

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 736 entitled “An act relating to creating targeted
4 economic development initiatives” respectfully reports that it has considered
5 the same and recommends that the bill be amended by striking all after the
6 enacting clause and inserting in lieu thereof the following:

7 * * * One-Stop Business Support Services * * *

8 Sec. 1. ONE-STOP SHOP WEB PORTAL

9 (a) Purpose. The State of Vermont seeks to simplify the process for
10 business creation and growth by providing:

11 (1) a clear guide to resources and technical assistance for all phases of
12 growth;

13 (2) a directory of financial assistance, including grants, funding capital,
14 tax credits, and incentives;

15 (3) a directory of workforce development assistance, including
16 recruiting, job postings, and training;

17 (4) a link to centralized business services available from the Secretary of
18 State, the Department of Labor, the Department of Taxes, and others; and

19 (5) agency contacts and links for available services and resources.

20 (b) Administration. The Agency of Commerce and Community

21 Development shall coordinate with relevant agencies and departments within

1 State government and its outside partners, including regional development
2 corporations and small business development centers, to provide
3 comprehensive business services, including a “First Stop” website, regional
4 coaching teams, print materials, and other outreach.

5 (c) Implementation. The Agency of Commerce and Community
6 Development shall complete the following phases of work on or before the end
7 of fiscal year 2015:

8 (1) Phase 1. The Agency shall complete necessary partner outreach and
9 collaboration and an inventory of existing websites, shall determine the
10 appropriate content to be included on the web portal, and shall update its
11 current website to include links to State agencies and departments with
12 regulatory oversight and authority over Vermont businesses.

13 (2) Phase 2. The Agency shall edit and organize the content to be
14 included on the website.

15 (3) Phase 3. The Agency shall complete the design and mapping of the
16 website.

17 (4) Phase 4. The Agency shall complete a communications and
18 outreach plan with a final funding proposal for the project.

19 * * * Vermont Entrepreneurial Lending Program;

20 Vermont Entrepreneurial Investment Tax Credit * * *

21 Sec. 2. 10 V.S.A. chapter 12 is amended to read:

1 CHAPTER 12. VERMONT ECONOMIC DEVELOPMENT

2 AUTHORITY

3 * * *

4 Subchapter 12. ~~Technology Loan~~ Vermont Entrepreneurial Lending
5 Program

6 § 280aa. FINDINGS AND PURPOSE

7 (a)(1) ~~Technology-based companies~~ Vermont-based seed, start-up, and
8 growth-stage businesses are a vital source of innovation, employment, and
9 economic growth in Vermont. The continued development and success of ~~this~~
10 ~~increasingly important sector of Vermont's economy~~ these businesses is
11 dependent upon the availability of flexible, risk-based capital.

12 (2) Because the primary assets of ~~technology-based companies~~
13 ~~sometimes~~ seed, start-up, and growth-stage businesses often consist almost
14 entirely of intellectual property or insufficient tangible assets to support
15 conventional lending, such these companies frequently do not have access to
16 conventional means of raising capital, such as asset-based bank financing.

17 (b) To support the growth of ~~technology-based companies~~ seed, start-up,
18 and growth-stage businesses and the resultant creation of high-wage
19 employment in Vermont, ~~a technology loan program is established under this~~
20 ~~subchapter~~ the General Assembly hereby creates in this subchapter the

1 Vermont Entrepreneurial Lending Program to support the growth and
2 development of seed, start-up, and growth-stage businesses.

3 § 280bb. ~~TECHNOLOGY LOAN~~ VERMONT ENTREPRENEURIAL
4 LENDING PROGRAM

5 (a) There is created a ~~technology (TECH) loan program~~ the Vermont
6 Entrepreneurial Lending Program to be administered by the Vermont ~~economic~~
7 ~~development authority~~ Economic Development Authority. The ~~program~~
8 Program shall seek to meet the working capital and capital-asset financing
9 needs of ~~technology-based companies~~ start-up, early stage, and growth-stage
10 businesses in Vermont. The Program shall specifically seek to fulfill capital
11 requirement needs that are unmet in Vermont, including:

12 (1) loans up to \$100,000.00 to manufacturing businesses with innovative
13 products that typically reflect long-term, organic growth;

14 (2) loans from \$250,000.00 through \$1,000,000.00 in growth-stage
15 companies who do not meet the underwriting criteria of other public and
16 private entrepreneurial financing sources; and

17 (3) loans to businesses that are unable to access adequate capital
18 resources because the primary assets of these businesses are typically
19 intellectual property or similar nontangible assets.

20 (b) The ~~economic development authority~~ Authority shall establish such
21 adopt regulations, policies, and procedures for the program Program as are

1 necessary to ~~carry out the purposes of this subchapter.~~ The authority's lending
2 ~~criteria shall include consideration of in-state competition and whether a~~
3 ~~company has made reasonable efforts to secure capital in the private sector~~
4 increase the amount of investment funds available to Vermont businesses
5 whose capital requirements are not being met by conventional lending sources.

6 (c) When considering entrepreneurial lending through the Program, the
7 Authority shall give additional consideration and weight to an application of a
8 business whose business model and practices will have a demonstrable effect
9 in achieving other public policy goals of the State, including:

10 (1) The business will create jobs in strategic sectors such as the
11 knowledge-based economy, renewable energy, advanced manufacturing, wood
12 products manufacturing, and value-added agricultural processing.

13 (2) The business is located in a designated downtown, village center,
14 growth center, or other significant geographic location recognized by the State.

15 (3) The business adopts energy and thermal efficiency practices in its
16 operations or otherwise operates in a way that reflects a commitment to green
17 energy principles.

18 (4) The business will create jobs that pay a livable wage and significant
19 benefits to Vermont employees.

20 (d) The Authority shall include provisions in the terms of an
21 entrepreneurial loan made under the Program to ensure that an entrepreneurial

1 loan recipient shall maintain operations within the State for a minimum of five
2 years from the date on which the recipient receives the entrepreneurial loan
3 funds from the Authority.

4 * * *

5 Sec. 3. VERMONT ENTREPRENEURIAL LENDING PROGRAM; LOAN
6 LOSS RESERVE FUNDS; CAPITALIZATION; PRIVATE
7 CAPITAL; APPROPRIATION

8 (a) The Vermont Economic Development Authority shall capitalize loan
9 loss reserves for the Vermont Entrepreneurial Lending Program created in
10 10 V.S.A. § 280bb with the following funding from the following sources:

11 (1) up to \$1,000,000.00 to the Program from Authority funds or eligible
12 federal funds currently administered by the Authority; and

13 (2) the amount of \$1,000,000.00 appropriated in fiscal year 2015 from
14 the General Fund to the Authority for the purposes of this section.

15 (b) The Authority shall use the funds in subsection (a) of this section solely
16 for the purpose of establishing and maintaining loan loss reserves to guarantee
17 entrepreneurial loans.

18 * * * Connecting Capital Providers and Entrepreneurs * * *

19 Sec. 4. NETWORKING INITIATIVES; APPROPRIATION

20 There is appropriated from the General Fund to the Agency of Commerce
21 and Community Development in fiscal year 2015 the amount of \$10,000.00,

1 which the Agency shall make available to one or more regional economic
2 development providers to award grants of up to \$2,000.00 per event to an
3 applicant who sponsors a networking event designed to connect capital
4 providers with one another or with Vermont entrepreneurs, or both.

5 * * * Downtown Tax Credits * * *

6 Sec. 5. 32 V.S.A. chapter 151, subchapter 11J is amended to read:

7 Subchapter 11J. Vermont Downtown and

8 Village Center Tax Credit Program

9 § 5930aa. DEFINITIONS

10 As used in this subchapter:

11 * * *

12 (3) “Qualified code or technology improvement project” means a
13 project:

14 (A)(i) ~~To~~ to install or improve platform lifts suitable for transporting
15 personal mobility devices, elevators, sprinkler systems, and capital
16 improvements in a qualified building, and the installations or improvements
17 are required to bring the building into compliance with the statutory
18 requirements and rules regarding fire prevention, life safety, and electrical,
19 plumbing, heating, ventilating, or cooling systems and accessibility codes as
20 determined by the ~~department of public safety.~~ Department of Public Safety; or

1 (ii) to install or improve data or network wiring, or heating,
2 ventilating, or cooling systems in a qualified building, provided that a
3 professional engineer licensed under 26 V.S.A. chapter 20 certifies as to the
4 fact and cost of the installation or improvement;

5 (B) ~~To~~ to abate lead paint conditions or other substances hazardous to
6 human health or safety in a qualified building; or

7 (C) ~~To~~ to redevelop a contaminated property in a designated
8 downtown or village center under a plan approved by the Secretary of Natural
9 Resources pursuant to 10 V.S.A. § 6615a.

10 (4) “Qualified expenditures” means construction-related expenses of the
11 taxpayer directly related to the project for which the tax credit is sought but
12 excluding any expenses related to a private residence.

13 (5) “Qualified façade improvement project” means the rehabilitation of
14 the façade of a qualified building that contributes to the integrity of the
15 designated downtown or designated village center. Façade improvements to
16 qualified buildings listed, or eligible for listing, in the State or National
17 Register of Historic Places must be consistent with Secretary of the Interior
18 Standards, as determined by the Vermont Division for Historic Preservation.

19 (6) “Qualified historic rehabilitation project” means an historic
20 rehabilitation project that has received federal certification for the
21 rehabilitation project.

1 (7) “Qualified project” means a qualified code or technology
2 improvement, qualified façade improvement, qualified technology
3 infrastructure project, or qualified historic rehabilitation project as defined by
4 this subchapter.

5 (8) “State Board” means the Vermont Downtown Development Board
6 established pursuant to 24 V.S.A. chapter 76A.

7 § 5930bb. ELIGIBILITY AND ADMINISTRATION

8 (a) Qualified applicants may apply to the State Board to obtain the tax
9 credits provided by this subchapter for ~~qualified code improvement, façade~~
10 ~~improvement, or historic rehabilitation projects~~ a qualified project at any time
11 before one year after completion of the qualified project.

12 (b) To qualify for any of the tax credits under this subchapter, expenditures
13 for the qualified project must exceed \$5,000.00.

14 (c) Application shall be made in accordance with the guidelines set by the
15 State Board.

16 (d) Notwithstanding any other provision of this subchapter, qualified
17 applicants may apply to the State Board at any time prior to June 30, 2013 to
18 obtain a tax credit not otherwise available under subsections 5930cc(a)-(c) of
19 this title of 10 percent of qualified expenditures resulting from damage caused
20 by a federally declared disaster in Vermont in 2011. The credit shall only be
21 claimed against the taxpayer’s State individual income tax under section 5822

1 of this title. To the extent that any allocated tax credit exceeds the taxpayer's
2 tax liability for the first tax year in which the qualified project is completed,
3 the taxpayer shall receive a refund equal to the unused portion of the tax credit.
4 If within two years after the date of the credit allocation no claim for a tax
5 credit or refund has been filed, the tax credit allocation shall be rescinded and
6 recaptured pursuant to subdivision 5930ee(6) of this title. The total amount of
7 tax credits available under this subsection shall not be more than \$500,000.00
8 and shall not be subject to the limitations contained in subdivision 5930ee(2)
9 of this subchapter.

10 § 5930cc. DOWNTOWN AND VILLAGE CENTER PROGRAM TAX

11 CREDITS

12 (a) Historic rehabilitation tax credit. The qualified applicant of a qualified
13 historic rehabilitation project shall be entitled, upon the approval of the State
14 Board, to claim against the taxpayer's ~~state~~ State individual income tax,
15 corporate income tax, or bank franchise or insurance premiums tax liability a
16 credit of 10 percent of qualified rehabilitation expenditures as defined in the
17 Internal Revenue Code, 26 U.S.C. § 47(c), properly chargeable to the federally
18 certified rehabilitation.

19 (b) Façade improvement tax credit. The qualified applicant of a qualified
20 façade improvement project shall be entitled, upon the approval of the State
21 Board, to claim against the taxpayer's State individual income tax, ~~state~~ State

1 corporate income tax, or bank franchise or insurance premiums tax liability a
2 credit of 25 percent of qualified expenditures up to a maximum tax credit of
3 \$25,000.00.

4 (c) Code improvement tax credit. The qualified applicant of a qualified
5 code or technology improvement project shall be entitled, upon the approval of
6 the State Board, to claim against the taxpayer's State individual income tax,
7 State corporate income tax, or bank franchise or insurance premiums tax
8 liability a credit of 50 percent of qualified expenditures up to a maximum tax
9 credit of \$12,000.00 for installation or improvement of a platform lift, a
10 maximum tax credit of \$50,000.00 for installation or improvement of an
11 elevator, a maximum tax credit of \$50,000.00 for installation or improvement
12 of a sprinkler system, a maximum tax credit of \$30,000.00 for the combined
13 costs of installation or improvement of data or network wiring or a heating,
14 ventilating, or cooling system, and a maximum tax credit of \$25,000.00 for the
15 combined costs of all other qualified code improvements.

16 * * *

17 * * * Electricity Rates for Businesses * * *

18 Sec. 6. 30 V.S.A. § 218e is added to read:

19 § 218e. BUSINESS ELECTRICITY RATES; POLICY; INVESTIGATION

20 (a). Policy and intent. It is the policy of the State of Vermont to consider
21 and prioritize retention and recruitment of manufacturing and other high-value

1 businesses in the determination of orders, rules, and other decisions affecting
2 the cost and reliability of electricity and other fuels. The intent of this policy
3 is:

4 (1) to encourage recruitment and retention of employers providing high
5 quality jobs and related economic investment and to support the State’s
6 economic welfare; and

7 (2) to seek appropriate balance between this policy and other policy
8 goals and criteria established in this title.

9 (b) The Public Service Board, in consultation with the Commissioner of
10 Public Service and the Secretary of Commerce and Community Development,
11 shall conduct an investigation of how best to advance the public good through
12 consideration of the competitiveness of Vermont’s industrial or manufacturing
13 businesses with regard to electricity costs. As used in this section, “industrial
14 or manufacturing business” means a business engaged in one or more of the
15 activities classified under North American Industry Classification System
16 (NAICS) Sector 31-33.

17 (c) In conducting the investigation required by this section, the Board shall
18 consider:

19 (1) how best to incorporate into rate design proceedings the impact of
20 electricity costs on business competitiveness and the identification of the costs
21 of service incurred by businesses;

1 (2) with regard to the energy efficiency programs established under 30
2 V.S.A. § 209, potential changes to their delivery, funding, financing, and
3 participation requirements;

4 (3) the history and outcome of any evaluations of the Energy Savings
5 Account or Customer Credit programs, as well as best practices for customer
6 self-directed energy efficiency programs;

7 (4) the history and outcome of any evaluations of retail choice programs
8 or policies, as relate to business competitiveness, that have been undertaken in
9 Vermont and in other jurisdictions;

10 (5) any other programs or policies the Board deems relevant; and

11 (6) whether and to what extent any programs or policies considered by
12 the Board under this section would impose cost shifts onto other customers,
13 result in stranded costs (costs that cannot be recovered by a regulated utility
14 due to a change in regulatory structure or policy), or conflict with renewable
15 energy requirements in Vermont and, if so, whether such programs or policies
16 would nonetheless promote the public good.

17 (d) In conducting the investigation required by this section, the Board shall
18 provide the following persons and entities an opportunity for written and oral
19 comments:

20 (1) consumer and business advocacy groups;

21 (2) regional development corporations; and

1 (3) any other person or entity as determined by the Board.

2 (e) On or before December 15, 2014, the Board shall provide a status report
3 to the General Assembly of its findings and recommendations regarding
4 regulatory or statutory changes that would reduce energy costs for Vermont
5 businesses and promote the public good. On or before December 15, 2015, the
6 Board shall provide a final report to the General Assembly of such findings
7 and recommendations.

8 * * * Domestic Export Program * * *

9 Sec. 7. DOMESTIC MARKET ACCESS PROGRAM FOR VERMONT

10 AGRICULTURE AND FOREST PRODUCTS

11 (a) The Secretary of Agriculture, Food and Markets, in collaboration with
12 the Agency of Commerce and Community Development and the Chief
13 Marketing Officer, shall create a Domestic Export Program Pilot Project within
14 the “Made in Vermont” designation program, the purpose of which shall be to:

15 (1) connect Vermont producers with brokers, buyers, and distributors in
16 other U.S. state and regional markets,

17 (2) provide technical and marketing assistance to Vermont producers to
18 convert these connections into increased sales and sustainable commercial
19 relationships; and

1 § 4104. ALTERATION, DAMAGE, OR INTERFERENCE

2 (a) A person shall not intentionally and without lawful authority, alter,
3 damage, or interfere with the operation of any computer, computer system,
4 computer network, computer software, computer program, or data contained in
5 such computer, computer system, computer program, or computer network.

6 (b) Penalties. A person convicted of violating this section shall be:

7 (1) if the damage or loss does not exceed \$500.00 for a first offense,
8 imprisoned not more than one year or fined not more than ~~\$500.00~~ \$5,000.00,
9 or both;

10 (2) if the damage or loss does not exceed \$500.00 for a second or
11 subsequent offense, imprisoned not more than two years or fined not more than
12 ~~\$1,000.00~~ \$10,000.00, or both; or

13 (3) if the damage or loss exceeds \$500.00, imprisoned not more than
14 10 years or fined not more than ~~\$10,000.00~~ \$25,000.00, or both.

15 § 4105. THEFT OR DESTRUCTION

16 (a)(1) A person shall not intentionally and without claim of right deprive
17 the owner of possession, take, transfer, copy, conceal, or retain possession of,
18 or intentionally and without lawful authority, destroy any computer system,
19 computer network, computer software, computer program, or data contained in
20 such computer, computer system, computer program, or computer network.

1 * * * Statute of Limitations to Commence Action
2 for Misappropriation of Trade Secrets * * *

3 Sec. 10. 12 V.S.A. § 523 is amended to read:

4 § 523. TRADE SECRETS

5 An action for misappropriation of trade secrets under 9 V.S.A. chapter 143
6 of ~~Title 9~~ shall be commenced within ~~three~~ five years after the cause of action
7 accrues, and not after. The cause of action shall be deemed to accrue as of the
8 date the misappropriation was discovered or reasonably should have been
9 discovered.

10 * * * Protection of Trade Secrets * * *

11 Sec. 11. 9 V.S.A. chapter 143 is amended to read:

12 CHAPTER 143. TRADE SECRETS

13 § 4601. DEFINITIONS

14 As used in this chapter:

15 (1) “Improper means” includes theft, bribery, misrepresentation, breach
16 or inducement of a breach of a duty to maintain secrecy, or espionage through
17 electronic or other means.

18 (2) “Misappropriation” means:

19 (A) acquisition of a trade secret of another by a person who knows or
20 has reason to know that the trade secret was acquired by improper means; or

1 (B) disclosure or use of a trade secret of another without express or
2 implied consent by a person who:

3 (i) used improper means to acquire knowledge of the trade
4 secret; or

5 (ii) at the time of disclosure or use, knew or had reason to know
6 that his or her knowledge of the trade secret was:

7 (I) derived from or through a person who had utilized improper
8 means to acquire it;

9 (II) acquired under circumstances giving rise to a duty to
10 maintain its secrecy or limit its use; or

11 (III) derived from or through a person who owed a duty to the
12 person seeking relief to maintain its secrecy or limit its use; or

13 (iii) before a material change of his or her position, knew or had
14 reason to know that it was a trade secret and that knowledge of it had been
15 acquired by accident or mistake.

16 (3) “Trade secret” means information, including a formula, pattern,
17 compilation, program, device, method, technique, or process, that:

18 (A) derives independent economic value, actual or potential, from
19 not being generally known to, and not being readily ascertainable by proper
20 means by, other persons who can obtain economic value from its disclosure or
21 use; and

1 (B) is the subject of efforts that are reasonable under the
2 circumstances to maintain its secrecy.

3 § 4602. INJUNCTIVE RELIEF

4 (a) ~~Actual~~ A court may enjoin actual or threatened misappropriation ~~may~~
5 ~~be enjoined of a trade secret.~~ Upon application to the court, an injunction shall
6 be terminated when the trade secret has ceased to exist, but the injunction may
7 be continued for an additional reasonable period of time in order to eliminate
8 commercial advantage that otherwise would be derived from the
9 misappropriation.

10 (b) In exceptional circumstances, an injunction may condition future use
11 upon payment of a reasonable royalty for no longer than the period of time for
12 which use could have been prohibited. Exceptional circumstances include, ~~but~~
13 ~~are not limited to~~, a material and prejudicial change of position prior to
14 acquiring knowledge or reason to know of misappropriation that renders a
15 prohibitive injunction inequitable.

16 (c) In appropriate circumstances, affirmative acts to protect a trade secret
17 may be compelled by court order.

18 § 4603. DAMAGES

19 (a)(1) Except to the extent that a material and prejudicial change of position
20 prior to acquiring knowledge or reason to know of misappropriation renders a

1 monetary recovery inequitable, a complainant is entitled to recover damages
2 for misappropriation.

3 (2) Damages can include both the actual loss caused by
4 misappropriation and the unjust enrichment caused by misappropriation that is
5 not taken into account in computing actual loss.

6 (3) In lieu of damages measured by any other methods, the damages
7 caused by misappropriation may be measured by imposition of liability for a
8 reasonable royalty for a misappropriator's unauthorized disclosure or use of a
9 trade secret.

10 (4) A court shall award a successful complainant his or her costs and
11 fees, including reasonable attorney's fees, arising from a misappropriation of
12 the complainant's trade secret.

13 (b) If malicious misappropriation exists, the court may award punitive
14 damages.

15 § 4605. PRESERVATION OF SECRECY

16 In an action under this chapter, a court shall preserve the secrecy of an
17 alleged trade secret by reasonable means, which may include granting
18 protective orders in connection with discovery proceedings, holding in-camera
19 hearings, sealing the records of the action, and ordering any person involved in
20 the litigation not to disclose an alleged trade secret without prior court
21 approval.

1 § 4607. EFFECT ON OTHER LAW

2 (a) Except as provided in subsection (b) of this section, this chapter
3 displaces conflicting tort, restitutionary, and any other law of this state
4 providing civil remedies for misappropriation of a trade secret.

5 (b) This chapter does not affect:

6 (1) contractual remedies, whether or not based upon misappropriation of
7 a trade secret;

8 (2) other civil remedies that are not based upon misappropriation of a
9 trade secret; or

10 (3) criminal remedies, whether or not based upon misappropriation of a
11 trade secret.

12 * * *

13 * * * Intellectual Property; Businesses and Government Contracting * * *

14 Sec. 12. 3 V.S.A. § 346 is added to read:

15 § 346. STATE CONTRACTING; INTELLECTUAL PROPERTY,

16 SOFTWARE DESIGN, AND INFORMATION TECHNOLOGY

17 (a) The Secretary of Administration shall include in Administrative
18 Bulletin 3.5 a policy direction applicable to State procurement contracts that
19 include services for the development of software applications, computer
20 coding, or other intellectual property, which would allow the State of Vermont

1 to grant permission to the contractor to use the intellectual property created
2 under the contract for the contractor's commercial purposes.

3 (b) The Secretary may recommend contract provisions that authorize the
4 State to negotiate with a contractor to secure license terms and license fees,
5 royalty rights, or other payment mechanism for the contractor's commercial
6 use of intellectual property developed under a State contract.

7 (c) If the Secretary authorizes a contractor to own intellectual property
8 developed under a State contract, the Secretary shall recommend language to
9 ensure the State retains a perpetual, irrevocable, royalty-free, and fully paid
10 right to continue to use the intellectual property.

11 * * * Securities Exemption for Small Businesses * * *

12 Sec. 13. 9 V.S.A. § 5205 is added to read:

13 § 5205. SMALL BUSINESS OFFERING EXEMPTION

14 (a) An offer or sale of a security by an issuer shall be exempt from the
15 requirements of sections 5301 through 5305 and §5504 of this title, and each
16 individual who represents an issuer in an offer or sale shall be exempt from the
17 requirements of subsection § 5402(a) of this title if the offer or sale is
18 conducted in accordance with each of the following requirements:

19 (1) The issuer of the security is a business entity with its principal place
20 of business located in Vermont and registered with the Secretary of State.

1 (2) If the offering involves a general solicitation or advertisement, the
2 transaction meets the requirements of the federal exemption for intrastate
3 offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. §
4 77c(a)(11), and SEC Rule 147, 17 C.F.R. 230.147.

5 (3) Unless the purchaser is an accredited investor as defined by rule 501
6 of SEC regulation D, 17 C.F.R. 230.501, the issuer does not accept from any
7 single purchaser:

8 (A) \$2,000 or 5 percent of annual income or net worth of the
9 investor, whichever is greater, if both the annual income and net worth are less
10 than \$100,000; and

11 (B) 10 percent of annual income or net worth of the investor,
12 whichever is greater, not to exceed an amount sold of \$100,000, if either the
13 annual income or net worth of the investor is equal to or more than \$100,000.

14 (b) The exemption under this section is unavailable for the following types
15 of offerings:

16 (1) Offerings in which it is proposed to issue stock or other equity
17 interest in a development stage company without a specific business plan or
18 purpose, or in which the issuer has indicated that its business is to engage in a
19 merger or acquisition with an unidentified company or companies, or other
20 unidentified entities or persons, or without an allocation of proceeds to

1 sufficiently identifiable properties or objectives, such as “blind pool” or “blank
2 check” offerings.

3 (2) Offerings involving petroleum exploration or production, mining, or
4 other extractive industries.

5 (3) Offerings involving an investment company as defined and classified
6 under Section 4 of the Investment Company Act of 1940.

7 (c) No commission, fee, or other remuneration may be paid or given,
8 directly or indirectly, to any person for soliciting any prospective purchaser in
9 reliance upon the exemption available under this section.

10 (d) The sum of all cash and other consideration to be received for all sales
11 of the security in reliance upon the exemption available under this section shall
12 not exceed:

13 (1) \$1,000,000.00, if the issuer has not undergone and made available to
14 each prospective investor and the Commissioner the documentation resulting
15 from a financial audit with respect to its most recently completed fiscal year
16 and meeting generally accepted accounting principles.

17 (2) \$2,000,000.00, if the issuer has undergone and made available to
18 each prospective investor and the Commissioner the documentation resulting
19 from a financial audit with respect to its most recently completed fiscal year
20 and meeting generally accepted accounting principles.

1 (e) All funds received from investors shall be deposited into a federally
2 insured depository institution located within Vermont, and all the funds shall
3 be used in accordance with representations made to investors.

4 (f) The exemption under this section is not available if the issuer or its
5 affiliates have previously sold securities of the issuer or affiliate under the
6 provisions of Sections 5303 or 5304 of the Act (registration by coordination or
7 qualification) or under the provisions of the securities laws of any other state
8 which pertain to registration by qualification or coordination.

9 (g) The duration of the offering period shall not exceed twelve months,
10 although the issuer may extend the offering in one year increments by
11 amending its initial filing, including payment of a renewal fee, in conformance
12 with requirements of this chapter.

13 (h) The exemption under this section shall not be available for a sale of
14 securities if the issuer; any predecessor of the issuer; any affiliated issuer; any
15 director, executive officer, other officer participating in the offering, general
16 partner or managing member of the issuer; any beneficial owner of 20 percent
17 or more of the issuer's outstanding voting equity securities, calculated on the
18 basis of voting power; any promoter connected with the issuer in any capacity
19 at the time of such sale, including any director, executive officer, other officer
20 participating in the offering, general partner or managing member of the
21 promoter; any investment manager of an issuer that is a pooled investment

1 fund; any general partner or managing member of any such investment
2 manager or solicitor; or any director, executive officer or other officer
3 participating in the offering of any such investment manager or solicitor or
4 general partner or managing member of such investment manager or solicitor:

5 (1) Has been convicted, within ten years before such sale, or five years,
6 in the case of issuers, their predecessors and affiliated issuers, of any felony or
7 misdemeanor:

8 (A) In connection with the purchase or sale of any security;

9 (B) Involving the making of any false filing with the Department or
10 the SEC; or

11 (C) Arising out of the conduct of the business of an underwriter,
12 broker, dealer, municipal securities dealer, investment adviser or paid solicitor
13 of purchasers of securities.

14 (2) Is subject to any order, judgment or decree of any court of competent
15 jurisdiction, entered within five years before such sale, that, at the time of such
16 sale, restrains or enjoins such person from engaging or continuing to engage in
17 any conduct or practice:

18 (A) In connection with the purchase or sale of any security;

19 (B) Involving the making of any false filing with the Department or
20 the SEC; or

1 (C) Arising out of the conduct of the business of an underwriter,
2 broker, dealer, municipal securities dealer, investment adviser or paid solicitor
3 of purchasers of securities.

4 (3) Is subject to a final order of a state securities administrator or an
5 agency or officer of a state performing like functions; a state authority that
6 supervises or examines banks, savings associations, or credit unions; a state
7 insurance commission or an agency or officer of a state performing like
8 functions; an appropriate federal banking agency; the U.S. Commodity Futures
9 Trading Commission; or the National Credit Union Administration that:

10 (A) At the time of such sale, bars the person from:

11 (i) Association with an entity regulated by such commission,
12 authority, agency, or officer;

13 (ii) Engaging in the business of securities, insurance or banking; or

14 (iii) Engaging in savings association or credit union activities; or

15 (B) Constitutes a final order based on a violation of any law or
16 regulation that prohibits fraudulent, manipulative, or deceptive conduct entered
17 within ten years before such sale.

18 (4) Is subject to an order of the SEC entered pursuant to section 15(b) or
19 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) or 78o-4(c))
20 or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-
21 3(e) or (f)) that, at the time of such sale:

1 (A) Suspends or revokes such person’s registration as a broker,
2 dealer, municipal securities dealer or investment adviser;

3 (B) Places limitations on the activities, functions or operations of such
4 person; or

5 (C) Bars such person from being associated with any entity or from
6 participating in the offering of any penny stock.

7 (5) Is subject to any order of the SEC entered within five years before
8 such sale that, at the time of such sale, orders the person to cease and desist
9 from committing or causing a violation or future violation of:

10 (A) Any scienter-based anti-fraud provision of the federal securities
11 laws, including without limitation section 17(a)(1) of the Securities Act of
12 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of
13 1934 (15 U.S.C. 78j(b)) and 17 CFR 240.10b-5, section 15(c)(1) of the
14 Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)) and section 206(1) of
15 the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or
16 regulation thereunder; or

17 (B) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

18 (6) Is suspended or expelled from membership in, or suspended or barred
19 from association with a member of, a registered national securities exchange or
20 a registered national or affiliated securities association for any act or omission

1 to act constituting conduct inconsistent with just and equitable principles of
2 trade.

3 (7) Has filed as a registrant or issuer, or was or was named as an
4 underwriter in, any registration statement or Regulation A offering statement
5 filed with the SEC that, within five years before such sale, was the subject of a
6 refusal order, stop order, or order suspending the Regulation A exemption, or
7 is, at the time of such sale, the subject of an investigation or proceeding to
8 determine whether a stop order or suspension order should be issued.

9 (8) Is subject to a United States Postal Service false representation order
10 entered within five years before such sale, or is, at the time of such sale,
11 subject to a temporary restraining order or preliminary injunction with respect
12 to conduct alleged by the United States Postal Service to constitute a scheme or
13 device for obtaining money or property through the mail by means of false
14 representations.

15 (i)(1) Subsection (h) of this section shall not apply:

16 (A) Upon a showing of good cause and without prejudice to any other
17 action by the Commissioner, if the Commissioner determines that it is not
18 necessary under the circumstances that an exemption be denied.

19 (B) If, before the relevant sale, the court or regulatory authority that
20 entered the relevant order, judgment or decree advises in writing, whether
21 contained in the relevant judgment, order or decree or separately to the

1 Commissioner, that disqualification under subsection (h) of this section should
2 not arise as a consequence of such order, judgment or decree.

3 (C) If the issuer establishes that it did not know and, in the exercise of
4 reasonable care, could not have known that a disqualification existed under
5 subsection (h) of this section.

6 (2) An issuer will not be able to establish that it has exercised reasonable
7 care unless it has made, in light of the circumstances, factual inquiry into
8 whether any disqualifications exist. The nature and scope of the factual inquiry
9 will vary based on the facts and circumstances concerning, among other things,
10 the issuer and the other offering participants.

11 (j) For purposes of subsection (h) of this section, events relating to any
12 affiliated issuer that occurred before the affiliation arose will be not considered
13 disqualifying if the affiliated entity is not:

14 (A) In control of the issuer; or

15 (B) Under common control with the issuer by a third party that was in
16 control of the affiliated entity at the time of such events.

17 (k) An issuer shall reasonably believe that the purchaser either alone or by
18 or through a representative has such knowledge as to be capable of evaluating
19 the merits and the risks of the investment

1 (l) An offering document shall be delivered to each offeree twenty four
2 hours prior to any sale of securities in reliance upon an exemption under this
3 section which meets the following requirements:

4 (1) The offering document must contain a legend which substantially
5 conforms to the following:

6 (A) INVESTMENT IN THESE SECURITIES INVOLVES SIGNIFICANT
7 RISKS AND IS SUITABLE ONLY FOR PERSONS WHO HAVE NO NEED
8 FOR IMMEDIATE LIQUIDITY IN THEIR INVESTMENT AND WHO
9 CAN BEAR THE ECONOMIC RISK OF A LOSS OF THEIR ENTIRE
10 INVESTMENT. INVESTORS SHOULD BE AWARE THAT THEY MAY
11 BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS
12 INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

13 (B) IN MAKING AN INVESTMENT DECISION INVESTORS MUST
14 RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE
15 TERMS OF THE OFFERING INCLUDING THE MERITS AND RISKS
16 INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED
17 BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR
18 REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING
19 AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR
20 DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY
21 REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

1 (C) THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON
2 TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED
3 OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT
4 OF 1933 AND THE VERMONT UNIFORM SECURITIES ACT
5 PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

6 (2) The offering document must be signed by a duly authorized
7 representative of the issuer who by such action shall certify that the issuer has
8 made reasonable efforts to verify the material accuracy and completeness of
9 the information therein contained.

10 (m) Nothing in this section alters the obligation of issuers under subdivision
11 5501(2) of this title. In addition, issuers shall otherwise comply with the
12 antifraud provisions of this chapter, as well as any applicable federal and state
13 securities laws. With the exception of the legend requirement, no format for
14 disclosure is prescribed. However, issuers should attempt to balance any
15 discussion of the potential rewards of the offering with a discussion of possible
16 risks. Issuers should take care to ensure that oral statements to prospective
17 purchasers about the offering are consistent with the disclosures contained in
18 the offering document. The Department of Financial Regulation shall have the
19 continuing right to comment upon and require revisions to the offering
20 document.

1 (n) An issuer or applicant shall file with the Commissioner no later than ten
2 calendar days prior to the commencement of any offering made in reliance on
3 an exemption under this section:

4 (1) A notice which includes the name, address, telephone number and
5 social security number for any of the issuer's officers, directors, partners,
6 members, ten percent shareholders, promoters presently connected with the
7 issuer in any capacity, a brief and general description of its business and
8 products, and its intended use of the proceeds of the proposed offering.

9 (2) A consent to service of process which is duly executed and
10 acknowledged by the issuer and accompanied by a properly executed corporate
11 resolution, if applicable.

12 (3) Included with the initial notice shall be the filing fee prescribed at
13 subsection 5305(k) of this title of the Act payable to the Vermont Department
14 of Financial Regulation.

15 (o) An issuer or applicant shall file with the Commissioner no later than five
16 business days prior to initial use in Vermont, a copy of all advertising intended
17 for publication or mass distribution including the script of any radio or
18 television broadcast to be made. Such advertising should, to the extent
19 practicable, conform to a standard "tombstone" format and limit the
20 information provided to the name of the issuer of the security, the name and
21 address of the person or persons from whom an offering document may be

1 obtained, the full title and a description of the security and the amount being
2 offered, a brief indication of the general type of business of the issuer, the price
3 of the security and, in the case of a debt security, the yield or interest rate. No
4 advertisement may be published or distributed if the issuer has been notified by
5 the Commissioner not to use such material.

6 (p) An issuer or applicant shall file with the Commissioner no later than
7 thirty calendar days after the expiration of the offering a sales report on a form
8 prescribed by the Commissioner. The Commissioner may require any issuer to
9 file periodic reports to keep reasonably current the information contained in the
10 notice and to disclose the progress of the offering.

11 (q) A broker-dealer that does not have a place of business in Vermont shall
12 be exempt from the registration requirements of section 5401 of this title to the
13 extent such broker-dealer limits its activities in Vermont to such transactions.

14 * * * Study; Effective Date * * *

15 Sec. 14. STUDY; DEPARTMENT OF FINANCIAL REGULATION;

16 LICENSED LENDER REQUIREMENTS; COMMERCIAL

17 LENDERS

18 On or before January 15, 2015, the Department of Financial Regulation
19 shall solicit public comment on, evaluate, and report to the House Committee
20 on Commerce and Economic Development and to the Senate Committees on
21 Finance and on Economic Development, Housing and General Affairs any

1 statutory and regulatory changes to the State’s licensed lender requirements
2 that are necessary to open private capital markets and remove unnecessary
3 barriers to business investment in Vermont.

4 Sec. 15. 2013 Acts and Resolves No. 87, Sec. 8 is amended to read:

5 Sec. 8. INVESTMENT OF STATE MONIES

6 The Treasurer is hereby authorized to establish a ~~short-term~~ credit facility
7 for the benefit of the Vermont Economic Development Authority in an amount
8 of up to \$10,000,000.00.

9 Sec. 16. 10 V.S.A. chapter 16A is amended to read:

10 CHAPTER 16A. VERMONT AGRICULTURAL CREDIT PROGRAM

11 § 374a. CREATION OF THE VERMONT AGRICULTURAL CREDIT
12 PROGRAM

13 * * *

14 (b) No borrower shall be approved for a loan from the corporation that
15 would result in the aggregate principal balances outstanding of all loans to that
16 borrower exceeding the then-current maximum Farm Service Agency loan
17 guarantee limits, or \$2,000,000.00, whichever is greater.

18 § 374b. DEFINITIONS

19 As used in this chapter:

20 (1) “Agricultural facility” means land and rights in land, buildings,
21 structures, machinery, and equipment which is used for, or will be used for

1 producing, processing, preparing, packaging, storing, distributing, marketing,
2 or transporting agricultural products which have been primarily produced in
3 this ~~state~~ State, and working capital reasonably required to operate an
4 agricultural facility.

5 (2) “Agricultural land” means real estate capable of supporting
6 commercial farming or forestry, or both.

7 (3) “Agricultural products” mean crops, livestock, forest products, and
8 other farm or forest commodities produced as a result of farming or forestry
9 activities.

10 (4) “Farm ownership loan” means a loan to acquire or enlarge a farm or
11 agricultural facility, to make capital improvements including construction,
12 purchase, and improvement of farm and agricultural facility buildings that can
13 be made fixtures to the real estate, to promote soil and water conservation and
14 protection, and to refinance indebtedness incurred for farm ownership or
15 operating loan purposes, or both.

16 (5) “Authority” means the Vermont ~~economic development authority~~
17 Economic Development Authority.

18 (6) “Cash flow” means, on an annual basis, all income, receipts, and
19 revenues of the applicant or borrower from all sources and all expenses of the
20 applicant or borrower, including all debt service and other expenses.

1 (7) “Farmer” means an individual directly engaged in the management
2 or operation of an agricultural facility or farm operation for whom the
3 agricultural facility or farm operation constitutes two or more of the following:

4 (A) is or is expected to become a significant source of the farmer’s
5 income;

6 (B) the majority of the farmer’s assets; and

7 (C) an occupation in which the farmer is actively engaged ~~in~~, either
8 on a seasonal or year-round basis.

9 (8) “Farm operation” shall mean the cultivation of land or other uses of
10 land for the production of food, fiber, horticultural, silvicultural, orchard,
11 maple syrup, Christmas trees, forest products, or forest crops; the raising,
12 boarding, and training of equines, and the raising of livestock; or any
13 combination of the foregoing activities. Farm operation also includes the
14 storage, preparation, retail sale, and transportation of agricultural or forest
15 commodities accessory to the cultivation or use of such land.

16 * * *

17 Sec. 17. 2 V.S.A. § 23 is added to read:

18 § 23. BILLS AFFECTING EXPENDITURES OR REVENUES; FISCAL

19 NOTES

20 (a) A bill voted out of a standing committee of the General Assembly
21 which would affect the expenditures or revenues of the State or of one or more

1 municipalities shall be accompanied by a fiscal note. The Joint Fiscal Office
2 shall prepare the fiscal note. The fiscal note shall be filed with the Clerk of the
3 House or the Secretary of the Senate, as appropriate, together with the bill to
4 be reported. A fiscal note shall accompany, rather than be a part of, the bill
5 and shall be presented by the reporter of the bill when the bill is taken up for
6 deliberation by the body.

7 (b) A fiscal note prepared under this section shall contain an estimate of the
8 positive and negative effects of the bill upon the expenditures or revenues of
9 the State or of municipalities for the fiscal year in which the bill would become
10 effective if enacted and for the next five succeeding years. A fiscal note shall
11 also contain an estimate of the positive and negative impacts of the bill on jobs
12 and employment in the State. If the effect of the bill is not expected to be
13 totally evidenced within that period of time, the estimate shall be projected
14 beyond that period to include an estimate for the first year in which the bill is
15 expected to affect fully expenditures or revenues.

16 (c) Fiscal notes prepared under this section are for the sole purpose of
17 assisting the General Assembly and the public in conducting informed
18 deliberations on legislative proposals. An inaccuracy in a fiscal note or the
19 failure to issue a fiscal note shall not affect the validity of a legislative
20 enactment nor be the basis of an action against the State.

1 Sec. 18. 2 V.S.A. § 503 is amended to read:

2 § 503. FUNCTIONS

3 (a) The ~~joint fiscal committee~~ Joint Fiscal Committee shall direct,
4 supervise, and coordinate the work of its staff and secretaries.

5 (b) The ~~joint fiscal committee~~ Joint Fiscal Committee shall:

6 (1) ~~Furnish~~ furnish research services and secretarial services of a fiscal
7 nature to the ~~committees on appropriations~~ Committees on Appropriations, the
8 ~~senate committee on finance~~ Senate Committee on Finance, the ~~house~~
9 ~~committee on ways and means~~ House Committee on Ways and Means, the
10 ~~committees on transportation~~ Committees on Transportation, and the ~~joint~~
11 ~~fiscal committee~~ Joint Fiscal Committee;

12 (2) ~~Carry~~ carry on a continuing review of the fiscal operations of the
13 ~~state~~ State, including ~~but not limited to~~ revenues, budgeting, and expenditures;

14 (3) ~~Accept~~ accept grants, gifts, loans, or any other thing of value,
15 approved by the ~~governor~~, Governor under the provisions of 32 V.S.A. § 5,
16 when the ~~general assembly~~ General Assembly is not in session;

17 (4) ~~Keep~~ keep minutes of its meetings and maintain a file thereof; and

18 (5) prepare fiscal notes pursuant to section 23 of this title.

19 Sec. 19. EFFECTIVE DATE

20 This act shall take effect on July 1, 2014.

21

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2
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(Committee vote: _____)

Representative [surname]

FOR THE COMMITTEE