws and regulations;

(8) ~~Not~~ not have any direct or indirect financial interest in a Vermont wholesale dealer or retail dealer, including a first, second, or third class license;

(9) ~~Comply~~ comply with all ~~liquor control board~~ Liquor Control Board laws and regulations; and

(10) comply with the beverage container deposit redemption system pursuant to 10 V.S.A. chapter 53.

(f) A common carrier shall not deliver vinous beverages or malt beverages until it has complied with the training provisions in subsections 239(a) and (b) of this title and been certified by the ~~department of liquor control~~ Department of Liquor Control. No employee of a certified common carrier may deliver vinous beverages or malt beverages until that employee completes the training provisions in subsection 239(c) of this title. A common carrier shall deliver only vinous beverages or malt beverages that have been shipped by the holder of a license issued under this section or a vinous beverage storage license issued under section 68 of this title.

(g) The ~~department of liquor control and the department of taxes~~ Departments of Liquor Control and of Taxes may adopt rules and forms necessary to implement this section.

(h) Direct shipments of vinous beverages or malt beverages are prohibited if the shipment is not specifically authorized and in compliance with this section. Any person who knowingly makes, participates in, imports, or receives a direct shipment of vinous beverages or malt beverages from a person who is not licensed or certified as required by this section may be fined not more than \$1,000.00 or imprisoned not more than one year, or both.

(i) A licensee under this section or a common carrier that ships vinous beverages or malt beverages to an individual under 21 years of age shall be fined not less than \$1,000.00 or more than \$3,000.00 or imprisoned not more than two years, or both.

(j) For any violation of this section, the ~~liquor control board~~ Liquor Control Board may suspend or revoke a license issued under this section, among all other remedies available to the board.

Sec. 3. 7 V.S.A. § 222 is amended to read:

§ 222. FIRST AND SECOND CLASS LICENSES, GRANTING OF; SALE
TO MINORS; CONTRACTING FOR FOOD SERVICE

With the approval of the ~~liquor control board, the control commissioners~~ Liquor Control Board, the Control Commissioners may grant to a retail dealer for the premises where the dealer carries on business the following:

* * *

(2) Upon making application and paying the license fee provided in section 231 of this title, a second class license for the premises where such dealer shall carry on the business which shall authorize such dealer to export malt and vinous beverages and to sell malt and vinous beverages to the public from such premises for consumption off the premises and upon satisfying the ~~liquor control board~~ Board that such premises are leased, rented, or owned by such retail dealers and are safe, sanitary, and a proper place from which to sell malt and vinous beverages. A retail dealer carrying on business in more than one place shall be required to acquire a second class license for each place where he or she ~~hall~~ shall so sell malt and vinous beverages. No malt or vinous beverages shall be sold by a second class licensee to a minor.

* * *

Sec. 4. 7 V.S.A. § 230 is amended to read:

§ 230. RESTRICTIONS; FINANCIAL INTERESTS; DISPLAY OF
LICENSE; EMPLOYEES

* * *

(b) An individual who is an employee of a wholesale dealer that does not hold a solicitor's permit may also be employed by a first or second class licensee on a paid or voluntary basis, provided that the employee does not exercise any control over, or participate in, the management of the first or second class licensee's business or business decisions, and that either employment relationship does not result in the exclusion of any competitor wholesale dealer or any brand of alcoholic beverages of a competitor wholesale dealer.

Sec. 5. 7 V.S.A. § 239 is amended to read:

§ 239. LICENSEE EDUCATION

(a) ~~No new first or second class license~~ A new first class, second class, third class, fourth class, or farmer's market license shall not be granted until the applicant has met with a liquor control investigator or training specialist for the purpose of being informed of the Vermont liquor laws, rules, and

regulations pertaining to the purchase, storage, and sale of alcohol beverages. A corporation, partnership, or association shall designate a director, partner, or manager who shall comply with the terms of this subsection.

(b) Every ~~first and second class licensee~~ first class, second class, third class, fourth class, or farmer's market license and every holder of a manufacturer's license shall complete the ~~department of liquor control~~ Department of Liquor Control ~~licensee enforcement training~~ licensee enforcement training seminar at least once every ~~three~~ two years. A corporation, partnership, or association shall designate a director, partner, or manager who shall comply with the terms of this subsection. ~~No first or second class license~~ A first class, second class, third class, fourth class, or farmer's market license or manufacturer's license shall not be renewed unless the records of the ~~department of liquor control~~ Department of Liquor Control show that the licensee has complied with the terms of this subsection.

(c) Each licensee shall ensure that every employee who is involved in the sale or serving of alcohol beverages completes a training program approved by the ~~department of liquor control~~ Department of Liquor Control before the employee begins serving or selling alcoholic beverages and at least once every 24 months thereafter. Each licensee shall maintain written documentation, signed by each employee trained, of each training program conducted. A licensee may comply with this requirement by conducting its own training program on its premises, using information and materials furnished or approved by the ~~department of liquor control~~ Department of Liquor Control. A licensee who fails to comply with the requirements of this subsection shall be subject to a suspension of no less than one day of the license issued under this title.

Sec. 6. 7 V.S.A. § 602 is amended to read:

§ 602. EXHIBITION OF CARD

An individual shall exhibit "a valid authorized form of identification," which means a valid photographic operator's license, enhanced driver's license, or valid photographic nondriver identification card issued by Vermont or another state or foreign jurisdiction, a United States military identification card, or a valid passport or passport card bearing the photograph and signature of the individual upon demand of a licensee, an employee of a licensee, or a law enforcement officer. On the failure of an individual to produce and exhibit a valid authorized form of identification upon demand of a licensee, the licensee shall be entitled to refuse to sell the individual any alcoholic beverage. Sale or furnishing of any alcoholic beverages by a licensee to an individual exhibiting a valid authorized form of identification shall be prima facie

evidence of the licensee's compliance with the law prohibiting the sale or furnishing of alcoholic beverages to minors.

Sec. 7. REPEAL

The following sections of 2011 Acts and Resolves No. 17 (An act relating to powers and immunities of the liquor control investigators) are repealed:

- (1) Sec. 3 (amending 7 V.S.A. § 561(a), effective July 1, 2013);
- (2) Sec. 4 (amending 23 V.S.A. § 4(11), effective July 1, 2013); and
- (3) Sec. 5(b) (effective date of Secs. 3 and 4).

Sec. 8. 7 V.S.A. § 561 is amended to read:

§ 561. AUTHORITY OF LIQUOR CONTROL INVESTIGATORS;
ARREST FOR UNLAWFULLY MANUFACTURING,
POSSESSING, OR TRANSPORTING ALCOHOLIC BEVERAGES;
SEIZURE OF PROPERTY

(a) ~~The director of the enforcement division of the department of liquor control~~ Director of the Enforcement Division of the Department of Liquor Control and investigators employed by the ~~liquor control board~~ Liquor Control Board or by the ~~department of liquor control~~ Department of Liquor Control shall be certified as full-time law enforcement officers by the Vermont Criminal Justice Training Council and shall have the same powers and immunities as those conferred on the ~~state police~~ State Police by 20 V.S.A. § 1914.

* * *

Sec. 9. EFFECTIVE DATE

This section and Secs. 7 and 8 of this act shall take effect on passage. All other sections shall take effect on July 1, 2013.

COMMITTEE ON THE PART OF
THE SENATE

SEN. KEVIN J. MULLIN
SEN. PHILLIP E. BARUTH
SEN. ANN E. CUMMINGS

COMMITTEE ON THE PART OF
THE HOUSE

REP. JOHN T. MORAN
REP. THOMAS S. STEVENS
REP. JEAN O'SULLIVAN

Which was considered and adopted on the part of the House.

On motion of **Rep. Turner of Milton**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Recess

At four o'clock and twenty minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At six o'clock and fifteen minutes in the afternoon, the Speaker called the House to order.

Message from the Senate No. 70

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has considered a bill originating in the House of the following title:

H. 295. An act relating to technical tax changes.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the House is requested.

Message from Governor

A message was received from His Excellency, the Governor, by Mr. Louis Porter, Secretary of Civil and Military Affairs, as follows:

Mr. Speaker:

I am directed by the Governor to inform the House that on the thirteenth day of May, 2013, he approved and signed bills originating in the House of the following titles:

H. 54 An act relating to Public Records Act exemptions

H. 131 An act relating to harvesting guidelines and procurement standards

H. 136 An act relating to cost-sharing for preventive services

H. 182 An act relating to search and rescue

H. 205 An act relating professions and occupations regulated by the office of Professional Regulation

H. 474 An act relating to amending the membership and charge of the Government Accountability Committee

H. 512 An act relating to approval of amendments to the charter of the City of Barre

H. 513 An act relating to the department of Financial Regulation**Message from the Senate No. 71**

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has considered House proposals of amendment to the following Senate bills and has refused to concur therein and asks for Committees of Conference upon the disagreeing votes of the two Houses to which the President announced the appointment as members of such Committees on the part of the Senate:

S. 20. An act relating to increasing the statute of limitations for certain sex offenses against children.

Senator Nitka
Senator Benning
Senator Sears

S. 129. An act relating to workers' compensation liens.

Senator Ashe
Senator Campbell
Senator Zuckerman

The Senate has considered House proposal of amendment to Senate proposal of amendment to House bill entitled:

H. 240. An act relating to Executive Branch fees.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The President announced the appointment as members of such Committee on the part of the Senate:

Senator Ashe
Senator MacDonald
Senator Flory.

Message from the Senate No. 72

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has considered a bill originating in the House of the following title:

H. 265. An act relating to the education property tax rates and base education amount for fiscal year 2014.

And has passed the same in concurrence.

The Senate has considered bills originating in the House of the following titles:

H. 107. An act relating to health insurance, Medicaid, and the Vermont Health Benefit Exchange.

H. 226. An act relating to the regulation of underground storage tanks.

H. 262. An act relating to establishing a program for the collection and recycling of paint.

H. 523. An act relating to jury questionnaires, the filing of foreign child custody determinations, court fees, and judicial record keeping.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the House is requested.

The Senate has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses upon House bill of the following title:

H. 169. An act relating to relieving employers' experience-rating records.

And has accepted and adopted the same on its part.

The Senate has considered House proposals of amendment to Senate bills of the following titles:

S. 130. An act relating to encouraging flexible pathways to secondary school completion.

S. 156. An act relating to home visiting standards.

S. 157. An act relating to modifying the requirements for hemp production in the State of Vermont.

And has concurred therein.

The Senate has considered House proposals of amendment to Senate bills of the following titles:

S. 37. An act relating to tax increment financing districts.

S. 152. An act relating to the Green Mountain Care Board's rate review authority.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the House is requested.

The Senate has considered House proposal of amendment to Senate proposal of amendment to House bill of the following title:

H. 522. An act relating to strengthening Vermont's response to opioid addiction and methamphetamine abuse.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the House is requested.

The Senate has considered House proposal of amendment to Senate proposal of amendment to House bill of the following title:

H. 515. An act relating to miscellaneous agricultural subjects.

And has concurred therein.

Senate Proposal of Amendment Concurred in

S. 77

Senate bill, entitled

An act relating to patient choice and control at end of life;

The Senate concurred in the House proposal of amendment with the following proposal of amendment thereto:

By striking all after the enacting clause and inserting in lieu thereof the following:

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

CHAPTER 113. PATIENT CHOICE AT END OF LIFE

§ 5281. DEFINITIONS

(a) As used in this chapter:

(1) "Bona fide physician-patient relationship" means a treating or consulting relationship in the course of which a physician has completed a full assessment of the patient's medical history and current medical condition, including a personal physical examination.

(2) "Capable" means that a patient has the ability to make and communicate health care decisions to a physician, including communication

through persons familiar with the patient's manner of communicating if those persons are available.

(3) "Health care facility" shall have the same meaning as in section 9432 of this title.

(4) "Health care provider" means a person, partnership, corporation, facility, or institution, licensed or certified or authorized by law to administer health care or dispense medication in the ordinary course of business or practice of a profession.

(5) "Impaired judgment" means that a person does not sufficiently understand or appreciate the relevant facts necessary to make an informed decision.

(6) "Interested person" means:

(A) the patient's physician;

(B) a person who knows that he or she is a relative of the patient by blood, civil marriage, civil union, or adoption;

(C) a person who knows that he or she would be entitled upon the patient's death to any portion of the estate or assets of the patient under any will or trust, by operation of law, or by contract; or

(D) an owner, operator, or employee of a health care facility, nursing home, or residential care facility where the patient is receiving medical treatment or is a resident.

(7) "Palliative care" shall have the same definition as in section 2 of this title.

(8) "Patient" means a person who is 18 years of age or older, a resident of Vermont, and under the care of a physician.

(9) "Physician" means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33.

(10) "Terminal condition" means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

§ 5282. RIGHT TO INFORMATION

The rights of a patient under section 1871 of this title to be informed of all available options related to terminal care and under 12 V.S.A. § 1909(d) to receive answers to any specific question about the foreseeable risks and benefits of medication without the physician's withholding any requested

information exist regardless of the purpose of the inquiry or the nature of the information. A physician who engages in discussions with a patient related to such risks and benefits in the circumstances described in this chapter shall not be construed to be assisting in or contributing to a patient's independent decision to self-administer a lethal dose of medication, and such discussions shall not be used to establish civil or criminal liability or professional disciplinary action.

§ 5283. REQUIREMENTS FOR PRESCRIPTION AND DOCUMENTATION; IMMUNITY

(a) A physician shall not be subject to any civil or criminal liability or professional disciplinary action if the physician prescribes to a patient with a terminal condition medication to be self-administered for the purpose of hastening the patient's death and the physician affirms by documenting in the patient's medical record that all of the following occurred:

(1) The patient made an oral request to the physician in the physician's physical presence for medication to be self-administered for the purpose of hastening the patient's death.

(2) No fewer than 15 days after the first oral request, the patient made a second oral request to the physician in the physician's physical presence for medication to be self-administered for the purpose of hastening the patient's death.

(3) At the time of the second oral request, the physician offered the patient an opportunity to rescind the request.

(4) The patient made a written request for medication to be self-administered for the purpose of hastening the patient's death that was signed by the patient in the presence of two or more witnesses who were not interested persons, who were at least 18 years of age, and who signed and affirmed that the patient appeared to understand the nature of the document and to be free from duress or undue influence at the time the request was signed.

(5) The physician determined that the patient:

(A) was suffering a terminal condition, based on the physician's physical examination of the patient and review of the patient's relevant medical records;

(B) was capable;

(C) was making an informed decision;

(D) had made a voluntary request for medication to hasten his or her death; and

(E) was a Vermont resident.

(6) The physician informed the patient in person, both verbally and in writing, of all the following:

(A) the patient's medical diagnosis;

(B) the patient's prognosis, including an acknowledgement that the physician's prediction of the patient's life expectancy was an estimate based on the physician's best medical judgment and was not a guarantee of the actual time remaining in the patient's life, and that the patient could live longer than the time predicted;

(C) the range of treatment options appropriate for the patient and the patient's diagnosis;

(D) if the patient was not enrolled in hospice care, all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(E) the range of possible results, including potential risks associated with taking the medication to be prescribed; and

(F) the probable result of taking the medication to be prescribed.

(7) The physician referred the patient to a second physician for medical confirmation of the diagnosis, prognosis, and a determination that the patient was capable, was acting voluntarily, and had made an informed decision.

(8) The physician either verified that the patient did not have impaired judgment or referred the patient for an evaluation by a psychiatrist, psychologist, or clinical social worker licensed in Vermont for confirmation that the patient was capable and did not have impaired judgment.

(9) If applicable, the physician consulted with the patient's primary care physician with the patient's consent.

(10) The physician informed the patient that the patient may rescind the request at any time and in any manner and offered the patient an opportunity to rescind after the patient's second oral request.

(11) The physician ensured that all required steps were carried out in accordance with this section and confirmed, immediately prior to writing the prescription for medication, that the patient was making an informed decision.

(12) The physician wrote the prescription no fewer than 48 hours after the last to occur of the following events:

(A) the patient's written request for medication to hasten his or her death;

(B) the patient's second oral request; or

(C) the physician's offering the patient an opportunity to rescind the request.

(13) The physician either:

(A) dispensed the medication directly, provided that at the time the physician dispensed the medication, he or she was licensed to dispense medication in Vermont, had a current Drug Enforcement Administration certificate, and complied with any applicable administrative rules; or

(B) with the patient's written consent:

(i) contacted a pharmacist and informed the pharmacist of the prescription; and

(ii) delivered the written prescription personally or by mail or facsimile to the pharmacist, who dispensed the medication to the patient, the physician, or an expressly identified agent of the patient.

(14) The physician recorded and filed the following in the patient's medical record:

(A) the date, time, and wording of all oral requests of the patient for medication to hasten his or her death;

(B) all written requests by the patient for medication to hasten his or her death;

(C) the physician's diagnosis, prognosis, and basis for the determination that the patient was capable, was acting voluntarily, and had made an informed decision;

(D) the second physician's diagnosis, prognosis, and verification that the patient was capable, was acting voluntarily, and had made an informed decision;

(E) the physician's attestation that the patient was enrolled in hospice care at the time of the patient's oral and written requests for medication to hasten his or her death or that the physician informed the patient of all feasible end-of-life services;

(F) the physician's verification that the patient either did not have impaired judgment or that the physician referred the patient for an evaluation and the person conducting the evaluation has determined that the patient did not have impaired judgment;

(G) a report of the outcome and determinations made during any evaluation which the patient may have received;

(H) the date, time, and wording of the physician's offer to the patient to rescind the request for medication at the time of the patient's second oral request; and

(I) a note by the physician indicating that all requirements under this section were satisfied and describing all of the steps taken to carry out the request, including a notation of the medication prescribed.

(15) After writing the prescription, the physician promptly filed a report with the Department of Health documenting completion of all of the requirements under this section.

(b) This section shall not be construed to limit civil or criminal liability for gross negligence, recklessness, or intentional misconduct.

§ 5284. NO DUTY TO AID

A patient with a terminal condition who self-administers a lethal dose of medication shall not be considered to be a person exposed to grave physical harm under 12 V.S.A. § 519, and no person shall be subject to civil or criminal liability solely for being present when a patient with a terminal condition self-administers a lethal dose of medication or for not acting to prevent the patient from self-administering a lethal dose of medication.

§ 5285. LIMITATIONS ON ACTIONS

(a) A physician, nurse, pharmacist, or other person shall not be under any duty, by law or contract, to participate in the provision of a lethal dose of medication to a patient.

(b) A health care facility or health care provider shall not subject a physician, nurse, pharmacist, or other person to discipline, suspension, loss of license, loss of privileges, or other penalty for actions taken in good faith reliance on the provisions of this chapter or refusals to act under this chapter.

(c) Except as otherwise provided in this section and sections 5283, 5289, and 5290 of this title, nothing in this chapter shall be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

§ 5286. HEALTH CARE FACILITY EXCEPTION

A health care facility may prohibit a physician from writing a prescription for a dose of medication intended to be lethal for a patient who is a resident in its facility and intends to use the medication on the facility's premises, provided the facility has notified the physician in writing of its policy with regard to the prescriptions. Notwithstanding subsection 5285(b) of this title, any physician who violates a policy established by a health care facility under this section may be subject to sanctions otherwise allowable under law or contract.

§ 5287. INSURANCE POLICIES; PROHIBITIONS

(a) A person and his or her beneficiaries shall not be denied benefits under a life insurance policy, as defined in 8 V.S.A. § 3301, for actions taken in accordance with this chapter.

(b) The sale, procurement, or issue of any medical malpractice insurance policy or the rate charged for the policy shall not be conditioned upon or affected by whether the physician is willing or unwilling to participate in the provisions of this chapter.

§ 5288. NO EFFECT ON PALLIATIVE SEDATION

This chapter shall not limit or otherwise affect the provision, administration, or receipt of palliative sedation consistent with accepted medical standards.

§ 5289. PROTECTION OF PATIENT CHOICE AT END OF LIFE

A physician with a bona fide physician-patient relationship with a patient with a terminal condition shall not be considered to have engaged in unprofessional conduct under 26 V.S.A. § 1354 if:

(1) the physician determines that the patient is capable and does not have impaired judgment;

(2) the physician informs the patient of all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(3) the physician prescribes a dose of medication that may be lethal to the patient;

(4) the physician advises the patient of all foreseeable risks related to the prescription; and

(5) the patient makes an independent decision to self-administer a lethal dose of the medication.

§ 5290. IMMUNITY FOR PHYSICIANS

A physician shall be immune from any civil or criminal liability or professional disciplinary action for actions performed in good faith compliance with the provisions of this chapter.

§ 5291. SAFE DISPOSAL OF UNUSED MEDICATIONS

The Department of Health shall adopt rules providing for the safe disposal of unused medications prescribed under this chapter.

§ 5292. STATUTORY CONSTRUCTION

Nothing in this chapter shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Action taken in accordance with this chapter shall not be construed for any purpose to constitute suicide, assisted suicide, mercy killing, or homicide under the law. This section shall not be construed to conflict with section 1553 of the Patient Protection and Affordable Health Care Act, Pub.L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub.L. No. 111-152.

Sec. 2. REPEAL

18 V.S.A. § 5283 (immunity for prescription and documentation) is repealed on July 1, 2016.

Sec. 3. EFFECTIVE DATES

(a) Sec. 1 (18 V.S.A. chapter 113) of this act shall take effect on passage, except that 18 V.S.A. §§ 5289 (protection of patient choice at end of life) and 5290 (immunity for physicians) shall take effect on July 1, 2016.

(b) The remaining sections of this act shall take effect on passage.

Pending the question, Shall the House concur in the Senate proposal of amendment to the House proposal of amendment? **Rep. Poirier of Barre City** moved that the House concur in the Senate proposal of amendment to the House proposal of amendment, with a further amendment thereto as follows:

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

(2) "Capacity" means that a patient:

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

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

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

(D) does not have impaired judgment.

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

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

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

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

Third: In Sec. 1, in 18 V.S.A. § 5283(a)(4), following “written request”, by inserting “pursuant to section 5293 of this title”

Fourth: In Sec. 1, in 18 V.S.A. § 5289, by adding a new subdivision (3) to read:

(3) the patient makes a written request pursuant to section 5293 of this title for medication to hasten his or her death in accordance with this chapter;

and by renumbering the remaining subdivisions to be numerically correct

Fifth: In Sec. 1, by adding 18 V.S.A. § 5293 to read:

§ 5293. FORM OF THE WRITTEN REQUEST

A written request for medication as authorized by this chapter shall be substantially in the following form:

REQUEST FOR MEDICATION TO HASTEN MY DEATH

I, _____, am an adult of sound mind.

I am suffering from _____, which my physician has determined is a terminal disease and which has been confirmed by a second physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, and the expected result. I have been informed of all feasible end-of-life services or am enrolled in hospice care.

I request that my physician prescribe medication that will hasten my death.

INITIAL ONE:

I have informed my family or others with whom I have a significant relationship of my decision and taken their opinions into consideration.

I have decided not to inform my family or others with whom I have a significant relationship of my decision.

I have no family or others with whom I have a significant relationship to inform of my decision.

I understand that I have the right to change my mind at any time.

I understand the full import of this request, and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer, and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: _____ Dated: _____

AFFIRMATION OF WITNESSES

We affirm that, to the best of our knowledge and belief:

(1) the person signing this request:

(A) is personally known to us or has provided proof of identity;

(B) signed this request in our presence;

(C) appears to understand the nature of the document and to be free from duress or undue influence at the time the request was signed; and

(2) that neither of us:

(A) is under 18 years of age;

(B) is a relative (by blood, civil marriage, civil union, or adoption) of the person signing this request;

(C) is the patient's physician;

(D) is entitled to any portion of the person's assets or estate upon death; or

(E) owns, operates, or is employed at a health care facility where the person is a patient or resident.

Witness 1/Date _____

Witness 2/Date

Pending the question, Shall the House concur with the Senate proposal of amendment to the House proposal of amendment with a further proposal of amendment as recommended by Rep. Poirier of Barre City? **Rep. Poirier of Barre City** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House concur with the Senate proposal of amendment to the House proposal of amendment with a further proposal of amendment as recommended by Rep. Poirier of Barre City? was decided in the negative. Yeas, 60. Nays, 79.

Those who voted in the affirmative are:

Batchelor of Derby	Fagan of Rutland City	Pearce of Richford
Beyor of Highgate	Feltus of Lyndon	Poirier of Barre City
Bissonnette of Winooski	Gage of Rutland City	Potter of Clarendon
Bouchard of Colchester	Greshin of Warren	Quimby of Concord
Branagan of Georgia	Hebert of Vernon	Ralston of Middlebury
Brennan of Colchester	Helm of Fair Haven	Russell of Rutland City
Browning of Arlington	Higley of Lowell	Savage of Swanton
Burditt of West Rutland	Jerman of Essex	Scheuermann of Stowe
Canfield of Fair Haven	Johnson of Canaan	Shaw of Pittsford
Carr of Brandon	Juskiewicz of Cambridge	Shaw of Derby
Christie of Hartford	Keenan of St. Albans City	Smith of New Haven
Connor of Fairfield	Kilmartin of Newport City	South of St. Johnsbury
Consejo of Sheldon	Koch of Barre Town	Strong of Albany
Corcoran of Bennington	Larocque of Barnet	Terenzini of Rutland Town
Cupoli of Rutland City	Lawrence of Lyndon	Turner of Milton
Dakin of Chester	Marcotte of Coventry	Van Wyck of Ferrisburgh
Devereux of Mount Holly	McCarthy of St. Albans City	Winters of Williamstown
Dickinson of St. Albans Town	McFaun of Barre Town	Wright of Burlington
Donaghy of Poultney	Moran of Wardsboro	Yantachka of Charlotte
Donahue of Northfield	Morrissey of Bennington	
	Myers of Essex	

Those who voted in the negative are:

Ancel of Calais	Copeland-Hanzas of Bradford	French of Randolph
Bartholomew of Hartland	Cross of Winooski	Gallivan of Chittenden
Botzow of Pownal	Davis of Washington	Goodwin of Weston
Burke of Brattleboro	Deen of Westminster	Grad of Moretown
Buxton of Tunbridge	Donovan of Burlington	Haas of Rochester
Campion of Bennington	Ellis of Waterbury	Head of South Burlington
Cheney of Norwich	Emmons of Springfield	Heath of Westford
Clarkson of Woodstock	Evans of Essex	Hooper of Montpelier
Cole of Burlington	Fisher of Lincoln	Huntley of Cavendish
Condon of Colchester	Frank of Underhill	Jewett of Ripton
Conquest of Newbury		Johnson of South Hero

Kitzmiller of Montpelier	Miller of Shaftsbury	Sweaney of Windsor
Klein of East Montpelier	Mook of Bennington	Taylor of Barre City
Krebs of South Hero	Mrowicki of Putney	Till of Jericho
Krowinski of Burlington	Nuovo of Middlebury	Toleno of Brattleboro
Kupersmith of South Burlington	O'Brien of Richmond	Toll of Danville
Lenes of Shelburne	O'Sullivan of Burlington	Townsend of Randolph
Lippert of Hinesburg	Partridge of Windham	Townsend of South Burlington
Macaig of Williston	Pearson of Burlington	Vowinkel of Hartford
Malcolm of Pawlet	Peltz of Woodbury	Waite-Simpson of Essex
Manwaring of Wilmington	Pugh of South Burlington	Webb of Shelburne
Marek of Newfane	Rachelson of Burlington	Weed of Enosburgh
Martin of Springfield	Ram of Burlington	Wilson of Manchester
Masland of Thetford	Sharpe of Bristol	Wizowaty of Burlington
McCormack of Burlington	Spengler of Colchester	Woodward of Johnson
McCullough of Williston	Stevens of Waterbury	
Michelsen of Hardwick	Stevens of Shoreham	
	Stuart of Brattleboro	

Those members absent with leave of the House and not voting are:

Fay of St. Johnsbury	Lewis of Berlin	Young of Glover
Hubert of Milton	Martin of Wolcott	Zagar of Barnard
Komline of Dorset	Mitchell of Fairfax	
Lanpher of Vergennes	Trieber of Rockingham	

Pending the question, Shall the House concur in the Senate proposal of amendment to the House proposal of amendment? **Rep. Batchelor of Derby** moved that the House concur in the Senate proposal of amendment to the House proposal of amendment, with a further amendment thereto as follows:

By redesignating Sec. 3, effective dates, to be Sec. 4 and by adding a new Sec. 3 to read as follows:

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

§ 9721. SURROGATE DECISION MAKING FOR HOSPICE ADMISSION

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

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

address the physical, emotional, psychosocial, and spiritual needs of the individual and his or her family.

Thereupon, **Rep. Marek of Newfane** raised a Point of Order in that the amendment was not germane to the bill, which Point of Order the Speaker ruled well taken.

Pending the question, Shall the House concur in the Senate proposal of amendment to the House proposal of amendment? **Rep. Donahue of Northfield** moved that the House concur in the Senate proposal of amendment to the House proposal of amendment, with a further amendment thereto as follows:

By striking all after the enacting clause and inserting in lieu thereof the following:

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

CHAPTER 113. PATIENT CHOICE AT END OF LIFE

§ 5281. DEFINITIONS

As used in this chapter:

(1) “Bona fide physician–patient relationship” means a treating or consulting relationship in the course of which a physician has completed a full assessment of the patient’s medical history and current medical condition, including a personal physical examination.

(2) “Capacity” means that a patient:

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

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

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

(D) does not have impaired judgment.

(3) “Health care facility” shall have the same meaning as in section 9432 of this title.

(4) “Health care provider” means a person, partnership, corporation, facility, or institution licensed or certified or authorized by law to administer health care or dispense medication in the ordinary course of business or practice of a profession.

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

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

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

(6) "Interested person" means:

(A) the patient's physician;

(B) a person who knows that he or she is a relative of the patient by blood, civil marriage, civil union, or adoption;

(C) a person who knows that he or she would be entitled upon the patient's death to any portion of the estate or assets of the patient under any will or trust, by operation of law, or by contract; or

(D) an owner, operator, or employee of a health care facility, nursing home, or residential care facility where the patient is receiving medical treatment or is a resident.

(7) "Palliative care" shall have the same definition as in section 2 of this title.

(8) "Patient" means a person who is 18 years of age or older, a resident of Vermont, and under the care of a physician.

(9) "Physician" means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33.

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

§ 5282. RIGHT TO INFORMATION

The rights of a patient under section 1871 of this title to be informed of all available options related to terminal care and under 12 V.S.A. § 1909(d) to receive answers to any specific question about the foreseeable risks and benefits of medication without the physician's withholding any requested information exist regardless of the purpose of the inquiry or the nature of the information. A physician who engages in discussions with a patient related to such risks and benefits in the circumstances described in this chapter shall not be construed to be assisting in or contributing to a patient's independent decision to self-administer a lethal dose of medication, and such discussions

shall not be used to establish civil or criminal liability or professional disciplinary action.

§ 5283. PROTECTION OF PATIENT CHOICE AT END OF LIFE

A physician with a bona fide physician–patient relationship with a patient with a terminal condition shall not be considered to have engaged in unprofessional conduct under 26 V.S.A. § 1354 if:

(1) the physician determines that the patient has a terminal condition and has capacity;

(2) the physician informs the patient of all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

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

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

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

§ 5284. NO DUTY TO AID

A patient with a terminal condition who self-administers a lethal dose of medication shall not be considered to be a person exposed to grave physical harm under 12 V.S.A. § 519, and no person shall be subject to civil or criminal liability solely for being present when a patient with a terminal condition self-administers a lethal dose of medication or for not acting to prevent the patient from self-administering a lethal dose of medication.

§ 5285. INSURANCE POLICIES; PROHIBITIONS

(a) A person and his or her beneficiaries shall not be denied benefits under a life insurance policy, as defined in 8 V.S.A. § 3301, for actions taken in accordance with this chapter.

(b) The sale, procurement, or issue of any medical malpractice insurance policy or the rate charged for the policy shall not be conditioned upon or affected by whether the physician undertakes actions in accordance with the provisions of this chapter.

§ 5286. NO EFFECT ON PALLIATIVE SEDATION

This chapter shall not limit or otherwise affect the provision, administration, or receipt of palliative sedation consistent with accepted medical standards.

§ 5287. IMMUNITY

(a) A physician shall be immune from any civil or criminal liability or professional disciplinary action for actions performed in good faith compliance with the provisions of this chapter.

(b) Except as otherwise provided in this section and in section 5283 of this title, nothing in this chapter shall be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

§ 5288. STATUTORY CONSTRUCTION

Nothing in this chapter shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Action taken in accordance with this chapter shall not be construed for any purpose to constitute suicide, assisted suicide, mercy killing, or homicide under the law. This section shall not be construed to conflict with section 1553 of the Patient Protection and Affordable Health Care Act, Pub.L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub.L. No. 111-152.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, **Rep. Donahue of Northfield** asked and was granted leave of the House to withdraw her amendment.

Pending the question, Shall the House concur in the Senate proposal of amendment to the House proposal of amendment? **Rep. Kilmartin of Newport City** moved that the House concur in the Senate proposal of amendment to the House proposal of amendment, with a further amendment thereto as follows:

In Sec. 1, by striking out 18 V.S.A. § 5286 in its entirety and inserting in lieu thereof a new § 5286 to read as follows:

§ 5286. HEALTH CARE FACILITY PROTECTION

(a) A health care facility may prohibit any dose of medication prescribed under this chapter and intended to be lethal, for a current or future patient of the facility, from being possessed or used on the facility's premises by any person. This section shall not be construed to prohibit delivery of the lethal medication in a physician's office, provided the lethal medication is delivered to the patient or written designee and thereafter removed from the premises.

(b) Notice of a prohibition on use or possession of medication adopted pursuant to subsection (a) of this section shall be posted conspicuously in the health care facility and shall be provided to any patient who informs the facility that he or she has obtained a prescription for, or taken delivery of, a lethal medication authorized under this chapter. Posting of the prohibition shall be sufficient notice to any patient for purposes of enforcement of the prohibition, notwithstanding any other provision of this section.

(c)(1) A health care facility may inquire whether a lethal prescription has been given or delivery of a lethal medication has been made if:

(A) the health care facility has adopted a prohibition on use or possession of medication pursuant to subsection (a) of this section and the policy has been posted pursuant to subsection (b) of this section; and

(B) the health care facility has reason to believe a patient is suffering from a disease or condition covered by this chapter.

(2) If the patient responds to an inquiry made by a health care facility pursuant to subdivision (1) of this subsection that a lethal prescription has been given or delivery of a lethal medication has been made, the health care facility shall inform the patient of the health care facility's policy in writing and shall document the policy in the patient's record at that facility.

(d) If lethal medication is possessed or used on the premises of a health care facility in violation of a prohibition adopted pursuant to subsection (a) of this section and posted pursuant to subsection (b) of this section, the facility may confiscate the lethal dose and deliver it to the prescribing physician or pharmacy from which it was obtained.

(e)(1) A health care facility shall be immune from civil or criminal liability for actions taken in good faith compliance with this section.

(2) A health care facility, irrespective of whether it has adopted a prohibition on use or possession of medication pursuant to subsection (a) of this section, shall be immune from civil or criminal liability for any death or injury resulting from the ingestion of a lethal medication prescribed under this chapter.

(3) This subsection shall not apply to gross negligence, recklessness, or intentional misconduct.

Which was disagreed to on a Division vote. Yeas, 47. Nays, 69.

Pending the question, Shall the House concur with the Senate proposal of amendment to the House proposal of amendment? **Rep. Poirier of Barre City** demanded the Yeas and Nays, which demand was sustained by the

Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House concur with the Senate proposal of amendment to the House proposal of amendment? was decided in the affirmative. Yeas, 75. Nays, 65.

Those who voted in the affirmative are:

Bartholomew of Hartland	Hooper of Montpelier	Pearson of Burlington
Botzow of Pownal	Huntley of Cavendish	Peltz of Woodbury
Burke of Brattleboro	Jerman of Essex	Pugh of South Burlington
Buxton of Tunbridge	Jewett of Ripton	Rachelson of Burlington
Campion of Bennington	Johnson of South Hero	Ram of Burlington
Carr of Brandon	Kitzmiller of Montpelier	Sharpe of Bristol
Cheney of Norwich	Klein of East Montpelier	Spengler of Colchester
Clarkson of Woodstock	Komline of Dorset	Stevens of Waterbury
Cole of Burlington	Krebs of South Hero	Stevens of Shoreham
Conquest of Newbury	Krowinski of Burlington	Stuart of Brattleboro
Copeland-Hanzas of Bradford	Lenes of Shelburne	Sweaney of Windsor
Davis of Washington	Lippert of Hinesburg	Taylor of Barre City
Deen of Westminster	Macaig of Williston	Till of Jericho
Ellis of Waterbury	Manwaring of Wilmington	Toleno of Brattleboro
Emmons of Springfield	Marek of Newfane	Toll of Danville
Fisher of Lincoln	Martin of Springfield	Townsend of South Burlington
Frank of Underhill	Masland of Thetford	Vowinkel of Hartford
French of Randolph	McCormack of Burlington	Waite-Simpson of Essex
Gallivan of Chittenden	McCullough of Williston	Webb of Shelburne
Goodwin of Weston	Michelsen of Hardwick	Weed of Enosburgh
Grad of Moretown	Miller of Shaftsbury	Wilson of Manchester
Greshin of Warren	Mook of Bennington	Wizowaty of Burlington
Haas of Rochester	Mrowicki of Putney	Woodward of Johnson
Head of South Burlington	Nuovo of Middlebury	Zagar of Barnard
Heath of Westford	O'Sullivan of Burlington	
	Partridge of Windham	

Those who voted in the negative are:

Ancel of Calais	Cross of Winooski	Higley of Lowell
Batchelor of Derby	Cupoli of Rutland City	Johnson of Canaan
Beyor of Highgate	Dakin of Chester	Juskiewicz of Cambridge
Bissonnette of Winooski	Devereux of Mount Holly	Keenan of St. Albans City
Bouchard of Colchester	Dickinson of St. Albans Town	Kilmartin of Newport City
Branagan of Georgia	Donaghy of Poultney	Koch of Barre Town
Brennan of Colchester	Donahue of Northfield	Kupersmith of South Burlington
Browning of Arlington	Donovan of Burlington	Larocque of Barnet
Burditt of West Rutland	Evans of Essex	Lawrence of Lyndon
Canfield of Fair Haven	Fagan of Rutland City	Malcolm of Pawlet
Christie of Hartford	Feltus of Lyndon	Marcotte of Coventry
Condon of Colchester	Gage of Rutland City	Martin of Wolcott
Connor of Fairfield	Hebert of Vernon	McCarthy of St. Albans City
Consejo of Sheldon	Helm of Fair Haven	McFaun of Barre Town
Corcoran of Bennington		

Moran of Wardsboro	Ralston of Middlebury	Strong of Albany
Morrissey of Bennington	Russell of Rutland City	Terenzini of Rutland Town
Myers of Essex	Savage of Swanton	Turner of Milton
O'Brien of Richmond	Scheuermann of Stowe	Van Wyck of Ferrisburgh
Pearce of Richford	Shaw of Pittsford	Winters of Williamstown
Poirier of Barre City	Shaw of Derby	Wright of Burlington
Potter of Clarendon	Smith of New Haven	
Quimby of Concord	South of St. Johnsbury	

Those members absent with leave of the House and not voting are:

Fay of St. Johnsbury	Lewis of Berlin	Trieber of Rockingham
Hubert of Milton	Mitchell of Fairfax	Yantachka of Charlotte
Lanpher of Vergennes	Townsend of Randolph	Young of Glover

Committee of Conference Appointed

S. 129

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on Senate bill, entitled

An act relating to workers' compensation liens

The Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Marcotte of Coventry
Rep. Botzow of Pownal
Rep. Young of Glover

Committee of Conference Appointed

H. 240

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on House bill, entitled

An act relating to Executive Branch fees

The Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Branagan of Georgia
Rep. Clarkson of Woodstock
Rep. Sharpe of Bristol

Rules Suspended; Senate Proposal of Amendment Concurred in**H. 522**

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Turner of Milton**, the rules were suspended and House bill, entitled

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

Was taken up for immediate consideration.

The Senate concurred in the House proposal of amendment with further proposal of amendment as follows:

In Sec. 11, 18 V.S.A. § 4289, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

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

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

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

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

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

Which proposal of amendment was considered and concurred in.

**Rules Suspended; Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed; Rules Suspended
Bill Messaged to Senate Forthwith****H. 295**

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Turner of Milton**, the rules were suspended and House bill, entitled

An act relating to technical tax changes

Was taken up for immediate consideration.

The Senate proposed to the House to amend House bill, entitled

First: By adding Secs. 3a through 3d to read as follows:

Sec. 3a. 32 V.S.A. § 312(d) is added to read:

(d) Every tax expenditure in the tax expenditure report required by this section shall be accompanied in statute by a statutory purpose explaining the policy goal behind the exemption, exclusion, deduction, or credit applicable to the tax. The statutory purpose shall appear as a separate subsection or subdivision in statute and shall bear the title "Statutory Purpose." Notwithstanding any other provision of law, a tax expenditure listed in the tax expenditure report that lacks a statutory purpose in statute shall not be implemented or enforced until a statutory purpose is provided.

Sec. 3b. TAX EXPENDITURE PURPOSES

The Joint Fiscal Committee shall draft a statutory purpose for each tax expenditure in the report required by 32 V.S.A. § 312 that explains the policy goal behind the exemption, exclusion, deduction, or credit applicable to the tax. For the purpose of this report, the Committee shall have the assistance of the Department of Taxes, the Joint Fiscal Office, and the Office of Legislative Council. The Committee shall report its findings and recommendations to the Senate Committee on Finance and the House Committee on Ways and Means by January 15, 2014. The report of the Committee shall consist of a written catalogue for Vermont's tax expenditures and draft legislation, in bill form, providing a statutory purpose for each tax expenditure. Upon receipt of the report under this section, the Senate Committee on Finance shall introduce a bill to adopt statutory purposes during the 2014 legislative session.

Sec. 3c. 32 V.S.A. § 3102(l) is added to read:

(l) The Commissioner shall provide the Joint Fiscal Office with state returns and return information necessary for the Joint Fiscal Office or its agents to perform its duties, including conducting its own statistical studies, forecasts, and fiscal analysis; provided, however, that the provisions of subsection (a) and (h) of this section apply to disclosures under this subsection, and provided that the Commissioner shall redact any information that identifies a particular taxpayer, including the taxpayer's name, address, Social Security or employer identification number, prior to releasing any state return or return information.

Sec. 3d. TAX COMPLIANCE

The General Assembly finds that there is a gap between the amount of taxes paid in this State and the amount of taxes due. Therefore, the General Assembly directs the Department of Taxes to develop and pursue further strategies to close the tax gap during state fiscal year 2014. The Department of

Taxes shall redeploy resources to focus on these strategies with the goal of increasing current collections by \$1,500,000.00 in fiscal year 2014.

Second: By adding a Sec. 9a to read as follows:

Sec. 9a. REPEALS

The following are repealed:

(1) 2011 Acts and Resolves No. 45, Sec. 13a (wastewater permits).

(2) 2012 Acts and Resolves No. 143, Secs. 41 through 43 (wastewater permits).

Third: By striking out Sec. 12 in its entirety and inserting in lieu thereof:

Sec. 12. [Deleted.]

Fourth: In Sec. 13, 32 V.S.A. § 5811(18)(A)(i), in subdivision (III), by inserting the word federal before the words “net operating loss”;

Fifth: By adding a Sec. 13a to read:

Sec. 13a. 32 V.S.A. § 5811(21)(B) is amended to read:

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations;

(ii) with respect to adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code reduced by the total amount of any qualified dividend income: either the first \$5,000.00 of such adjusted net capital gain income; or 40 percent of adjusted net capital gain income from the sale of assets held by the taxpayer for more than three years, except not adjusted net capital gain income from:

* * *

Sixth: By adding Sec. 18a to read as follows:

Sec. 18a. H-2A PAYMENTS

The Department of Taxes shall not enforce the provisions of 32 V.S.A. chapter 151, including any associated penalties or interest, for any person who received payments while working under an H-2A temporary agricultural visa for any return period prior to December 31, 2011. The Department of Taxes shall also not enforce the provisions of 32 V.S.A. chapter 151, subchapter 4, including any associated penalties or interest, for any person who fails to withhold taxes for payments made to an employee under an H-2A temporary agricultural visa for any return period prior to December 31, 2011. Any

liability, interest, or penalty imposed for a return period specified in this section shall be refunded upon request, provided the person provides documentation of his or her claim to the satisfaction of the Commissioner of Taxes.

Seventh: By adding Sec. 18b to read as follows:

Sec. 18b. WOOD PRODUCTS MANUFACTURERS TAX CREDIT

2005 Spec. Sess. Acts and Resolves No. 2, Sec. 2, as amended by 2006 Acts and Resolves No. 212, Sec. 9 and 2008 Acts and Resolves No. 190, Sec. 29, and as further amended by 2011 Acts and Resolves No. 45, Sec. 17, is further amended to read:

Sec. 2. EFFECTIVE DATE; SUNSET

Sec. 1 of this act (wood products manufacture tax credit) shall apply to taxable years beginning on or after July 1, 2005. 32 V.S.A. § 5930y is repealed ~~July 1, 2013~~ January 1, 2014, and no credit under that section shall be available for any taxable year beginning on or after ~~July 1, 2013~~ December 31, 2013.

Eighth: By adding Secs. 20a through 20f to read as follows:

Sec. 20a. 32 V.S.A. § 3802a is added to read:

§ 3802a. REQUIREMENT TO PROVIDE INSURANCE INFORMATION

Before April 1 of each year, owners of property exempt from taxation under subdivisions 3802(4)–(6), (9), and (12)–(15) and under subdivisions 5401(10)(D), (F), (G), and (J) of this title shall provide their local assessing officials with information regarding the insurance replacement cost of the exempt property or with a written explanation of why the property is not insured.

Sec. 20b. 32 V.S.A. § 4152 is amended to read:

§ 4152. CONTENTS

(a) When completed, the grand list of a town shall be in such form as the director prescribes and shall contain such information as the director prescribes, including:

* * *

(6) For those parcels which are exempt, the insurance replacement value reported to the local assessing officials by the owner under section 3802a of this title, or what the full listed value of the property would be absent the exemption and the statutory authority for granting such exemption and, for

properties exempt pursuant to a vote, the year in which the exemption became effective and the year in which the exemption ends;

* * *

(c) When the grand list of a town describes exempt property, the grand list shall identify if the value provided is the insurance replacement cost provided under section 3802a of this title or the full listed value under subdivision (a)(6) of this section.

Sec. 20c. 32 V.S.A. § 3850 is added to read:

§ 3850. BLIGHTED PROPERTY IMPROVEMENT PROGRAM

(a) At an annual or special meeting, a municipality may vote to authorize the legislative body of the municipality to exempt from municipal taxes for a period not to exceed five years the value of improvements made to dwelling units certified as blighted. As used in this section, "dwelling unit" means a building or the part of a building that is used as a primary home, residence, or sleeping place by one or more persons who maintain a household.

(b) If a municipality votes to approve the exemption described in subsection (a) of this section, the legislative body of the municipality shall appoint an independent review committee that is authorized to certify dwelling units in the municipality as blighted and exempt the value of improvements made to these dwelling units.

(c) As used in this section, a dwelling unit may be certified as blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

(d) If a dwelling unit is certified as blighted under subsection (b) of this section, the exemption shall take effect on the April 1 following the certification of the dwelling unit.

Sec. 20d. STUDY COMMITTEE ON CERTAIN PROPERTY TAX EXEMPTIONS

(a) Creation of committee. There is created a Property Tax Exemption Study Committee to study issues related to properties that fall within the public, pious, and charitable property tax exemption in 32 V.S.A. § 3802(4). The Committee shall study and make recommendations related to the definition, listing, valuation, and tax treatment of properties within this exemption.

(b) Membership. The Property Tax Exemption Study Committee shall be composed of seven members. Four members of the Committee shall be

members of the General Assembly. The Committee on Committees of the Senate shall appoint two members of the Senate, not from the same political party, and the Speaker of the House shall appoint two members of the House, not from the same political party. The Chair and Vice Chair of the Committee shall be legislative members selected by all members of the Committee. Three members of the Committee shall be as follows:

(1) the Director of the Division of Property Valuation and Review;

(2) one member from Vermont's League of Cities and Towns, chosen by its board of directors; and

(3) one member of the Vermont Assessors and Listers Association, chosen by its board of directors.

(c) Powers and duties.

(1) The Committee shall study the definition, listing practices, valuation, and tax treatment of properties within the public, pious, and charitable exemption, including the following:

(A) ways to clarify the definitions of properties that fall within this exemption, including recreational facilities, educational facilities, and publically owned land and facilities;

(B) guidelines to ensure a uniform listing practice of public, pious, and charitable properties in different municipalities;

(C) methods of providing a valuation for properties within this exemption; and

(D) whether the policy justification for these exemptions continues to be warranted and whether a different system of taxation or exemption of these properties may be more appropriate.

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

(d) Report. By January 15, 2014, the Committee shall report to the Senate Committee on Finance and the House Committee on Ways and Means its findings and any recommendations for legislative action.

(e) Number of meetings; term of Committee. The Committee may meet no more than six times, and shall cease to exist on January 16, 2014.

Sec. 20e. 2008 Acts and Resolves No. 190, Sec. 40, as amended by 2010 Acts and Resolves No. 160, Sec. 22, as amended by 2011 Acts and Resolves No. 45, Sec. 13f, is further amended to read:

Sec. 40. EDUCATION PROPERTY TAX EXEMPTION FOR
~~SKATINGRINKS~~ SKATING RINKS USED FOR PUBLIC
SCHOOLS

Real and personal property operated as a skating rink, owned and operated on a nonprofit basis but not necessarily by the same entity, and which, in the most recent calendar year, provided facilities to local public schools for a sport officially recognized by the Vermont Principals' Association shall be exempt from 50 percent of the education property taxes for fiscal ~~year 2012~~ years 2013 and 2014 only.

Sec. 20f. 32 V.S.A. § 8701(d) is added to read:

(d) The existence of a renewable energy plant subject to tax under subsection (b) of this section shall not alter the exempt status of any underlying property under section 3802 or 5401(10)(F) of this title.

Ninth: By adding a Sec. 30a to read as follows:

Sec. 30a. 32 V.S.A. § 3802(18) is added to read:

(18) Any parcel of land that provides public access to public waters, as defined in 10 V.S.A. § 1422(6), and that is also:

(A) owned by the Town of Hardwick and located in Greensboro, Vermont; or

(B) owned by the Town of Thetford and located in Fairlee, Vermont, and West Fairlee, Vermont.

Tenth: In Sec. 31, in subsection (b), after “Commissioner may reasonably require for the proper administration of this chapter.” by inserting

The return shall include notice that the property may be subject to regulations governing potable water supplies and wastewater systems under 10 V.S.A. chapter 64 and to building, zoning, and subdivision regulations; and that the parties have an obligation under law to investigate and disclose his or her knowledge regarding flood regulation, if any, affecting the property.

Eleventh: By inserting a Sec. 34a to read: [adds intent language, extends cloud moratorium to July 1, 2016, requires regulations with specific standards by January 1, 2016.]

Sec. 34a. 2012 Acts and Resolves No. 143, Sec. 52 is amended to read:

Sec. 52. TEMPORARY MORATORIUM ON ENFORCEMENT OF
SALES TAX ON PREWRITTEN SOFTWARE ACCESSED
REMOTELY

(a) The General Assembly finds that “cloud-based services” is the general term given to a variety of services that are accessed via the Internet or a proprietary network. Cloud-based services allow users to store data, access software, and access services and platforms from almost any device that can access the cloud via a broadband connection. The use of cloud services has greatly increased over the past decade. As a result, states have taken a wide range of positions regarding the way to characterize cloud-based services for the purpose of applying the sales and use tax. It is in this context that the General Assembly adopts this section.

(b) Notwithstanding the imposition of sales and use tax on prewritten computer software by 32 V.S.A. chapter 233, the ~~department of taxes~~ Department of Taxes shall not assess tax on charges for remotely accessed software made after December 31, 2006 and before July 1, 2013 2016, and taxes paid on such charges shall be refunded upon request if within the statute of limitations and documented to the satisfaction of the ~~commissioner~~ Commissioner. “Charges for remotely accessed software” means charges for the right to access and use prewritten software run on underlying infrastructure that is not managed or controlled by the consumer or a related company. Enforcement of the sales and use tax imposed on the purchase of specified digital products pursuant to 32 V.S.A. § 9771(8) is not affected by this section.

(c) Beginning on July 1, 2013, the moratorium in subsection (b) of this section shall not apply to charges by a vendor for the right to access and use prewritten software if any vendor offers for sale, in a storage medium or by an electronic download to the user’s computer or server, either directly or through wholesale or retail channels that same computer software or comparable computer software that performs the same functions. The software shall be considered the same or comparable if the seller provides the customer with the use of software that functions with little or no personal intervention by the seller or seller’s employees other than “help desk” assistance for customers having difficulty using the software.

(d) By January 1, 2016, the Department of Taxes shall adopt regulations specifying how the sales and use tax will be applied to remotely accessed software. The regulations shall conform to the following general standards:

(1) The sale of computer hardware, computer equipment, and prewritten software shall be taxed, regardless of the method of delivery. The term “sale”

shall include electronic delivery or load and leave, licenses or leases, transfer of rights to use software installed on a remote server, upgrades, and license upgrades.

(2) The lease of computer hardware on the premise of another shall be taxed if the lessor operates, directs, or controls the hardware.

(3) Charges for the installation of hardware shall not be taxed.

(4) If computer hardware cannot be purchased without mandatory services, such as training, maintenance, or testing, charges for these services shall be considered taxable. If, on the other hand, the services are optional, the charges shall not be taxed.

(5) The sale of the right to reproduce a program shall generally be considered taxable.

(6) The sale of custom software shall not be taxed, regardless of the method of delivery.

(7) If a sale involves both prewritten and custom software or if it involves the customization of prewritten software, the sale shall be taxable unless the price of both the prewritten component and the custom component are stated separately, in which case only the prewritten software component shall be taxed.

(8) The furnishing of reports of standard information to more than two customers shall generally be considered taxable.

(9) The provision of data processing services and access to database services shall generally be considered nontaxable.

(10) The regulations drafted by the Department of Taxes under this subsection shall conform with current Vermont law and maintain Vermont's compliance with the Streamlined Sales and Use Tax Agreement.

Twelfth: By inserting Secs. 35 and 36 to read:

Sec. 35. 8 V.S.A. § 15(c) is amended to read:

(c) The ~~commissioner~~ Commissioner may waive the requirements of 15 V.S.A. § 795(b) as the ~~commissioner~~ Commissioner deems necessary to permit the ~~department~~ Department to participate in any national licensing or registration systems with respect to any person or entity subject to the jurisdiction of the ~~commissioner~~ Commissioner under this title, Title 9, or 18 V.S.A. chapter 221 of Title 18. ~~The commissioner may waive the requirements of 32 V.S.A. § 3113(b) as the commissioner deems necessary to permit the department to participate in any national licensing or registration~~

~~systems with respect to any person or entity not residing in this state and subject to the jurisdiction of the commissioner under this title, Title 9, or chapter 221 of Title 18.~~

Sec. 36. 32 V.S.A. § 3113(b) is amended to read:

(b) No agency of the ~~state~~ State shall grant, issue, or renew any license or other authority to conduct a trade or business (including a license to practice a profession) to, or enter into, extend, or renew any contract for the provision of goods, services, or real estate space with, any person unless such person shall first sign a written declaration under the pains and penalties of perjury, that the person is in good standing with respect to or in full compliance with a plan to pay, any and all taxes due as of the date such declaration is made, except that the Commissioner may waive this requirement as the Commissioner deems appropriate to facilitate the Department of Financial Regulation's participation in any national licensing or registration systems for persons required to be licensed or registered by the Commissioner of Financial Regulation under Title 8, Title 9, or 18 V.S.A. chapter 221.

Thirteenth: By inserting Secs. 37–43 to read:

* * * Health Insurance Claims Tax * * *

Sec. 37. 32 V.S.A. chapter 243 is added to read:

CHAPTER 243. HEALTH CARE CLAIMS TAX

§ 10401. DEFINITIONS

As used in this section:

(1) “Health insurance” means any group or individual health care benefit policy, contract, or other health benefit plan offered, issued, renewed, or administered by any health insurer, including any health care benefit plan offered, issued, renewed, or administered by any health insurance company, any nonprofit hospital and medical service corporation, any dental service corporation, or any managed care organization as defined in 18 V.S.A. § 9402. The term includes comprehensive major medical policies, contracts, or plans and Medicare supplemental policies, contracts, or plans, but does not include Medicaid or any other state health care assistance program in which claims are financed in whole or in part through a federal program unless authorized by federal law and approved by the General Assembly. The term does not include policies issued for specified disease, accident, injury, hospital indemnity, long-term care, disability income, or other limited benefit health insurance policies, except that any policy providing coverage for dental services shall be included.

(2) “Health insurer” means any person who offers, issues, renews, or administers a health insurance policy, contract, or other health benefit plan in this State and includes third party administrators or pharmacy benefit managers who provide administrative services only for a health benefit plan offering coverage in this State. The term does not include a third party administrator or pharmacy benefit manager to the extent that a health insurer has paid the fee which would otherwise be imposed in connection with health care claims administered by the third party administrator or pharmacy benefit manager.

§ 10402. HEALTH CARE CLAIMS TAX

(a) There is imposed on every health insurer an annual tax in an amount equal to 0.999 of one percent of all health insurance claims paid by the health insurer for its Vermont members in the previous fiscal year ending June 30. The annual fee shall be paid to the Commissioner of Taxes in one installment due by January 1.

(b) Revenues paid and collected under this chapter shall be deposited as follows:

(1) 0.199 of one percent of all health insurance claims into the Health IT-Fund established in section 10301 of this title; and

(2) 0.8 of one percent of all health insurance claims into the State Health Care Resources Fund established in 33 V.S.A. § 1901d.

(c) The annual cost to obtain Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES) data, pursuant to 18 V.S.A. § 9410, for use by the Department of Taxes shall be paid from the Vermont Health IT-Fund and the State Health Care Resources Fund in the same proportion as revenues are deposited into those Funds.

(d) It is the intent of the General Assembly that all health insurers shall contribute equitably through the tax imposed in subsection (a) of this section. In the event that the tax is found not to be enforceable as applied to third party administrators or other entities, the tax owed by all other health insurers shall remain at the existing level and the General Assembly shall consider alternative funding mechanisms that would be enforceable as to all health insurers.

§ 10403. ADMINISTRATION OF TAX

(a) The Commissioner of Taxes shall administer and enforce this chapter and the tax. The Commissioner may adopt rules under 3 V.S.A. chapter 25 to carry out such administration and enforcement.

(b) All of the administrative provisions of chapter 151 of this title, including those relating to the collection and enforcement by the Commissioner of the withholding tax and the income tax, shall apply to the tax imposed by this chapter. In addition, the provisions of chapter 103 of this title, including those relating to the imposition of interest and penalty for failure to pay the tax as provided in section 10402 of this title, shall apply to the tax imposed by this chapter.

§ 10404. DETERMINATION OF DEFICIENCY, REFUND, PENALTY, OR INTEREST

(a) Within 60 days after the mailing of a notice of deficiency, denial or reduction of a refund claim, or assessment of penalty or interest, a health insurer may petition the Commissioner in writing for a determination of that deficiency, refund, or assessment. The Commissioner shall thereafter grant a hearing upon the matter and notify the health insurer in writing of his or her determination concerning the deficiency, penalty, or interest. This is the exclusive remedy of a health insurer with respect to these matters.

(b) Any hearing granted by the Commissioner under this section shall be subject to and governed by 3 V.S.A. chapter 25.

(c) Any aggrieved health insurer may, within 30 days after a determination by the Commissioner concerning a notice of deficiency, an assessment of penalty or interest, or a claim to refund, appeal that determination to the Washington Superior Court or to the Superior Court for the county in which the health insurer has a place of business.

Sec. 38. 32 V.S.A. § 3102(e) is amended to read:

(e) The ~~commissioner~~ Commissioner may, in his or her discretion and subject to such conditions and requirements as he or she may provide, including any confidentiality requirements of the Internal Revenue Service, disclose a return or return information:

* * *

(14) to the ~~office of the state treasurer~~ Office of the State Treasurer, only in the form of mailing labels, with only the last address known to the ~~department of taxes~~ Department of Taxes of any person identified to the ~~department~~ Department by the ~~treasurer~~ Treasurer by name and Social Security number, for the ~~treasurer's~~ Treasurer's use in notifying owners of unclaimed property; ~~and~~

(15) to the ~~department of liquor control~~ Department of Liquor Control, provided that the information is limited to information concerning the sales and

use tax and meals and rooms tax filing history with respect to the most recent five years of a person seeking a liquor license or a renewal of a liquor license; and

(16) to the Commissioner of Financial Regulation and the Commissioner of Vermont Health Access, if such return or return information relates to obligations of health insurers under chapter 243 of this title.

Sec. 39. 32 V.S.A. § 10301 is amended to read:

§ 10301. HEALTH IT-FUND

* * *

(c) Into the fund shall be deposited:

(1) revenue from the ~~reinvestment fee~~ health care claims tax imposed on health insurers pursuant to ~~8 V.S.A. § 4089k~~ subdivision 10402(b)(1) of this title.

* * *

Sec. 40. 2008 Acts and Resolves No. 192, Sec. 9.001(g) is amended to read:

(g) Sec. 7.005 of this act shall sunset July 1, ~~2015~~ 2013.

Sec. 41. 32 V.S.A. § 10301 is amended to read:

§ 10301. HEALTH IT-FUND

* * *

(c) Into the fund shall be deposited:

(1) ~~revenue from the health care claims tax imposed on health insurers pursuant to subdivision 10402(b)(1) of this title.~~ [Deleted.]

* * *

Sec. 42. 32 V.S.A. § 10402 is amended to read:

§ 10402. HEALTH CARE CLAIMS TAX

(a) There is imposed on every health insurer an annual tax in an amount equal to ~~0.999~~ 0.8 of one percent of all health insurance claims paid by the health insurer for its Vermont members in the previous fiscal year ending June 30. The annual fee shall be paid to the Commissioner of Taxes in one installment due by January 1.

(b) Revenues paid and collected under this chapter shall be deposited as follows:

~~(1) 0.199 of one percent of all health insurance claims into the Health IT Fund established in section 10301 of this title; and~~

~~(2) 0.8 of one percent of all health insurance claims into the State Health Care Resources Fund established in 33 V.S.A. § 1901d.~~

* * *

Sec. 43. REPEAL

§ V.S.A. § 40891 (health care claims assessment) is repealed on July 1, 2013.

Fourteenth: By inserting Secs. 44 and 45 to read:

Sec. 44. 23 V.S.A. § 3106(a)(2) is amended to read:

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

Sec 45. 2013 Acts and Resolves No. 12, Sec. 24 is amended to read:

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

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

Fifteenth: By adding a new section to be numbered Sec. 45a to read as follows:

Sec. 45a. 32 V.S.A. § 5884(a) is amended to read:

(a) At any time within three years after the date a return is required to be filed under this chapter; or six months after a refund was received from the United States with respect to an income tax liability, or an amount of taxable income, under the laws of the United States, reported in a return filed under the laws of the United States for the taxable year, with respect to which that return

was filed under this chapter; or three years after the date when real or personal property was seized by the Department as remedy for outstanding tax liability; whichever is ~~later~~ latest, a taxpayer may petition the ~~commissioner~~ Commissioner for the refund of all or any part of the amount of tax paid with respect to the return. Unless the period is extended by agreement of the ~~commissioner~~ Commissioner and the taxpayer, the ~~commissioner~~ Commissioner shall thereafter, upon notice to the taxpayer, hold a hearing on the claim and shall notify the taxpayer of his or her determination of the claim within 30 days of the hearing. The failure of the ~~commissioner~~ Commissioner to refund the amount claimed by a taxpayer within six months of the date of the petition for the refund, under this subsection, shall be considered to be a notification to the taxpayer of the ~~commissioner's~~ Commissioner's determination concerning the claim. The notification shall be considered to have been given on the date of the expiration of the six-month period.

Sixteenth: By adding a Sec. 45b and Sec. 45c to read as follows:

Sec. 45b. 7 V.S.A. § 422 is amended to read:

§ 422. TAX ON SPIRITUOUS LIQUOR

A tax is assessed on the gross revenue on the retail sale of spirituous liquor in the ~~state~~ State of Vermont, including fortified wine, sold by the ~~liquor control board~~ Liquor Control Board or sold by a manufacturer or rectifier of spirituous liquor in accordance with the provisions of this title. The tax shall be at the following rates based on the gross revenue of the retail sales by the seller in the ~~previous~~ current year:

(1) if the gross revenue of the seller is ~~\$100,000.00~~ \$150,000.00 or lower, the rate of tax is five percent;

(2) if the gross revenue of the seller is between ~~\$100,000.00~~ \$150,000.00 and ~~\$200,000.00~~ \$250,000.00, the rate of tax is ~~\$15,000.00~~ \$7,500.00 plus 15 percent of gross revenues over ~~\$100,000.00~~ \$150,000.00;

(3) if the gross revenue of the seller is over ~~\$200,000.00~~ \$250,000.00, the rate of tax is 25 percent.

Sec. 45c. 33 V.S.A. § 2503 is amended to read:

§ 2503. FUEL GROSS RECEIPTS TAX

(a) There is imposed a gross receipts tax of 0.5 percent on the retail sale of the following types of fuel ~~by sellers receiving more than \$10,000.00 annually for the sale of such fuels:~~

-
- (1) heating oil, kerosene, and other dyed diesel fuel delivered to a residence or business;
 - (2) propane;
 - (3) natural gas;
 - (4) electricity;
 - (5) coal.

* * *

Seventeenth: By adding a new section to be Sec. 45d to read:

Sec. 45d. 33 V.S.A. § 1955a(a) is amended to read:

(a) Beginning October 1, 2011, each home health agency's assessment shall be 19.30 percent of its net operating revenues from core home health care services, excluding revenues for services provided under Title XVIII of the federal Social Security Act; provided, however, that each home health agency's annual assessment shall be limited to no more than six percent of its annual net patient revenue. The amount of the tax shall be determined by the ~~commissioner~~ Commissioner based on the home health agency's most recent audited financial statements at the time of submission, a copy of which shall be provided on or before ~~December 1~~ May 1 of each year to the ~~department~~ Department. For providers who begin operations as a home health agency after January 1, 2005, the tax shall be assessed as follows:

* * *

And by renumbering the remaining section to be numerically correct

Eighteenth: In the renumbered Sec. 46 (effective dates), by adding subsections (8) (9) (10) and (11) to read:

(8) Sec. 3a (tax expenditures) and Sec. 45d (home health agencies) shall take effect on July 1, 2014.

(9) Secs. 20a (insurance values) and 20b (grand list) shall take effect on July 1, 2014.

(10) Sec. 30a (water access) of this act shall take effect on January 1, 2014.

(11) Secs. 37-40 (health claims tax) of this act shall take effect on July 1, 2013 and Secs. 41 and 42 (health claims sunset) shall take effect on July 1, 2017.

And in subdivision (4), after the words “(state appraiser name change)” by inserting , Sec. 45b (spirituous liquor), and Sec. 45c (fuel gross receipts tax)

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Ancel of Calais** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Ancel of Calais

Rep. Ram of Burlington

Rep. Wilson of Manchester

On motion of **Rep. Turner of Milton**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Adjournment

At nine o'clock and twenty minutes in the evening, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at ten o'clock and thirty minutes in the forenoon.