

Journal of the Senate

TUESDAY, MAY 7, 2013

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Message from the House No. 62

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

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

S. 85. An act relating to workers' compensation for firefighters and rescue or ambulance workers.

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

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

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

And has adopted the same on its part.

Pursuant to the request of the Senate for a Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

S. 1. An act relating to consideration of financial cost of criminal sentencing options.

The Speaker has appointed as members of such committee on the part of the House:

Rep. Lippert of Hinesburg
Rep. Grad of Moretown
Rep. Koch of Barre Town.

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

H. 205. An act relating to 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.

And has severally concurred therein.

Message from the Governor

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

Mr. President:

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

S. 47. An act relating to protection orders and second degree domestic assault.

S. 161. An act relating to mitigation of traffic fines and approval of a DLS Diversion Program contract.

Bill Called Up

H. 522.

Senate bill of the following title was called up by Senator Sears, and, under the rule, placed on the Calendar for action the next legislative day:

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

Joint Senate Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Baruth and Benning,

J.R.S. 30. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, May 10, 2013, it be to meet again no later than Tuesday, May 14, 2013.

Committee Relieved of Further Consideration; Bill Committed

H. 226.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to the regulation of underground storage tanks,
and the bill was committed to the Committee on Natural Resources and Energy.

Committee Relieved of Further Consideration; Bill Committed

H. 535.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to the approval of the adoption and to the codification of the charter of the Town of Woodford,
and the bill was committed to the Committee on Government Operations.

Bill Passed in Concurrence with Proposal of Amendment

H. 26.

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to technical corrections.

Third Readings Ordered

H. 54.

Senator White, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to Public Records Act exemptions.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

H. 403.

Senator Fox, for the Committee on Health and Welfare, to which was referred Senate bill entitled:

An act relating to community supports for persons with serious functional impairments.

Reported that the bill ought to pass in concurrence.

Senator Fox, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

H. 512.

Senator Pollina, for the Committee on Government Operations, to which was referred House bill entitled:

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

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

H. 517.

Senator McAllister, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to approval of the adoption and the codification of the charter of the Town of St. Albans.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered**H. 200.**

Senator Benning, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to civil penalties for possession of marijuana.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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

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

§ 4230. MARIJUANA

(a) Possession and cultivation.

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

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

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

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

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

(4) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or~~

~~substances of an aggregate weight of 10 pounds or more of marijuana~~ or knowingly and unlawfully cultivating more than 25 plants of marijuana shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

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

* * *

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

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

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

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

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

(b)(1) Except as otherwise provided in this section, a person 21 years of age or older who possesses one ounce or less of marijuana or five grams or less of hashish or who possesses paraphernalia for marijuana use shall not be

penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under state law.

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

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

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

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

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

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

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

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

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

(3) The person may be detained only until the person identifies himself or herself satisfactorily to the officer. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a judge in the Criminal Division of the Superior Court for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately

and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f)(1) Diversion Program Requirements. Upon being contacted by a person who has been issued a notice of violation, the Diversion Program shall register the person in the Youth Substance Abuse Safety Program. Pursuant to the

Youth Substance Abuse Safety Program, the Diversion Program shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense and in every case shall include a condition requiring satisfactory completion of substance abuse screening using an evidence-based tool and, if deemed appropriate following the screening, substance abuse assessment and substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a state-certified or state-licensed substance abuse counselor or substance abuse treatment provider to provide the services.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

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

* * *

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

* * *

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

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

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

* * *

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

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

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

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

* * *

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

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

§ 3202. INTEREST AND PENALTIES

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

(b) Penalties.

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

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

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

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

“negligence” means any failure to make a reasonable attempt to comply with the provisions of the tax code and “substantial understatement” means an understatement of 20 percent or more of the tax.

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

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

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

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

§ 5894. LIABILITY FOR FAILURE OR DELINQUENCY

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

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

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

(d) Failure to file or failure to pay; in excess of \$500.00. An individual, fiduciary, or officer or employee of a corporation or partner or employee of a partnership, who with intent to evade a tax liability fails to file a tax return

when required to do so or fails to pay a tax when due shall, if the amount of tax evaded is in excess of \$500.00 in a single calendar year, be imprisoned not more than three years or fined not more than \$10,000.00, or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for the Youth

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A minor shall not:

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

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

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

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

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

(d) A person who violates this section:

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

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

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

(1) ~~a person who is charged with a violation of this section who holds a license to operate a motor vehicle, and who has previously been convicted of~~

~~violating this section or adjudicated in violation of section 656 of this title, relinquish the license for a period of 60 days; and~~

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

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

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

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

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

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

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

* * * Task Force * * *

Sec. 11. TASK FORCE

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

(b) Membership. The Task Force shall be composed of four 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

(a) Secs. 1–4, 10, and 11 shall apply prospectively to conduct that occurs on or after July 1, 2013. A person who is cited or arrested for possession of one ounce or less of marijuana or five grams or less of hashish or for an underage alcohol offense under 7 V.S.A. § 656 or 657 prior to July 1, 2013 shall be subject to the penalties provided by law at the time the conduct occurred.

(b) 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.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Judiciary.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Judiciary?, Senator Sears moved to amend the proposal of amendment of the Committee on Judiciary, in Sec. 12, subsection (b), by striking out the following: “four” and inserting in lieu thereof the following: seven

Which was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Judiciary, as amended?, Senator Benning moved to amend the proposal of amendment of the Committee on Judiciary, as amended, in Sec. 13 (application), by striking out subsection (a) in its entirety and, in subsection (b), by striking out the subsection designation

Which was agreed to on a roll call, Yeas 16, Nays 14.

Senator Collins having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ayer, Baruth, Benning, Bray, Cummings, Doyle, French, Galbraith, MacDonald, McCormack, Pollina, Rodgers, Starr, Westman, White, Zuckerman.

Those Senators who voted in the negative were: Ashe, Campbell, Collins, Flory, Fox, Hartwell, Kitchel, Lyons, Mazza, McAllister, Mullin, Nitka, Sears, Snelling.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Judiciary, as amended, was agreed to.

Thereupon, third reading of the bill was ordered on a roll call, Yeas 24, Nays 6.

Senator McAllister having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Benning, Bray, Cummings, Doyle, Fox, French, Galbraith, Hartwell, Kitchel, Lyons, MacDonald, McCormack, Mullin, Pollina, Rodgers, Sears, Snelling, Starr, Westman, White, Zuckerman.

Those Senators who voted in the negative were: Campbell, Collins, Flory, Mazza, McAllister, Nitka.

Proposals of Amendment; Third Reading Ordered

H. 299.

Senator Sears, for the Committee on Judiciary, to which was referred House bill entitled:

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

Reported recommending that the Senate propose to the House to amend the bill as follows:

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

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

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

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

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

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

And that the bill ought to pass in concurrence with such proposals of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposals of amendment were collectively agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senator Mullin moved to amend the Senate proposal of amendment by inserting a new Sec. 6 to read as follows:

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

CHAPTER 120. BAD FAITH ASSERTIONS OF PATENT
INFRINGEMENT

§ 4195. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE

(a) The General Assembly finds that:

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

(2) Patents are essential to encouraging innovation, especially in the IT and knowledge based fields. The protections afforded by the federal patent system create an incentive to invest in research and innovation, which spurs economic growth. Patent holders have every right to enforce their patents when they are infringed, and patent enforcement litigation is necessary to protect intellectual property.

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

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

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

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

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

(b) Through this narrowly focused act, the General Assembly seeks to facilitate the efficient and prompt resolution of patent infringement claims, protect Vermont businesses from abusive and bad faith assertions of patent infringement, and build Vermont's economy, while at the same time respecting

federal law and being careful to not interfere with legitimate patent enforcement actions.

§ 4196. DEFINITIONS

In this chapter:

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

(2) “Target” means a Vermont person:

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

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

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

§ 4197. BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

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

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

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

(A) the patent number;

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

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

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

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

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

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

(6) The claim or assertion of patent infringement is meritless, and the person knew, or should have known, that the claim or assertion is meritless.

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

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

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

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

(9) Any other factor the court finds relevant.

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

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

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

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

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

(5) The person is:

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

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

(6) The person has:

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

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

(7) Any other factor the court finds relevant.

§ 4198. BOND

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

§ 4199. ENFORCEMENT; REMEDIES; DAMAGES

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

(b) A target of conduct involving assertions of patent infringement, or a person aggrieved by a violation of this chapter or by a violation of rules adopted under this chapter, may bring an action in superior court. A court may award the following remedies to a plaintiff who prevails in an action brought pursuant to this subsection:

(1) equitable relief;

(2) damages;

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

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

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

And by renumbering the remaining section to be numerically correct.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Proposals of Amendment; Third Reading Ordered**H. 395.**

Senator Collins, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

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

Reported that the bill ought to pass in concurrence.

Senator Galbraith, for the Committee on Natural Resources and Energy, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill as follows:

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

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

And that when so amended the bill ought to pass in concurrence with proposals of amendment.

Senator Lyons, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill by inserting a new section to be numbered Sec. 8a to read as follows:

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

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

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

(c) The Treasurer shall take all reasonable steps to minimize the administrative costs of the financing programs supported by the facility

described in subsection (a) of this section. On or before December 15, 2013, the Treasurer shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committees on Economic Development, Housing and General Affairs and on Finance detailing the steps taken to implement this subsection.

And that when so amended the bill ought to pass in concurrence with proposal of amendment.

Senator Westman, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass in concurrence.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Natural Resources and Energy?, was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Finance?, Senators Ashe and Lyons moved to amend the proposal of amendment of the Committee on Finance, as follows:

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

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

Second: In Sec. 8a, by adding subsection (d) as follows:

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

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

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

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

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

Third: After Sec. 8a, by adding Sec. 8b as follows:

Sec. 8b. VERMONT CLEAN ENERGY JOBS INITIATIVE

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

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Finance, as amended?, was agreed to.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 405.

Senator Lyons, for the Committee on Finance, to which was referred House bill entitled:

An act relating to manure management and anaerobic digesters.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 1, 30 V.S.A. § 248, in subdivision (q)(1), by striking out the last sentence and inserting in lieu thereof the following:

The certificate shall not be required for the methane digester, the digester influents and non-gas effluents, the buildings and equipment used to handle such influents and non-gas effluents, or the on-farm use of heat and exhaust produced by the generation of electricity, and these components shall not be subject to jurisdiction under this section.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

House Proposal of Amendment Concurred In with Amendment

S. 31.

House proposal of amendment to Senate bill entitled:

An act relating to prohibiting a court from consideration of interests in revocable trusts or wills when making a property settlement in a divorce proceeding.

Was taken up.

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

Sec. 1. 15 V.S.A. § 751 is amended to read:

§ 751. PROPERTY SETTLEMENT

(a) Upon motion of either party to a proceeding under this chapter, the court shall settle the rights of the parties to their property, by including in its judgment provisions which equitably divide and assign the property. All property owned by either or both of the parties, however and whenever acquired, shall be subject to the jurisdiction of the court. Title to the property, whether in the names of the husband, the wife, both parties, or a nominee, shall be immaterial, except where equitable distribution can be made without disturbing separate property.

(b) In making a property settlement the court may consider all relevant factors, including ~~but not limited to:~~

- (1) the length of the civil marriage;
- (2) the age and health of the parties;

-
- (3) the occupation, source, and amount of income of each of the parties;
 - (4) vocational skills and employability;
 - (5) the contribution by one spouse to the education, training, or increased earning power of the other;
 - (6) the value of all property interests, liabilities, and needs of each party;
 - (7) whether the property settlement is in lieu of or in addition to maintenance;
 - (8) the opportunity of each for future acquisition of capital assets and income;. For purposes of this subdivision:

(A) The court may consider the parties' lifestyle and decisions made during the marriage and any other competent evidence as related to their expectations of gifts or an inheritance. The court shall not speculate as to the value of an inheritance or make a finding as to its value unless there is competent evidence of such value.

(B) A party's interest in an inheritance that has not yet vested and is capable of modification or divestment shall not be included in the marital estate.

(C) The court shall honor the provisions of any spendthrift clause as it applies to a party's interest in an irrevocable trust or inheritance.

(D) A party's interest in a trust with a valid spendthrift provision shall not be included in the marital estate.

(E) Notwithstanding any other provision of this subdivision (8), a person who is not a party to the divorce shall not be subject to any subpoena to provide documentation or to give testimony about:

(i) his or her assets, income, or net worth, unless it relates to a party's interest in an instrument that is vested and not capable of modification or divestment; or

(ii) his or her revocable estate planning instruments, including interests that pass at death by operation of law or by contract, unless a party's interest in an instrument is vested and not capable of modification or divestment.

(F) This subdivision (8) shall not be construed to limit the testimony given by the parties themselves or what can be obtained through discovery of the parties;

- (9) the desirability of awarding the family home or the right to live there for reasonable periods to the spouse having custody of the children;

(10) the party through whom the property was acquired;

(11) the contribution of each spouse in the acquisition, preservation, and depreciation or appreciation in value of the respective estates, including the nonmonetary contribution of a spouse as a homemaker; and

(12) the respective merits of the parties.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

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

An act relating to consideration of interests in revocable estate planning instruments when making a property settlement in a divorce proceeding.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Sears, on behalf of the Committee on Judiciary moved that the Senate concur in the House proposal of amendment with an amendment as follows:

In Sec. 1, in 15 V.S.A. § 751, subdivision (b)(8), by striking out subdivisions (C) and (D) in their entirety and by relettering the existing subdivision (E) to be (C) and the existing (F) to be (D)

Which was agreed to.

House Proposal of Amendment Concurred In

S. 59.

House proposal of amendment to Senate bill entitled:

An act relating to independent direct support providers.

Was taken up.

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

Sec. 1. 21 V.S.A. chapter 20 is added to read:

CHAPTER 20. INDEPENDENT DIRECT SUPPORT

PROVIDERS

§ 1631. DEFINITIONS

As used in this chapter:

(1) "Board" means the State Labor Relations Board established by 3 V.S.A. § 921.

(2) “Collective bargaining” or “bargaining collectively” means the process by which the State and the exclusive representative of the independent direct support providers negotiate mandatory subjects of bargaining identified in subsection 1634(b) of this chapter, or any other mutually agreed subjects of bargaining not in conflict with state or federal law, with the intent to arrive at an agreement which, when reached, shall be legally binding on all parties.

(3) “Collective bargaining service fee” means a fee deducted by the State from the compensation of an independent direct support provider who is not a member of the exclusive representative of independent direct support providers, which is paid to the exclusive representative. The collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the exclusive representative, and shall be deducted in the same manner as dues are deducted from the compensation of members of the exclusive representative, and shall be used to defray the costs incurred by the labor organization in fulfilling its duty to represent independent direct support providers in their relations with the State.

(4) “Exclusive representative” means the labor organization that has been certified under this chapter and has the right to represent independent direct support providers for the purpose of collective bargaining.

(5) “Grievance” means the exclusive representative’s formal written complaint regarding the improper application of one or more terms of the collective bargaining agreement, the failure to abide by any agreement reached, or the discriminatory application of a rule or regulation, which has not been resolved to a satisfactory result through informal discussion with the State.

(6) “Independent direct support provider” means any individual who provides home- and community based services to a service recipient and is employed by the service recipient, shared living provider, or surrogate.

(7) “Labor organization” means an organization of any kind in which independent direct support providers participate and which exists, in whole or in part, for the purpose of representing independent direct support providers.

(8) “Service recipient” means a person who receives home- and community-based services under the Choices for Care Medicaid waiver, the Attendant Services Program (ASP), the Children’s Personal Care Service Program, the Developmental Disabilities Services Program, or any successor program or similar program subsequently established.

(9) “Shared living provider” means a person who operates under a contract with an authorized agency and provides individualized home support

for one or two people who live in his or her home. An authorized agency includes a designated agency for developmental services.

(10) "Surrogate" means a service recipient's authorized family member, legal guardian, or a person identified in a written agreement as having responsibility for the care of a service recipient.

§ 1632. RIGHTS OF INDEPENDENT DIRECT SUPPORT PROVIDERS

Independent direct support providers shall have the right to:

(1) organize, form, join, or assist a labor organization for the purposes of collective bargaining without interference, restraint, or coercion;

(2) bargain collectively through their chosen representatives;

(3) engage in concerted activities for the purpose of supporting or engaging in collective bargaining or other mutual aid or protection;

(4) pursue grievances through the exclusive representative as provided in this chapter; and

(5) refrain from any or all such activities, subject to the requirements of subdivision 1634(b)(3) of this chapter.

§ 1633. RIGHTS OF THE STATE

Subject to the rights guaranteed by this chapter and subject to all other applicable laws, rules, and regulations, nothing in this chapter shall be construed to interfere with the right of the State to:

(1) carry out the statutory mandate and goals of the Agency of Human Services and to utilize personnel, methods, and means in the most appropriate manner possible;

(2) with the approval of the Governor, take whatever action may be necessary to carry out the mission of the Agency of Human Services in an emergency situation;

(3) comply with federal and state laws and regulations;

(4) enforce regulations and regulatory processes;

(5) develop regulations and regulatory processes that do not impair existing contracts, subject to the duty to bargain over mandatory subjects of bargaining and to the rulemaking authority of the General Assembly and the Human Services Board; and

(6) solicit and accept for use any grant of money, services, or property from the federal government, the State, or any political subdivision or agency of the State, including federal matching funds, and to cooperate with the

federal government or any political subdivision or agency of the State in making an application for any grant.

§ 1634. ESTABLISHMENT OF LIMITED COLLECTIVE BARGAINING;
SCOPE OF BARGAINING

(a) Independent direct support providers, through their exclusive representative, shall have the right to bargain collectively with the State, through the Governor's designee, under this chapter.

(b) Mandatory subjects of bargaining under this section shall be limited to:

(1) compensation rates, workforce benefits, and payment methods and procedures, except that independent direct support providers shall not be eligible to participate in the State's retirement system or the Vermont state employee health plan solely by virtue of bargaining under this chapter;

(2) professional development and training, except that the issue of whether the State may choose directly to create and administer a professional development or training program shall be a permissive subject of bargaining;

(3) the collection and disbursement of dues or fees to the exclusive representative, provided that a collective bargaining service fee may not be required of nonmembers unless the exclusive representative has established and maintained a procedure to provide nonmembers with:

(A) an audited financial statement that identifies the major categories of expenses, and divides them into chargeable and nonchargeable expenses; and

(B) an opportunity to object to the amount of the agency fee sought, any amount reasonably in dispute to be placed in escrow, subject to prompt review and determination by the board to resolve any objection over the amount of the collective bargaining fee, as provided for in subsection (d) of this section.

(4) procedures for resolving grievances against the State, provided that the final step of any negotiated grievance procedure, if required, shall be a hearing and final determination by the board in accordance with board rules and regulations; and

(5) access to job referral opportunities within covered programs, except that the issue of whether the State may choose directly to create and administer a referral registry shall be a permissive subject of bargaining.

(c) For the purpose of this chapter, the obligation to bargain collectively is the performance of the mutual obligation of the State and the exclusive representative of the independent direct support providers to meet at

reasonable times and confer in good faith with respect to all matters bargainable under the provisions of this chapter; but the failure or refusal of either party to agree to a proposal, or to change or withdraw a lawful proposal, or to make a concession shall not constitute, or be evidence of direct or indirect, a breach of this obligation. Nothing in this chapter shall be construed to require either party during collective bargaining to accede to any proposal or proposals of the other party.

(d) Any dispute raised by a nonmember concerning the amount of a collective bargaining service fee, as provided for under subdivision (b)(3) of this section, may be grieved to the State Labor Relations Board which shall review and determine such matter promptly, in accordance with the Board's rules.

§ 1635. ELECTION; BARGAINING UNIT

(a) Petitions and elections shall be conducted pursuant to the procedures provided in 3 V.S.A. §§ 941 and 942, except that only one bargaining unit shall exist for independent direct support providers, and the exclusive representative shall be the exclusive representative for the purpose of grievances.

(b) A representation election for independent direct support providers conducted by the Board shall be by mail ballot.

(c) The bargaining unit for purposes of collective bargaining pursuant to this chapter shall be one statewide unit of independent direct support providers. Eligible independent direct support providers shall have the right to participate in a representation election but shall not have the right to vote on or otherwise determine the collective bargaining unit. Eligible independent direct support providers shall all be independent direct support providers who have been paid for providing home- and community-based services within the previous 180 days.

(d) At least quarterly the State shall compile and maintain a list of names and addresses of all independent direct support providers who have been paid for providing home- and community-based services to service recipients within the previous 180 days. The list shall not include the names of any recipient, or indicate that an independent direct support provider is a relative of a recipient or has the same address as a recipient. The State shall, upon request, provide within seven days the most recent list of independent direct support providers in its possession to any organization which has as one of its primary purposes the collective bargaining representation of independent direct support providers in their relations with state or other public entities. This obligation shall include providing the most recent list, upon request, to any labor organization certified as the exclusive representative under this chapter.

§ 1636. MEDIATION; FACT-FINDING; LAST BEST OFFER

(a) If, after a reasonable period of negotiation, the representative of the collective bargaining unit and the State reach an impasse, the Board, upon petition of either party, may authorize the parties to submit their differences to mediation. Within five days after receipt of the petition, the Board shall appoint a mediator who shall communicate with the parties and attempt to mediate an amicable settlement. A mediator shall be of high standing and not actively connected with labor or management.

(b) If, after a reasonable period of time, no fewer than 15 days after the appointment of a mediator, the impasse is not resolved, the mediator shall certify to the Board that the impasse continues.

(c) The Board shall appoint a fact finder who has been mutually agreed upon by the parties. If the parties fail to agree on a fact finder within five days, the Board shall appoint a neutral third party to act as a fact finder pursuant to rules adopted by the Board. A member of the Board or any individual who has actively participated in mediation proceedings for which fact-finding has been called shall not be eligible to serve as a fact finder under this section, unless agreed upon by the parties.

(d) The fact finder shall conduct hearings pursuant to rules of the Board. Upon request of either party or of the fact finder, the Board may issue subpoenas of persons and documents for the hearings and the fact finder may require that testimony be given under oath and may administer oaths.

(e) Nothing in this section shall prohibit the fact finder from endeavoring to mediate the dispute at any time prior to issuing recommendations.

(f) The fact finder shall consider the following factors in making a recommendation:

(1) the needs and welfare of consumers, including their interest in greater access to quality services;

(2) the nature and needs of the personal care assistance program;

(3) the interest and welfare of independent direct support providers;

(4) the history of negotiation between the parties, including those leading to the proceedings;

(5) changes in the cost of living; and

(6) generally accepted labor-management relations practices in Vermont.

(g) Upon completion of the hearings provided in subsection (d) of this section, the fact finder shall file written findings and recommendations with both parties.

(h) The costs of witnesses and other expenses incurred by either party in fact-finding proceedings shall be paid directly by the parties incurring them, and the costs and expenses of the fact finder shall be divided equally by the parties. The fact finder shall be paid a rate mutually agreed upon by the parties for each day or any part of a day while performing fact-finding duties and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of his or her duties. A statement of fact-finding per diem and expenses shall be certified by the fact finder and submitted to the Board for approval. The Board shall provide a copy of approved fact-finding costs to each party with its order apportioning half of the total to each party for payment. Each party shall pay its half of the total within 15 days after receipt of the order. Approval by the Board of fact-finding and the fact finder's costs and expenses and its order for payment shall be final as to the parties.

(i) If the dispute remains unresolved 20 days after transmittal of findings and recommendations, each party shall submit to the Board its last best offer on all disputed issues as a single package. Each party's last best offer shall be certified to the Board by the fact finder. The board may hold hearings and consider the recommendations of the fact finder. Within 30 days of the certifications, the Board shall select between the last best offers of the parties, considered in their entirety without amendment, and shall determine its cost. The Board shall not issue an order under this subsection that: (1) is in conflict with any statute; (2) is in conflict with any rule unless the rule relates to a mandatory subject of bargaining; or (3) determines an issue that is not a mandatory subject of bargaining. The Board shall determine the cost of the agreement selected and recommend to the General Assembly its choice with a request for appropriation. If the General Assembly appropriates sufficient funds, the agreement shall become effective and legally binding at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly, and the agreement with the negotiated changes shall become effective and binding at the beginning of the next fiscal year. No portion of any agreement shall become effective separately without the mutual consent of the parties.

§ 1637. GENERAL DUTIES AND PROHIBITED CONDUCT

(a) The State and the independent direct support providers and their representatives shall make every reasonable effort to make and maintain

agreements concerning matters allowed under this chapter and to settle all disputes, whether arising out of the application of those agreements or disputes concerning the agreements. All disputes shall, upon request of either party, be considered within 15 days of the request or at such times as may be mutually agreed to and if possible settled with all expedition in conference between representatives designated and authorized to confer by the State or the independent direct support providers. This obligation does not compel either party to make any agreements or concessions.

(b) It shall be an unfair labor practice for the State to:

(1) Interfere with, restrain, or coerce independent direct support providers in the exercise of their rights under this chapter or by any law, rule, or regulation.

(2) Dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

(3) Discriminate in regard to referral practices or eligibility for work opportunities within covered programs for an independent direct support provider, or to encourage or discourage membership in any labor organization.

(4) Take negative action against an independent direct support provider because the provider has taken actions demonstrating his or her support for a labor organization, including signing a petition, grievance, or affidavit or giving testimony under this chapter.

(5) Refuse to bargain collectively in good faith with the exclusive representative.

(6) Discriminate against an independent direct support provider based on race, color, creed, religion, age, gender, sexual orientation, gender identity, or national origin, or because the provider is a qualified individual with a disability.

(c) It shall be an unfair labor practice for a labor organization to:

(1) Restrain or coerce independent direct support providers in the exercise of the rights guaranteed them by law, rule, or regulation. However, a labor organization may prescribe its own rules with respect to the acquisition or retention of membership, provided such rules are not discriminatory.

(2) Refuse to bargain collectively in good faith with the State.

(3) Cause, or attempt to cause, the State to discriminate against an independent direct support provider in violation of subsection (b) of this section.

(4) Threaten to or cause a provider to strike or curtail the provider's services in recognition of a picket line of any employee or labor organization.

(d) An independent direct support provider shall not strike or curtail his or her services in recognition of a picket line of any employee or labor organization.

§ 1638. PREVENTION OF UNFAIR PRACTICES

(a) The Board may prevent the State or a labor organization from engaging in any unfair labor practice listed in section 1637 of this title. Whenever a charge is made that the State or a labor organization has engaged in or is engaging in any unfair labor practice, the Board may issue and cause to be served upon that party a complaint stating the charges in that respect and containing a notice of hearing before the Board at a place and time therein fixed at least seven days after the complaint is served. The Board may amend the complaint at any time before it issues an order based thereon. No complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the party against whom such charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the U.S. Armed Forces, in which event the six-month period shall be computed from the day of his or her discharge.

(b) The party complained of shall have the right to file an answer to the original or amended complaint and appear in person or otherwise and present evidence in connection therewith at the time and place fixed in the complaint. In the discretion of the Board, any other person may be permitted to intervene and present evidence in the matter. Any proceeding under this section shall, so far as practicable, be conducted in accordance with rules of evidence used in the courts. The Board shall provide for the making of a transcript of the testimony presented at the hearing.

(c) The Board shall have power to administer oaths and take testimony under oath relative to the matter of inquiry. At any hearing ordered by the Board, the Board shall have the power to subpoena witnesses and to demand the production of books, papers, records, and documents for its examination. Officers who serve subpoenas issued by the Board and witnesses attending hearings conducted by the Board shall receive fees and compensation at the same rates as officers and witnesses in causes before a Criminal Division of the Superior Court, to be paid on vouchers of the Board.

(d) If upon the preponderance of the evidence, the Board finds that any party named in the complaint has engaged in or is engaging in any such unfair labor practice, it shall state its finding of fact in writing and shall issue and cause to be served on that party an order requiring him or her to cease and

desist from the unfair labor practice, and to take such affirmative action as will carry out the policies of this chapter. If upon the preponderance of the evidence, the Board does not find that the party named in the complaint has engaged in or is engaging in any unfair labor practice, it shall state its findings of fact in writing and dismiss the complaint.

(e) In determining whether a complaint shall issue alleging a violation of subdivision 1637(1) or (2) of this title, and in deciding those cases, the same regulations and rules of decision shall apply irrespective of whether or not a labor organization affected is affiliated with a labor organization national or international in scope.

§ 1639. NEGOTIATED AGREEMENT; FUNDING

(a) If the State and the exclusive representative reach an agreement, the Governor shall request from the General Assembly an appropriation sufficient to fund the agreement in the next operating budget. If the General Assembly appropriates sufficient funds, the negotiated agreement shall become effective and binding at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly and shall become effective and legally binding in the next fiscal year.

(b) Collective bargaining agreements shall be for a maximum term of two years and shall not be subject to cancellation or renegotiation during the term except with the mutual consent in writing of both parties, which consent shall be filed with the Board. Upon the filing of such consent, an agreement may be supplemented, cancelled, or renegotiated.

(c) The agreement shall terminate at the expiration of its specified term. Negotiations for a new agreement to take effect upon the expiration of the preceding agreement shall be commenced at any time within one year next preceding the expiration date upon the request of either party and may be commenced at any time previous thereto with the consent of both parties.

(d) In the event the State of Vermont and the collective bargaining unit are unable to arrive at an agreement and there is not an existing agreement in effect, the existing contract shall remain in force until a new contract is ratified by the parties. However, nothing in this subsection shall prohibit the parties from agreeing to a modification of certain provisions of the existing contract which, as amended, shall remain in effect until a new contract is finalized and funded by the General Assembly.

(e) The Board is authorized to enforce compliance with all provisions of a collective bargaining agreement upon complaint of either party. In the event a

complaint is made by either party to an agreement, the Board shall proceed in the manner prescribed in section 1638 of this title relating to the prevention of unfair labor practices.

§ 1640. RIGHTS UNALTERED

(a) A collective bargaining agreement shall not infringe upon any rights of service recipients or their surrogates to hire, direct, supervise, or discontinue the employment of any particular independent direct support provider.

(b) Nothing in this section shall alter the rights and obligations of private sector employers and employees under the National Labor Relations Act, 29 U.S.C. § 151 et seq.

(c) Independent direct support providers shall not be considered state employees for purposes other than collective bargaining, including for purposes of joint or vicarious liability in tort or the limitation on liability in subsection (e) of this section. Independent direct support providers shall not be eligible for participation in the State Employee Retirement System or health care plan solely by virtue of bargaining under this chapter. Nothing in this chapter shall require the State to alter its current practice with respect to independent direct support providers of making payments regarding Social Security and Medicare taxes, federal or state unemployment contributions, or workers' compensation insurance.

(d) Nothing in this chapter shall infringe upon the right of the Judiciary and the General Assembly to make programmatic modifications to the delivery of state services through subsidy or other programs.

(e) The State and its employees shall not be vicariously liable for any act or omission by an independent direct support provider or any claim arising out of the employment relationship between a service recipient and an independent direct service provider, nor shall the State be liable as a joint employer.

§ 1641. RULES AND REGULATIONS

The Board shall make and may amend and rescind and adopt such rules and regulations consistent with this chapter as may be necessary to carry out the provisions of this chapter.

§ 1642. APPEAL

(a) Any person aggrieved by an order or decision of the Board issued under the authority of this chapter may appeal on questions of law to the Supreme Court.

(b) An order of the Board shall not automatically be stayed pending appeal. A stay must first be requested from the Board. The Board may stay the order

or any part of it. If the Board denies a stay, then a stay may be requested from the Supreme Court. The Supreme Court or a single justice may stay the order or any part of it and may order additional interim relief.

§ 1643. ENFORCEMENT

(a) Orders of the Board issued under this chapter may be enforced by any party or by the Board by filing a petition with the Civil Division of the Superior Court of Washington County or in the Civil Division of the Superior Court in the county in which the action before the Board originated. The petition shall be served on the adverse party as provided for service of process under the Vermont Rules of Civil Procedure. If, after hearing, the court determines that the Board had jurisdiction over the matter and that a timely appeal was not filed or that an appeal was timely filed and a stay of the Board order or any part of it was not granted or that a Board order was affirmed on appeal in pertinent part by the Supreme Court, the court shall incorporate the order of the Board as a judgment of the court. There is no appeal from that judgment except that a judgment reversing a Board decision on jurisdiction may be appealed to the Supreme Court.

(b) Upon filing of a petition by a party or the Board, the court may grant such temporary relief, including a restraining order, as it deems proper pending formal hearing.

(c) Orders and decisions of the Board shall apply only to the particular case under appeal, but any number of appeals presenting similar issues may be consolidated for hearing with the consent of the Board. The Board shall not modify, add to, or detract from a collective bargaining agreement by any order or decision.

§ 1644. ANTITRUST EXEMPTION

The activities of independent direct support providers and their exclusive representative that are necessary for the exercise of their rights under this chapter shall be afforded state action immunity under applicable federal and state antitrust laws. The State intends that the "state action" exemption to federal antitrust laws be available only to the State, to independent direct support providers, and to their exclusive representative in connection with these necessary activities. Exempt activities shall be actively supervised by the State.

Sec. 2. SELF-DETERMINATION ALLIANCE

(a) There is established a Self-Determination Alliance to advise the State on issues related to stabilizing the independent direct provider workforce and improving the quality of services provided to people with disabilities and elders who manage their services. The alliance shall consist of:

(1) The Commissioner of Disabilities, Aging, and Independent Living or designee;

(2) The Commissioner of Health or designee;

(3) Two service recipients who manage their services under Developmental Disabilities Services, two service recipients who manage their services under Choices for Care Medicaid Waiver, and two recipients who manage their services under Attendant Services Program (ASP), and one service recipient who manages his or her services under the Traumatic Brain Injury Program.

(4) One family member of a service recipient under Children's Personal Care Program and one family member of a service recipient under Developmental Disabilities Services.

(b) All initial appointments to the Alliance shall be made on or before August 1, 2013. The chair shall convene the first meeting on or before September 1, 2013. The chair shall be appointed by the Governor from among its members. Members shall serve coterminously and at the pleasure of their appointing authority. A majority of members of the Self-Determination Alliance shall constitute a quorum for the transaction of any business. The Alliance shall be within the Agency of Human Services for administrative purposes only.

(c) The Self-Determination Alliance shall advise the State regarding issues relating to attracting and retaining a high-quality independent direct support provider workforce to be available to all service recipients, including making recommendations to improve the quality, stability, and availability of the independent direct support provider workforce.

(d) The Secretary of Human Services shall review the recommendations of the Self-Determination Alliance within 30 days of submission, and shall include the recommendations with his or her input to the Governor's collective bargaining designee.

Sec. 3. SUNSET

Sec. 2 of this act shall be repealed on June 30, 2018. Prior to this date, the members of the Self-Determination Alliance shall review the purpose and membership of the Alliance and report its recommendations on the future role of the Alliance to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

House Proposal of Amendment; Action Postponed

S. 77.

House proposal of amendment to Senate bill entitled:

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

Was taken up.

The House proposes to the Senate to amend the bill by striking out 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. RIGHTS OF QUALIFIED PATIENTS SUFFERING A
TERMINAL CONDITION

§ 5281. DEFINITIONS

As used in this chapter:

(1) “Capable” means that in the opinion of a court or in the opinion of the patient’s prescribing physician, consulting physician, psychiatrist, psychologist, or clinical social worker, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient’s manner of communicating if those persons are available.

(2) “Consulting physician” means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient’s illness and who is willing to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

(3) “Dispense” means to prepare and deliver pursuant to a lawful order of a physician a prescription drug in a suitable container appropriately labeled for subsequent use by a patient entitled to receive the prescription drug. The term shall not include the actual administration of a prescription drug to the patient.

(4) “Evaluation” means a consultation between a psychiatrist, psychologist, or clinical social worker licensed in Vermont and a patient for the purpose of confirming that the patient:

(A) is capable; and

(B) does not have impaired judgment.

(5) “Good faith” means objective good faith.

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

(7) “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.

(8) “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.

(9) “Impaired judgment” means that a person does not sufficiently appreciate the relevant facts necessary to make an informed decision.

(10) “Informed decision” means a decision by a patient to request and obtain a prescription for medication to be self-administered to hasten his or her death based on the patient’s understanding and appreciation of the relevant facts that was made after the patient was fully informed by the prescribing physician 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 is an estimate based on the physician’s best medical judgment and is not a guarantee of the actual time remaining in the patient’s life, and that the patient may 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 is 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.

(11) “Palliative care” shall have the same meaning as in section 2 of this title.

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

(13) “Physician” means a physician licensed pursuant to 26 V.S.A. chapter 23 or 33.

(14) “Prescribing physician” means the physician whom the patient has designated to have responsibility for the care of the patient pursuant to this chapter and who is willing to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

(15)(A) “Qualified patient” means a patient who:

(i) is capable;

(ii) is physically able to self-administer medication;

(iii) has executed an advance directive in accordance with chapter 231 of this title;

(iv) is enrolled in hospice care or has been informed of all feasible end-of-life services pursuant to subdivision 5283(3)(D) of this title; and

(v) has satisfied the requirements of this chapter in order to obtain a prescription for medication to hasten his or her death.

(B) An individual shall not qualify under the provisions of this chapter solely because of age or disability.

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

§ 5282. REQUESTS FOR MEDICATION

(a) In order to qualify under this chapter:

(1) A patient who is capable, who has been determined by the prescribing physician and consulting physician to be suffering from a terminal condition, and who has voluntarily expressed a wish to hasten the dying process may request medication to be self-administered for the purpose of hastening his or her death in accordance with this chapter.

(2) A patient shall have made an oral request and a written request and shall have reaffirmed the oral request to his or her prescribing physician not less than 15 days after the initial oral request. At the time the patient makes the second oral request, the prescribing physician shall offer the patient an opportunity to rescind the request.

(b) Oral requests for medication by the patient under this chapter shall be made in the physical presence of the prescribing physician.

(c) A written request for medication shall be signed and dated by the patient and witnessed by at least two persons, at least 18 years of age, who, in the presence of the patient, sign and affirm that the patient appears to understand the nature of the document and to be free from duress or undue influence at the time the request was signed. Neither witness shall be any of the following persons:

(1) the patient's prescribing physician, consulting physician, or any person who has conducted an evaluation of the patient pursuant to section 5285 of this title;

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

(3) a person who at the time the request is signed 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

(4) 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.

(d) A person who knowingly fails to comply with the requirements in subsection (c) of this section is subject to prosecution under 13 V.S.A. § 2004.

(e) The written request shall be completed only after the patient has been examined by a consulting physician as required under section 5284 of this title.

(f)(1) Under no circumstances shall a guardian or conservator be permitted to act on behalf of a ward for purposes of this chapter.

(2) Under no circumstances shall an agent under an advance directive be permitted to act on behalf of a principal for purposes of this chapter.

§ 5283. PRESCRIBING PHYSICIAN; DUTIES

The prescribing physician shall perform all the following:

(1) determine whether a patient:

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

(B) is capable;

(C) has executed an advance directive in accordance with chapter 231 of this title;

(D) is enrolled in hospice care;

-
- (E) is making an informed decision; and
- (F) has made a voluntary request for medication to hasten his or her death;
- (2) require proof of Vermont residency, which may be shown by:
- (A) a Vermont driver's license or photo identification card;
- (B) proof of Vermont voter's registration; or
- (C) a Vermont resident personal income tax return for the most recent tax year;
- (3) inform 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 is an estimate based on the physician's best medical judgment and is not a guarantee of the actual time remaining in the patient's life, and that the patient may 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 is 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;
- (4) refer the patient to a consulting physician for medical confirmation of the diagnosis, prognosis, and a determination that the patient is capable and is acting voluntarily;
- (5) verify that the patient does not have impaired judgment or refer the patient for an evaluation under section 5285 of this chapter;
- (6) with the patient's consent, consult with the patient's primary care physician, if the patient has one;
- (7) recommend that the patient notify the next of kin or someone with whom the patient has a significant relationship;
- (8) counsel the patient about the importance of ensuring that another individual is present when the patient takes the medication prescribed pursuant

to this chapter and the importance of not taking the medication in a public place;

(9)(A) inform the patient that the patient has an opportunity to rescind the request at any time and in any manner; and

(B) offer the patient an opportunity to rescind after the patient's second oral request;

(10) verify, immediately prior to writing the prescription for medication under this chapter, that the patient is making an informed decision;

(11) fulfill the medical record documentation requirements of section 5290 of this title;

(12) ensure that all required steps are carried out in accordance with this chapter prior to writing a prescription for medication to hasten death; and

(13)(A) dispense medication directly, including ancillary medication intended to facilitate the desired effect while minimizing the patient's discomfort, provided the prescribing physician is licensed to dispense medication in Vermont, has a current Drug Enforcement Administration certificate, and complies with any applicable administrative rules; or

(B) with the patient's written consent:

(i) contact a pharmacist and inform the pharmacist of the prescription; and

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

§ 5284. MEDICAL CONSULTATION REQUIRED

Before a patient is qualified in accordance with this chapter, a consulting physician shall physically examine the patient, review the patient's relevant medical records, and confirm in writing the prescribing physician's diagnosis that the patient is suffering from a terminal condition and verify that the patient is capable, is acting voluntarily, and has made an informed decision. The consulting physician shall either verify that the patient does not have impaired judgment or refer the patient for an evaluation under section 5285 of this chapter.

§ 5285. REFERRAL FOR EVALUATION

If, in the opinion of the prescribing physician or the consulting physician, a patient may have impaired judgment, either physician shall refer the patient for an evaluation. A medication to end the patient's life shall not be prescribed

until the person conducting the evaluation determines that the patient is capable and does not have impaired judgment.

§ 5286. INFORMED DECISION

A person shall not receive a prescription for medication to hasten his or her death unless the patient has made an informed decision. Immediately prior to writing a prescription for medication in accordance with this chapter, the prescribing physician shall verify that the patient is making an informed decision.

§ 5287. RECOMMENDED NOTIFICATION

The prescribing physician shall recommend that the patient notify the patient's next of kin or someone with whom the patient has a significant relationship of the patient's request for medication in accordance with this chapter. A patient who declines or is unable to notify the next of kin or the person with whom the patient has a significant relationship shall not be refused medication in accordance with this chapter.

§ 5288. RIGHT TO RESCIND

A patient may rescind the request for medication in accordance with this chapter at any time and in any manner regardless of the patient's mental state. A prescription for medication under this chapter shall not be written without the prescribing physician's offering the patient an opportunity to rescind the request.

§ 5289. WAITING PERIOD

The prescribing physician shall write a prescription no less than 48 hours after the last to occur of the following events:

- (1) the patient's written request for medication to hasten his or her death;
- (2) the patient's second oral request; or
- (3) the prescribing physician's offering the patient an opportunity to rescind the request.

§ 5290. MEDICAL RECORD DOCUMENTATION

The following shall be documented and filed in the patient's medical record:

- (1) the date, time, and wording of all oral requests of the patient for medication to hasten his or her death;
- (2) all written requests by a patient for medication to hasten his or her death;

(3) the prescribing physician's diagnosis, prognosis, and basis for the determination that the patient is capable, is acting voluntarily, and has made an informed decision;

(4) the consulting physician's diagnosis, prognosis, and verification, pursuant to section 5284 of this title, that the patient is capable, is acting voluntarily, and has made an informed decision;

(5) a copy of the patient's advance directive;

(6) the prescribing 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 prescribing physician informed the patient of all feasible end-of-life services;

(7) the prescribing physician's and consulting physician's verifications that the patient either does not have impaired judgment or that the prescribing or consulting physician, or both, referred the patient for an evaluation pursuant to section 5285 of this title and the person conducting the evaluation has determined that the patient does not have impaired judgment;

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

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

(10) a note by the prescribing physician indicating that all requirements under this chapter have been satisfied and describing all of the steps taken to carry out the request, including a notation of the medication prescribed.

§ 5291. REPORTING REQUIREMENT

(a) The Department of Health shall require:

(1) that any physician who writes a prescription pursuant to this chapter promptly file a report with the Department covering all the prerequisites for writing a prescription under this chapter; and

(2) physicians to report on an annual basis the number of written requests for medication received pursuant to this chapter, regardless of whether a prescription was actually written in each instance.

(b) The Department shall review annually the medical records of qualified patients who hastened their deaths in accordance with this chapter during the previous year.

(c) The Department shall adopt rules pursuant to 3 V.S.A. chapter 25 to facilitate the collection of information regarding compliance with this chapter

and to enable the Department to report information as required by subsection (d) of this section. Individually identifiable health information collected under this chapter, as well as reports filed pursuant to subdivision (a)(1) of this section, are confidential and are exempt from public inspection and copying under the Public Records Act.

(d) The Department shall generate, and make available to the public to the extent that doing so would not reasonably be expected to violate the privacy of any person, an annual statistical report of information collected under subsections (a) and (b) of this section, including:

(1) demographic information regarding qualified patients who hastened their deaths in accordance with this chapter, including the underlying illness and the type of health insurance or other health coverage, if any;

(2) any reasons given by qualified patients for their use of medication to hasten their deaths in accordance with this chapter;

(3) information regarding physicians prescribing medication in accordance with this chapter, including physicians' compliance with the requirements of this chapter;

(4) the number of qualified patients who did not take the medication prescribed pursuant to this chapter and died of other causes; and

(5) the number of instances in which medication was taken by a qualified patient to hasten death but failed to have the intended effect.

§ 5292. SAFE DISPOSAL OF UNUSED MEDICATIONS

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

(1) The Department initially shall adopt rules under this section as emergency rules pursuant to 3 V.S.A. § 844. The General Assembly determines that adoption of emergency rules pursuant to this subdivision is necessary to address an imminent peril to public health and safety.

(2) Contemporaneously with the initial adoption of emergency rules under subdivision (1) of this section, the Department shall propose permanent rules under this section for adoption pursuant to 3 V.S.A. §§ 836–843. The Department subsequently may revise these rules in accordance with the Vermont Administrative Procedure Act.

§ 5293. PROHIBITIONS; INSURANCE POLICIES

(a) The sale, procurement, or issue of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request by a person for

medication to hasten his or her death in accordance with this chapter or the act by a qualified patient to hasten his or her death pursuant to this chapter. Neither shall a qualified patient's act of ingesting medication to hasten his or her death have an effect on a life, health, or accident insurance or annuity policy.

(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 provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

§ 5294. LIMITATIONS ON ACTIONS

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for actions taken in good faith reliance on the provisions of this chapter.

(b) A person shall not be subject to civil or criminal liability or professional disciplinary action solely for being present when a qualified patient takes prescribed medication to hasten his or her death in accordance with this chapter.

(c) A health care facility or health care provider shall not subject a physician, nurse, 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.

(d) The provision by a prescribing physician of medication in good faith reliance on the provisions of this chapter shall not constitute patient neglect for any purpose of law.

(e) A request by a patient for medication under this chapter shall not provide the sole basis for the appointment of a guardian or conservator.

(f)(1) A health care provider shall not be under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

(2) If a health care provider is unable or unwilling to carry out a patient's request in accordance with this chapter and the patient transfers his or her care to a new health care provider, the previous health care provider, upon request, shall transfer a copy of the patient's relevant medical records to the new health care provider.

(3) A decision by a health care provider not to participate in the provision of medication to a qualified patient shall not constitute the abandonment of the patient or unprofessional conduct under 26 V.S.A. § 1354.

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

§ 5295. HEALTH CARE FACILITY EXCEPTION

Notwithstanding any other provision of law to the contrary, a health care facility may prohibit a prescribing physician from writing a prescription for medication under this chapter 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 prescribing physician in writing of its policy with regard to the prescriptions. Notwithstanding subsection 5294(c) of this title, any health care provider who violates a policy established by a health care facility under this section may be subject to sanctions otherwise allowable under law or contract.

§ 5296. LIABILITIES AND PENALTIES

(a) With the exception of the limitations on actions established by section 5294 of this title and with the exception of the provisions of section 5298 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.

(b) With the exception of the limitations on actions established by section 5294 of this title and with the exception of the provisions of section 5298 of this title, nothing in this chapter shall be construed to limit criminal prosecution under any other provision of law.

(c) A health care provider is subject to review and disciplinary action by the appropriate licensing entity for failing to act in accordance with this chapter, provided such failure is not in good faith.

§ 5297. 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 prescribing physician has determined is a terminal disease and which has been confirmed by a consulting 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 completed an advance directive. I have been informed of all feasible end-of-life services or am enrolled in hospice care.

I request that my prescribing 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 prescribing physician, consulting physician, or a person who has conducted an evaluation of the patient pursuant to 18 V.S.A. § 5285;

(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 _____

NOTE: A knowingly false affirmation by a witness may result in criminal penalties.

§ 5298. 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.

§ 5299. 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.

Sec. 2. 13 V.S.A. § 2004 is added to read:

§ 2004. FALSE WITNESSING

A person who knowingly violates the requirements of 18 V.S.A. § 5282(c) shall be imprisoned for not more than 10 years or fined not more than \$2,000.00, or both.

Sec. 3. EFFECTIVE DATES

This act shall take effect on September 1, 2013, except that 18 V.S.A. § 5292 (rules for safe disposal of unused medications) in Sec. 1 of this act shall take effect on passage. The Department of Health shall ensure that emergency rules adopted under Sec. 1 of this act, 18 V.S.A. § 5292, are in effect on or before September 1, 2013.

Senator Sears, requested that the Senate reject the House proposal of amendment and that a committee of conference be appointed. Thereupon, pending the question, Shall the Senate reject the House proposal of amendment and that a committee of conference be appointed?, Senator Sears requested and was granted leave to withdraw the motion.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Zuckerman moved that the Senate concur in the House proposal of amendment with an amendment as follows:

By striking out 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) “Palliative care” shall have the same definition as in section 2 of this title.

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

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

§ 5282. RIGHT TO INFORMATION

A patient’s right 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 withholding any requested information exists regardless of the purpose of the inquiry. 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) A physician with a bona fide physician-patient relationship with a patient with a terminal condition who is, within reasonable medical judgment, within the final three months of life 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.

(b) A patient who self-administers a lethal dose of medication prescribed for that patient pursuant to this chapter 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 self-administers a lethal dose of medication prescribed pursuant to this chapter or for not acting to prevent the patient from self-administering a lethal dose of medication prescribed pursuant to this chapter.

§ 5284. LIMITATIONS ON ACTIONS

(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) 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 in accordance with this chapter.

(c) 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.

§ 5285. HEALTH CARE FACILITY EXCEPTION

Notwithstanding any other provision of law to the contrary, a health care facility may prohibit a physician from writing a prescription for medication under this chapter 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 5284(c) 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.

§ 5286. NO DENIAL OF BENEFITS UNDER LIFE INSURANCE POLICY

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.

Sec. 2. EFFECTIVE DATE

This act shall take effect on September 1, 2013.

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

An act relating to protection of patient choice at end of life.

Which was disagreed to on a roll call, Yeas 1, Nays 29.

Senator Campbell having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Hartwell.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Benning, Bray, Campbell, Collins, Cummings, Doyle, Flory, Fox, French, Galbraith, Kitchel, Lyons, MacDonald, Mazza, McAllister, McCormack, Mullin, Nitka, Pollina, Rodgers, Sears, Snelling, Starr, Westman, White, Zuckerman.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Ayer moved that the Senate concur in the House proposal of amendment with an amendment as follows:

By striking out 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. RIGHTS OF QUALIFIED PATIENTS SUFFERING A
TERMINAL CONDITION

§ 5281. DEFINITIONS

As used in this chapter:

(1) “Capacity” shall have the same meaning as in subdivision 9701(4)(B) of this title.

(2) “End stages of a terminal condition” means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

(3) “Good faith” means objective good faith.

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

(5) “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.

(6) “Informed consent” shall have the same meaning as in subdivision 9701(17) of this title.

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

(8) “Physician” means a physician licensed pursuant to 26 V.S.A. chapter 23 or 33.

(9) “Prescribing physician” means the physician whom the patient has designated to have responsibility for the care of the patient pursuant to this chapter and who is willing to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

(10) “Qualified patient” means a patient who has met the requirements of section 5283 of this chapter. A patient shall not qualify under the provisions of this chapter solely because of age or disability.

§ 5282. PRESCRIBING PHYSICIAN’S DETERMINATIONS

A prescribing physician shall determine whether:

(1) a patient is in the end stages of a terminal condition, based on the prescribing physician’s full assessment of the patient’s medical history and current medical condition, including a physical examination of the patient;

(2) a patient has capacity; and

(3) the provisions of the Patient's Bill of Rights for Palliative Care and Pain Management set forth in section 1871 of this title have been satisfied.

§ 5283. REQUESTS FOR MEDICATION

(a) In order to qualify under this chapter:

(1) A patient with capacity who has been determined by the prescribing physician to be in the end stages of a terminal condition and who has voluntarily expressed a wish to hasten the dying process may request medication to be self-administered for the purpose of hastening his or her death in accordance with this chapter.

(2) A patient who has been determined to be in the end stages of a terminal condition pursuant to subdivision (1) of this subsection and who has voluntarily expressed a wish to hasten the dying process shall have personally made a written request for medication to hasten his or her death that the patient signed and dated in the presence of two or more witnesses who are at least 18 years of age and who, in the presence of the patient, 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. Neither witness shall be any of the following persons:

(A) the patient's prescribing 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 at the time the request is signed 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.

(b) A person who knowingly fails to comply with the requirements of subdivision (a)(2) of this section is subject to prosecution under 13 V.S.A. § 2004.

§ 5284. PRESCRIBING PHYSICIAN; DUTIES FOLLOWING WRITTEN REQUEST FOR MEDICATION

After receiving a written request for medication to hasten death pursuant to section 5283 of this chapter, the prescribing physician shall perform all of the following:

-
- (1) determine that the patient has provided informed consent for medication to be self-administered to hasten his or her patient's death;
 - (2) recommend that the patient notify the next of kin or someone with whom the patient has a significant relationship of the request for medication;
 - (3) counsel the patient about the importance of ensuring that another individual is present when the patient takes the medication prescribed pursuant to this chapter and the importance of not taking the medication in a public place;
 - (4) fulfill the medical record documentation requirements of section 5286 of this title; and
 - (5) ensure that all required steps are carried out in accordance with this chapter prior to writing a prescription for medication to hasten death.

§ 5285. REQUEST TO DISPENSE

A qualified patient may request that the prescribing physician dispense medication pursuant to this chapter no sooner than 10 days following delivery of the written request for medication to the prescribing physician. The prescribing physician shall either:

- (1) dispense the medication directly, including ancillary medication intended to facilitate the desired effect while minimizing the patient's discomfort, provided the prescribing physician is licensed to dispense medication in Vermont, has a current Drug Enforcement Administration certificate, and complies with any applicable administrative rules; or
- (2) with the patient's written consent:
 - (A) contact a pharmacist and inform the pharmacist of the prescription; and
 - (B) deliver the written prescription personally or by mail or facsimile to the pharmacist, who will dispense the medication to the patient, the prescribing physician, or an expressly identified agent of the patient.

§ 5286. MEDICAL RECORD DOCUMENTATION

The following shall be documented and filed in the patient's medical record:

- (1) the patient's written request for medication to hasten his or her death in accordance with this chapter;
- (2) the prescribing physician's diagnosis, prognosis, and basis for the determination that the patient has capacity, is acting voluntarily, and has provided informed consent;

(3) the prescribing physician's attestation that the provisions of the Patient's Bill of Rights for Palliative Care and Pain Management set forth in section 1871 of this title have been satisfied; and

(4) a note by the prescribing physician indicating that all requirements under this chapter have been satisfied and describing all of the steps taken to carry out the request, including a notation of the medication prescribed.

§ 5287. REPORTING REQUIREMENT

The Department of Health shall require:

(1) that any physician who writes a prescription pursuant to this chapter promptly file a report with the Department covering all the prerequisites for writing a prescription under this chapter; and

(2) that physicians report on an annual basis the number of written requests for medication received pursuant to this chapter, regardless of whether a prescription was actually written in each instance.

§ 5288. SAFE DISPOSAL OF UNUSED MEDICATIONS

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

§ 5289. PROHIBITIONS; INSURANCE POLICIES

(a) The sale, procurement, or issue of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request by a person for medication to hasten his or her death in accordance with this chapter or the act by a qualified patient to hasten his or her death pursuant to this chapter. Neither shall a qualified patient's act of ingesting medication to hasten his or her death have an effect on a life, health, or accident insurance or annuity policy.

(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 provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

§ 5290. LIMITATIONS ON ACTIONS

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for actions taken in good faith reliance on the provisions of this chapter.

(b) A person shall not be subject to civil or criminal liability or professional disciplinary action solely for being present when a qualified patient takes

prescribed medication to hasten his or her death in accordance with this chapter.

(c) A health care facility or health care provider shall not subject a physician, nurse, 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.

(d) The provision by a prescribing physician of medication in good faith reliance on the provisions of this chapter shall not constitute patient neglect for any purpose of law.

(e) A request by a patient for medication under this chapter shall not provide the sole basis for the appointment of a guardian or conservator.

(f)(1) A health care provider shall not be under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

(2) If a health care provider is unable or unwilling to carry out a patient's request in accordance with this chapter and the patient transfers his or her care to a new health care provider, the previous health care provider, upon request, shall transfer a copy of the patient's relevant medical records to the new health care provider.

(3) A decision by a health care provider not to participate in the provision of medication to a qualified patient shall not constitute the abandonment of the patient or unprofessional conduct under 26 V.S.A. § 1354.

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

§ 5291. HEALTH CARE FACILITY EXCEPTION

Notwithstanding any other provision of law to the contrary, a health care facility may prohibit a prescribing physician from writing a prescription for medication under this chapter 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 prescribing physician in writing of its policy with regard to the prescriptions. Notwithstanding subsection 5288(c) of this title, any health care provider who violates a policy established by a health care facility under this section may be subject to sanctions otherwise allowable under law or contract.

§ 5292. LIABILITIES AND PENALTIES

(a) With the exception of the limitations on actions established by section 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.

(b) With the exception of the limitations on actions established by section 5290 of this title, nothing in this chapter shall be construed to limit criminal prosecution under any other provision of law.

(c) A health care provider is subject to review and disciplinary action by the appropriate licensing entity for failing to act in accordance with this chapter, provided such failure is not in good faith.

§ 5293. 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.

§ 5294. 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.

Sec. 2. 13 V.S.A. § 2004 is added to read:

§ 2004. FALSE WITNESSING

A person who knowingly violates the requirements of 18 V.S.A. § 5283(a)(2) shall be imprisoned for not more than 10 years or fined not more than \$2,000.00, or both.

Sec. 3. EFFECTIVE DATES

This act shall take effect on September 1, 2013, except that 18 V.S.A. § 5288 (rules for safe disposal of unused medications) in Sec. 1 of this act and this section shall take effect on passage.

Which was disagreed to on a roll call Yeas 15, Nays 16.

Senator Sears having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Bray, Collins, Fox, French, Lyons, MacDonald, McCormack, Pollina, Rodgers, Snelling, White, Zuckerman.

Those Senators who voted in the negative were: Benning, Campbell, Cummings, Doyle, Flory, Galbraith, Hartwell, Kitchel, Mazza, McAllister, Mullin, Nitka, Sears, Starr, Westman.

There being a tie, the Secretary took the casting vote of the President, who voted "Nay".

Thereupon, pending the question, Shall the Senate Concur in the House Proposal of Amendment?, Senator Ayer moved that action be postponed until tomorrow, which was agreed to on a roll call, Yeas 16, Nays 14.

Senator Sears having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Bray, Collins, Fox, French, Galbraith, Hartwell, Lyons, MacDonald, McCormack, Pollina, Snelling, White, Zuckerman.

Those Senators who voted in the negative were: Benning, Campbell, Cummings, Doyle, Flory, Kitchel, Mazza, McAllister, Mullin, Nitka, Rodgers, Sears, Starr, Westman.

House Proposal of Amendment Concurred In

S. 88.

House adoption of amendment to Senate bill entitled:

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

Was taken up.

The House proposes to the Senate to amend the bill in Sec. 1, in the second sentence, after "service delivery.", by inserting the words "the possibility of equipping home health agency nurses with the tools needed to provide telemedicine services during home health visits."

Thereupon, the question, Shall the Senate concur in the House adoption of amendment?, was decided in the affirmative.

House Proposals of Amendment to Senate Proposal of Amendment Concurred In

H. 95.

House proposals of amendment to Senate proposal of amendment to House bill entitled:

An act relating to unclaimed life insurance benefits.

Were taken up.

The House proposes to the Senate to amend the Senate proposal of amendment as follows:

First: By striking out Sec. 2 (group life policyholder information) in its entirety and by inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. EFFECTIVE DATE; APPLICATION

This act shall take effect on July 1, 2013 and, notwithstanding 1 V.S.A. § 214(b), shall apply to all life insurance policies, annuity contracts, and retained asset accounts in force on or after the effective date.

Second: By striking out Sec. 3 in its entirety

Thereupon, the question, Shall the Senate concur in the House proposals of amendment to the Senate proposal of amendment?, was decided in the affirmative.

**House Proposals of Amendment to Senate Proposal of Amendment
Concurred In**

H. 533.

House proposals of amendment to Senate proposal of amendment to House bill entitled:

An act relating to capital construction and state bonding.

Were taken up.

The House proposes to the Senate to amend the Senate proposal of amendment as follows:

First: In Sec. 1, Legislative Intent, in subsection (a), by striking out “\$90,148,531.00” and inserting in lieu thereof \$90,373,066.00

Second: In Sec. 2, State Buildings, in subsection (b), by striking out subdivision (5) and inserting in lieu thereof:

(5) Statewide, BGS engineering and architectural project costs:
\$2,982,132.00

Third: In Sec. 2, State Buildings, in subsection (c), by striking out subdivisions (4) and (5) and inserting in lieu thereof:

(4) Statewide, major maintenance: \$8,334,994.00
(5) Statewide, BGS engineering and architectural project costs:
\$2,982,132.00

Fourth: In Sec. 2, in subsection (d), by inserting after the last sentence:

It is also the intent of the General Assembly that the Commissioner of Buildings and General Services may use up to \$360,000.00 of the funds appropriated in subdivisions (b)(5) and (c)(5) of this section for the purpose of funding four limited service positions in the Department of Buildings and General Services created for engineering-related work pursuant to the 2013 Acts and Resolves No. [], Sec. E.100(b)(1) (FY 2014 Appropriations Act).

Fifth: In Sec. 2, in subsection (e), by striking out “\$52,281,597.00”, “\$45,966,661.00”, and “\$98,248,258.00” and inserting in lieu thereof \$52,461,132.00, \$45,742,126.00, and \$98,203,258.00

Sixth: By striking out Sec. 4, Human Services, in its entirety and inserting in lieu thereof:

Sec. 4. HUMAN SERVICES

(a) The following sums are appropriated in FY 2014 to the Department of Buildings and General Services for the Agency of Human Services for the projects described in this subsection:

(1) Health laboratory, continuation of design, permitting, bidding, and construction phases for co-location of Department of Health laboratory with the UVM Colchester research facility: \$5,000,000.00

(2) Corrections, security upgrades: \$100,000.00

(3) Corrections, facilities conditions analysis: \$100,000.00

(b) The following sums are appropriated in FY 2015 to the Department of Buildings and General Services for the Agency of Human Services for the projects described in this subsection:

(1) Health laboratory, continuation of design, permitting, bidding, and construction phases for co-location of the Department of Health laboratory with the UVM Colchester research facility: \$6,000,000.00

(2) Corrections, security upgrades: \$100,000.00

(c) It is the intent of the General Assembly that the funds appropriated in subdivision (b)(1) of this section are committed funds not subject to budget adjustment.

(d) On or before January 15, 2014, the Department of Corrections and the Department of Buildings and General Services shall report to the General Assembly on capital needs at state correctional facilities. The report shall evaluate five-year capital needs and shall include:

(1) a facilities conditions analysis;

(2) an assessment of space and capacity at Vermont state correctional facilities required for programming use; and

(3) proposed unit configurations for the housing of aging and other special needs populations.

(e) The Commissioner of Buildings and General Services shall use the funds appropriated to the Department of Buildings and General Services for the Agency of Human Services in subdivision (a)(3) of this section for the purpose described in subdivision (d)(1) of this section.

Appropriation – FY 2014 \$5,200,000.00

Appropriation – FY 2015 \$6,100,000.00

Total Appropriation – Section 4 \$11,300,000.00

Seventh: In Sec. 6, Commerce and Community Development, by striking out subsection (c) in its entirety and inserting in lieu thereof:

(c) The following sum is appropriated in FY 2014 to the Department of Buildings and General Services for the Battle of Cedar Creek and Winchester Memorials, relocation and placement of roadside marker: \$25,000.00

Eighth: In Sec. 6, in subsection (e), by striking out “\$495,000.00” and “\$745,000.00” and inserting in lieu thereof \$440,000.00 and \$690,000.00, respectively

Ninth: In Sec. 8, Education, in subsection (b), by striking out the second sentence and inserting in lieu thereof:

It is the intent of the General Assembly that the funds appropriated in this subsection are committed funds not subject to budget adjustment.

Tenth: In Sec. 11, Natural Resources, in subsection (a), by striking out subdivision (4)(B) and inserting in lieu thereof:

(B) Fish and Wildlife Enforcement Division, for equipment:
\$75,950.00

Eleventh: In Sec. 18a, Enhanced 911 Program, by striking out the section in its entirety and inserting in lieu thereof:

Sec. 18a. ENHANCED 911 PROGRAM

(a) The sum of \$10,000.00 is appropriated in FY 2014 to the Enhanced 911 Board for one-time fees and equipment associated with the planning and implementation of the Enhanced 911 program in schools pursuant to 30 V.S.A. § 7057.

(b) The sum of \$10,000.00 is appropriated in FY 2015 for the project described in subsection (a) of this section.

(c) It is the intent of the General Assembly that the appropriations to the Enhanced 911 Board for the Enhanced 911 program in subsections (a) and (b) of this section are one-time appropriations. Any future appropriations shall be funded through the Universal Service Fund established pursuant to 30 V.S.A. chapter 88.

Total Appropriation – Section 18a

\$20,000.00

Twelfth: In Sec. 24, Newport Waterfront, by striking out the section in its entirety and inserting in lieu thereof:

Sec. 24. 2009 Acts and Resolves No. 43, Sec. 25(a) is amended to read:

~~(a) Notwithstanding 29 V.S.A. § 166(b), the commissioner of buildings and general services~~ Commissioner of Buildings and General Services is authorized to ~~negotiate the sale of~~ sell, lease, gift, or otherwise convey all or a portion of the ~~state's~~ State's property that adjoins the Hebard ~~state office building~~ State Office Building in Newport City for the purposes of transferring ownership and operation of the bike path, walking path, and boardwalk. ~~Upon approval of the chairs and vice chairs of the senate committee on institutions and the house committee on corrections and institutions, the commissioner may sell the property for the negotiated price. The commissioner shall strive to sell the property at fair market value. However, due to the unique nature of the transaction, the commissioner may use the following factors to justify selling the property at less than fair market value:~~

~~(1) Ongoing maintenance and operation costs associated with the property.~~

~~(2) Risk potential to the state.~~

~~(3) The local economic situation.~~

The Commissioner is further authorized to accept federal or state grants for improvements, maintenance, and operating costs associated with this property.

Thirteenth: In Sec. 25, Battle of Cedar Creek and Winchester Memorials, by inserting the word “capital” before each instance of the word “expenses”, either lower or upper cased, and the words “of the Memorial” after the word “transportation”

Fourteenth: In Sec. 28, Windsor County Courthouse, by striking out “\$40,000.00” and inserting in lieu thereof \$45,000.00

Fifteenth: By adding a Sec. 29a, after Sec. 29, to read as follows:

Sec. 29a. 29 V.S.A. § 821(a) is amended to read:

(a) State buildings.

(1) “Asa Bloomer State Office Building” shall be the name of the building now known as the “Hulett” office building in the city of Rutland.

* * *

(9) “Vermont Psychiatric Care Hospital” shall be the name of the state hospital in Berlin.

(10) “Vermont State Health Laboratory” shall be the name of the state health laboratory in Colchester.

Sixteenth: In Sec. 30, Regional Economic Development Grant Program, by designating the existing language as (a) and by replacing the word “consider” with the word “evaluate” and by inserting a subsection (b) to read as follows:

(b) On or before September 15, 2013, the Commissioner of Buildings and General Services shall report to the House Committee on Corrections and Institutions, the Senate Committee on Institutions, the House Committee on Commerce and Economic Development, and the Senate Committee on Economic Development, Housing and General Affairs with the results of the evaluation described in subsection (a) of this section.

Seventeenth: In Sec. 43, Additional Funding for Capital Projects, by inserting in subdivision (d)(1) “A total of” before “\$200,000.00”, by adding “for the Agency of Natural Resources” after “funds”, and by adding subsections (e) and (f) to read as follows:

(e) On or before January 15, 2014, the Secretary of Natural Resources shall report to the House Committee on Corrections and Institutions and the Senate Committee on Institutions on the amount of unexpended funds reallocated pursuant to subsection (c) of this section and a description of the projects that received the funds.

(f) It is the intent of the General Assembly to evaluate in FY 2014 whether to grant the Agency of Natural Resources additional authority to reallocate unexpended funds.

Eighteenth: In Sec. 47, Enhanced 911 Program; Implementation in School Districts, by striking out the second sentence and inserting in lieu thereof:

The Board is authorized to use funds appropriated in Sec. 18a of this act for one-time fees and equipment associated with planning and implementing compliance with this program.

Thereupon, the question, Shall the Senate concur in the House proposals of amendment to the Senate proposal of amendment?, was decided in the affirmative.

House Proposal of Amendment Concurred In

J.R.S. 14.

House proposal of amendment to joint resolution entitled:

Joint resolution supporting the Agency of Agriculture, Food and Markets' proposal to adopt an administrative rule to implement international maple grading standards in Vermont.

Was taken up.

The House proposes to the Senate to amend the joint resolution as follows:

First: By striking the final *Whereas* clause and inserting in lieu thereof the following:

Whereas, the 1,000-member Vermont Maple Sugar Makers' Association, the Maple Industry Committee of the Vermont Maple Sugar Makers' Association, the Franklin County Sugar Makers' Association, the Vermont Agriculture and Forest Products Development Board, and the Vermont Farm Bureau are each supportive of the Agency's adoption of the international maple grading standard, *now therefore be it*

Second: By striking the second ***Resolved*** clause and inserting in lieu thereof the following:

Resolved: That the Secretary of State be directed to send a copy of this resolution to Chuck Ross, Secretary of Agriculture, Food and Markets, to the Vermont Maple Sugar Makers' Association, to the Maple Industry Committee of the Vermont Maple Sugar Makers' Association, to the Franklin County Maple Sugar Makers' Association, to the Vermont Agricultural and Forest Products Development Board, and to the Vermont Farm Bureau.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Rules Suspended; Bill Passed

H. 522.

Pending entry on the Calendar for action tomorrow, on motion of Senator Sears, the rules were suspended and Senate bill entitled:

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

Was placed on all remaining stages of its passage forthwith.

Thereupon, the bill was read the third time and passed.

Committee Relieved of Further Consideration; Bill Committed

H. 270.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to providing access to publicly funded prekindergarten education,

and the bill was committed to the Committee on Education.

Rules Suspended; Bills Messaged

On motion of Senator Campbell, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 31, H. 26, H. 522.

Bill Committed

H. 517.

On motion of Senator Ashe, House bill entitled:

An act relating to approval of the adoption and the codification of the charter of the Town of St. Albans.

Was committed to the Committee on Finance.

Adjournment

On motion of Senator Campbell, the Senate adjourned until nine o'clock in the morning.