

House Calendar

Wednesday, March 18, 2015

71st DAY OF THE BIENNIAL SESSION

House Convenes at 1:00 P.M.

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ACTION CALENDAR

Action Postponed Until March 18, 2015

Committee Bill for Second Reading

H. 477

An act relating to miscellaneous amendments to election law.

(Rep. Cole of Burlington will speak for the Committee on Government Operations.)

NEW BUSINESS

Third Reading

H. 20

An act relating to licensed alcohol and drug abuse counselors as participating providers in Medicaid

H. 25

An act relating to natural burial grounds

H. 105

An act relating to disclosure of sexually explicit images without consent

Amendment to be offered by Rep. Donahue of Northfield to H. 105

In Sec. 2, 13 V.S.A. § 2606, in subdivision (d)(1), by striking out the word “exposure” and inserting in lieu thereof “nudity or sexual conduct” and after the words “commercial settings” by adding “, or in a place where a person does not have a reasonable expectation of privacy”

H. 128

An act relating to the use of results-based accountability common language in Vermont law

H. 217

An act relating to potable water or wastewater system permits for a change in use of a building

H. 241

An act relating to rulemaking on emergency involuntary procedures

Amendment to be offered by Rep. Donahue of Northfield to H. 241

First: In Sec. 1, by inserting “(a)” before the first sentence

Second: In Sec. 1, in the first sentence, by inserting the phrase “and children” after the word “adults”

Third: In Sec. 1, by inserting a subsection (b) after subsection (a) to read as follows:

(b) The rules adopted pursuant to subsection (a) of this section that pertain to children shall be consistent with the policies set forth in subsection (a), but may reflect best practices that apply to children where those best practices differ from those that apply to adults.

H. 269

An act relating to the transportation and disposal of excavated development soils legally categorized as solid waste

H. 304

An act relating to making miscellaneous amendments to Vermont’s retirement laws

H. 306

An act relating to unemployment compensation

Committee Bill for Second Reading

H. 482

An act relating to principle-based valuation for life insurance reserves and a standard nonforfeiture law for life insurance policies.

(Rep. Baser of Bristol will speak for the Committee on Commerce & Economic Development.)

Favorable with Amendment

H. 5

An act relating to hunting, fishing, and trapping

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

* * * Definition of Bow and Arrow * * *

Sec. 1. 10 V.S.A. § 4001 is amended to read:

§ 4001. DEFINITIONS

Words and phrases used in this part, unless otherwise provided, shall be construed to mean as follows:

* * *

(29) Bow in the phrase “bow and arrow”: hand-held bow, including a long bow, recurve bow, or compound bow ~~but does not include a crossbow.~~

* * *

* * * License Agent Fees * * *

Sec. 2. 10 V.S.A. § 4254(f) and (g) are amended to read:

(f) All persons or businesses who wish to serve as agents shall apply on forms provided by the Department. ~~All applicants who become agents, except town clerks or other municipal or State employees who sell licenses as part of their official duties, shall pay an agency origination fee of \$100.00 upon establishment of the agency.~~ Except for the fee collected under subdivision (e)(9) of this section, all license fees collected by an agent are the property of the State of Vermont and shall be promptly paid to the State following the procedures established under subdivision (e)(6) of this section.

~~(g) All operating license agents, including those in their first year of operation, but not including town clerks, other municipal or State employees who sell licenses as part of their official duties, and point of sale agents, shall pay an annual agency operation fee of \$35.00. This fee shall be used for the administration of this section and to offset any losses incurred from sales of licenses, in lieu of individual bonding. [Repealed.]~~

* * * Permanent Licenses; Persons with Disabilities * * *

Sec. 3. 10 V.S.A. § 4255(c) is amended to read:

(c) A permanent or free license may be secured on application to the Department by a person qualifying as follows:

(1) For \$50.00, a Vermont resident ~~aged~~ 65 years of age or older may purchase one or all of the following licenses:

(A) A permanent fishing license.

(B) If the person qualifies for a hunting license, a combination fishing and hunting license, which shall include all big game licenses, except for a moose license.

(C) If the person qualifies for a trapping license, a trapping license.

* * *

(3) A ~~person~~ Vermont resident with paraplegia as defined in subdivision 4001(30) of this title ~~who is a Vermont resident or a permanent, severe, physical mobility disability certified by a physician~~ may receive a free permanent fishing license or, if the person qualifies for a hunting license, a free combination hunting and fishing license. A person with paraplegia ~~or a person certified by a physician to have permanent, severe, physical mobility disability~~ who is a resident of a state which provides a reciprocal privilege for Vermont residents may receive a free one-year fishing license, or if the person qualifies for a hunting license, a free one-year combination fishing and hunting license.

* * *

* * * Reports * * *

Sec. 4. DEPARTMENT OF FISH AND WILDLIFE REPORT ON PERMANENT LICENSE FOR PERSONS WITH DISABILITIES

On or before January 15, 2017, the Commissioner of Fish and Wildlife shall report to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy regarding any free permanent fishing, hunting, or combination licenses issued to persons with a permanent, severe, physical mobility disability. This report shall include the number of applicants and the number of free permanent licenses issued.

Sec. 5. DEPARTMENT OF FISH AND WILDLIFE REPORT ON PERMANENT AND LIFETIME FISHING, HUNTING, AND COMBINATION LICENSES.

On or before February 15, 2017, the Commissioner of Fish and Wildlife shall report to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy regarding the continued use of permanent and lifetime licenses. In conducting this report, the Commissioner may request that residents holding a permanent or lifetime fishing, hunting, or combination license communicate their intent prior to the time he or she exercises fishing, hunting, or trapping privileges each year.

* * * Mentored Hunting License * * *

Sec. 6. 10 V.S.A. § 4256(d) is amended to read:

(d) ~~For the purposes of~~ As used in this section, “accompany,” “accompanied,” or “accompanying” means that the mentored hunter is in the direct control and supervision of the licensed hunter and is within 15 feet of the licensed hunter. While hunting, an individual who holds a valid hunting license under subsection 4254(b) of this title shall accompany only one mentored hunter at a time. ~~The individual accompanying the mentored hunter while hunting shall sign and date the license of the mentored hunter.~~

* * * Migratory Waterfowl Advisory Committee * * *

Sec. 7. 10 V.S.A. § 4277(f) is amended to read:

(f) Advisory committee. There is hereby created a ~~migratory waterfowl advisory committee~~ Migratory Waterfowl Advisory Committee which shall consist of five persons and up to three alternates appointed by and serving at the pleasure of the ~~commissioner of the department of fish and wildlife~~ Commissioner of Fish and Wildlife. The ~~commissioner~~ Commissioner shall designate a chairperson. The ~~committee~~ Committee shall be consulted with and may make recommendations to the ~~commissioner~~ Commissioner in regard to all projects and activities supported with the funds derived from the implementation of this section. The ~~commissioner~~ Commissioner shall make an annual financial and progress report to the ~~committee~~ Committee with regard to all activities authorized by this section.

* * * Endangered and Threatened Species * * *

Sec. 8. 10 V.S.A. § 5403 is amended to read:

§ 5403. PROTECTION OF ENDANGERED AND THREATENED SPECIES

(a) Except as authorized under this chapter, a person shall not take, possess, or transport wildlife or plants that are members of an endangered or threatened species.

(b) The ~~secretary~~ Secretary may, with advice of the ~~endangered species committee~~ Endangered Species Committee, adopt rules for the protection and conservation of endangered and threatened species.

(c) ~~A~~ The Secretary may bring a civil enforcement action against any person who violates subsection (a) of this section with regard to an endangered species shall be fined not more than \$1,000.00 on the first offense. For a subsequent conviction the person shall be fined not less than \$500.00 nor more than \$1,000.00 or rules adopted under this chapter in accordance with chapters 201 and 211 of this title.

(d) ~~A person who violates subsection (a) of this section with regard to a threatened species shall be fined not more than \$500.00 on the first offense. For a subsequent conviction the person shall be fined not less than \$250.00 nor more than \$500.00~~ Instead of bringing a civil enforcement action for a violation of this chapter or rules adopted under this chapter, the Secretary may refer violations of this chapter to the Commissioner of Fish and Wildlife for enforcement.

(e) A person who violates a rule of the ~~secretary~~ Secretary adopted under subsection (b) of this section shall be fined not more than \$500.00.

(f) ~~A~~ Any person who violates subsection (a) of this section by knowingly injuring a member of a threatened or endangered species may be required by the court to pay restitution ~~of no more than \$500.00~~ for:

(1) veterinarian actual costs and related expenses incurred in treating and caring for the injured bird plant or animal to the person incurring these expenses, including the costs of veterinarian services and Agency of Natural Resources staff time; or

(2) reasonable mitigation and restoration costs such as: species restoration plans; habitat protection; and enhancement, transplanting, cultivation, and propagation for plants.

Sec. 9. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

* * *

(27) 10 V.S.A. chapter 123, relating to threatened and endangered species.

(b) The Secretary's administrative enforcement authority established by this chapter shall supplement any authority of the Secretary established by the chapters set forth in subsection (a) of this section to initiate criminal proceedings, or civil proceedings under chapters 47, 56, 59, 123, and 159 of this title.

(c) The Authority established by this chapter shall not be construed as negating any constitutional, common law, or statutory rights of persons.

* * * Aquatic Nuisance Enforcement * * *

Sec. 10. 10 V.S.A. § 1454(c) is amended to read:

(c) A violation of this section may be brought by any law enforcement officer, as that term is defined in 23 V.S.A. § ~~4(11)~~ 3302(2), in the Environmental Division of the Superior Court. When a violation is brought by an enforcement officer other than an environmental enforcement officer employed by the Agency of Natural Resources, the enforcement officer shall submit to the Secretary a copy of the citation for purposes of compliance with the public participation requirements of section 8020 of this title.

Sec. 11. 23 V.S.A. § 3317(b) is amended to read:

(b) A person who violates a requirement under 10 V.S.A. § 1266 1454 shall be subject to enforcement under 10 V.S.A. chapter 201, provided that the person shall be assessed a penalty of not more than \$1,000.00 for each violation. A person who violates a rule ~~promulgated~~ adopted under 10 V.S.A. § 1424 ~~or~~ shall be subject to enforcement under 10 V.S.A. chapter 201, provided that the person shall be assessed a penalty of not more than \$300.00 for each violation. A person who violates any of the following sections of this title shall be subject to a penalty of not more than \$300.00 for each violation:

§ 3306(e) marine toilet

§ 3312a operation of personal watercraft

Sec. 12. 23 V.S.A. § 3318(c) is amended to read:

(c) The provisions of this subchapter and the rules adopted pursuant to this subchapter shall be enforced by law enforcement officers as defined in section 3302 of this title in accordance with the provisions of 12 V.S.A. chapter 193, ~~and they.~~ Law enforcement officers as defined in section 3302 of this title may also enforce the provisions of 10 V.S.A. § 1266 1454 and the rules adopted pursuant to 10 V.S.A. § 1424 in accordance with the requirements of 10 V.S.A. chapter 50. ~~With respect to the provisions of 10 V.S.A. § 1266 and the rules adopted pursuant to 10 V.S.A. § 1424, whenever a penalty for a violation of such a rule is not otherwise established, three Superior judges appointed by the Court Administrator shall establish a schedule, within the limits prescribed by law, of the penalty to be imposed. Any law enforcement officer who issues a complaint shall advise the defendant of the schedule of penalties and show the defendant a copy of the schedule.~~

* * * Repeal of Agency of Agriculture, Food and Markets Authority Over Domestic Fur-Bearing Animals * * *

Sec. 13. REPEAL OF AGENCY OF AGRICULTURE, FOOD AND
MARKETS REGULATION OF FUR-BEARING ANIMALS

6 V.S.A. chapter 173 (Agency of Agriculture, Food and Markets regulation of domestic fur-bearing animals) is repealed.

* * * Moose Permits for Veterans * * *

Sec. 14. 10 V.S.A. § 4254 is amended to read:

§ 4254. FISHING AND HUNTING LICENSES; ELIGIBILITY, DESIGN,
DISTRIBUTION, SALE, AND ISSUE

* * *

(i)(1) If the Board establishes a moose hunting season, up to five moose permits shall be set aside to be auctioned. The moose permits set aside for auction shall be in addition to the number of annual moose permits authorized by the Board. The Board shall adopt rules necessary for the Department to establish, implement, and run the auction process. The Commissioner annually may establish a minimum dollar amount of not less than \$1,500.00 for any winning bid for a moose permit auctioned under this subdivision. Proceeds from the auction shall be deposited in the Fish and Wildlife Fund and used for conservation education programs run by the Department. Successful bidders must have a Vermont hunting or combination license in order to purchase a moose permit.

(2) If the Board establishes a moose hunting season, there shall be established a program to set aside five moose permits for Vermont residents who have served on active duty in any branch of the U.S. Armed Forces of the United States and ~~who have been awarded or are eligible to receive a campaign ribbon for Operation Iraqi Freedom or Operation Enduring Freedom~~ provided that he or she has not received a dishonorable discharge. The Department of Fish and Wildlife shall adopt a procedure to implement the set-aside program for veterans ~~who have been awarded or are eligible to receive a campaign ribbon for Operation Iraqi Freedom or Operation Enduring Freedom~~, including a method to award applicants preference points and a method by which veterans who applied for but failed to receive a permit in one hunting season are awarded priority in the subsequent moose hunting season. The procedure adopted under this subdivision shall be consistent with the preference system for the permit auction authorized under subdivision (1) of this subsection. Veterans awarded a moose permit under this subsection must possess a valid Vermont hunting or combination license in order to purchase a moose permit. The Department of Fish and Wildlife shall coordinate with the ~~Department of Veterans Affairs~~ Office of Veterans Affairs to provide notice to eligible veterans of the moose permits set-aside under this subsection.

* * * Effective Dates * * *

Sec. 15. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 3 (permanent license for persons with disability), 4 (report on permanent license for persons with disability), 6 (mentored hunting license), and 14 (moose permits for veterans) shall take effect on January 1, 2016.

(Committee Vote: 9-0-0)

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

(Committee Vote: 8-0-3)

H. 14

An act relating to prohibiting the harassment of law enforcement and corrections officers

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

Sec. 1. 13 V.S.A. § 1061 is amended to read:

§ 1061. DEFINITIONS

* * *

(3) “Harassing” means actions directed at a specific person, or a member of the person’s family, which would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, ~~or~~ death, or damage to property, including verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent.

* * *

Sec. 2. 13 V.S.A. § 1028b is added to read:

§ 1028b. HARASSMENT OF A LAW ENFORCEMENT OFFICER OR CORRECTIONS OFFICER

(a) As used in this section:

(1) “Corrections officer” means an employee of the Department of Corrections whose official duties or job classification includes the supervision or monitoring of a person on parole or probation or serving any sentence of incarceration whether inside or outside a correctional facility.

(2) “Law enforcement officer” means a member of the Department of Public Safety who exercises law enforcement powers, a member of the State police, a Capitol Police officer, a municipal police officer, a constable who exercises law enforcement powers, a motor vehicle inspector, an employee of the Department of Liquor Control who exercises law enforcement powers, an investigator employed by the Secretary of State, the Department of Health, Attorney General, or a State’s Attorney, a fish and wildlife warden, a sheriff or deputy sheriff who exercises law enforcement powers, and a railroad police officer commissioned pursuant to 5 V.S.A. chapter 68, subchapter 8.

(3) “Harrass” shall have the same meaning as “harassing” as defined in section 1061 of this title.

(b) A person shall not harass a law enforcement officer, an employee of a State or municipal law enforcement agency or a sheriff’s department, a corrections officer, or an employee of the Vermont Department of Corrections in connection with the officer’s or employee’s exercise of his or her duties.

(c) A person who is convicted of harassment of a law enforcement or corrections officer shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

(Committee Vote: 10-0-1)

H. 95

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

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

Sec. 1. 33 V.S.A. § 5206 is added to read:

§ 5206. CITATION OF 16- AND 17-YEAR-OLDS

(a)(1) If a child was over 16 years of age and under 18 years of age at the time the offense was alleged to have been committed and the offense is not specified in subsection (b) of this section, law enforcement shall cite the child to the Family Division of the Superior Court.

(2) If, after the child is cited to the Family Division, the State’s Attorney chooses to file the charge in the Criminal Division of the Superior Court, the State’s Attorney shall state in the information the reason why filing in the Criminal Division is in the interest of justice.

(b) Offenses for which a law enforcement officer is not required to cite a child to the Family Division of the Superior Court shall include:

(1) 23 V.S.A. §§ 674 (driving while license suspended or revoked); 1128 (accidents—duty to stop); and 1133 (eluding a police officer).

(2) Fish and wildlife offenses that are not minor violations as defined by 10 V.S.A. § 4572.

(3) A listed crime as defined in 13 V.S.A. § 5301.

(4) An offense listed in subsection 5204(a) of this title.

Sec. 2. REPORT

(a) On or before March 1, 2016, each State's Attorney shall adopt a written protocol regarding his or her approach to deciding whether to file a delinquency petition or criminal charges against a child that reflects the purposes of 33V.S.A. § 5101.

(b) On or before April 1, 2016, the Executive Director of the Department of State's Attorneys and Sheriffs shall report to the House and Senate Committees on Judiciary regarding State's Attorneys' implementation of subsection (a) of this section.

Sec. 3. 33 V.S.A. § 5234 is amended to read:

§ 5234. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS INVOLVING A LISTED CRIME

(a) The victim in a delinquency proceeding involving a listed crime shall have the following rights:

(1) To be notified by the prosecutor's office in a timely manner;

(A) when a delinquency petition has been filed, the name of the child, and any conditions of release ordered for the child that are materially related to the victim or intended to protect the safety of the victim;

(B) his or her rights as provided by law, information regarding how a case proceeds through a delinquency proceeding, the confidential nature of delinquency proceedings, and that it is unlawful to disclose confidential information concerning the proceedings to another person;

(C) when a predispositional or dispositional court proceeding is scheduled to take place and when a court proceeding of which he or she has been notified will not take place as scheduled; and

~~(2)(D) To be notified by the prosecutor's office as to whether delinquency has been found and disposition has occurred, including any conditions of release that are materially related to the victim or intended to protect the safety of the victim and restitution relevant to the victim, when ordered.~~

~~(3)(2) To attend the disposition hearing and to present a victim's impact statement, including a statement why restitution may be appropriate, at the disposition hearing in accordance with subsection 5233(b) of this title and to be notified as to the disposition pursuant to subsection 5233(d) of this title. The Court shall consider the victim's statement when ordering disposition.~~

~~(4)(3) Upon request, to~~ To be notified by the agency having custody of the delinquent child before he or she is discharged from a secure or staff-secured residential facility. The name of the facility shall not be disclosed. An agency's inability to give notification shall not preclude the release. However, in such an event, the agency shall take reasonable steps to give notification of the release as soon thereafter as practicable. Notification efforts shall be deemed reasonable if the agency attempts to contact the victim at the address or telephone number provided to the agency in the request for notification.

~~(5) To obtain the name of the child in accordance with sections 5226 and 5233 of this title. [Repealed.]~~

~~(6) To be notified by the Court of the victim's rights under this section. [Repealed.]~~

(b) The prosecutor's office shall keep the victim informed and consult with the victim through the delinquency proceedings.

Sec. 4. 33 V.S.A. § 5234a is added to read:

§ 5234a. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS INVOLVING A NONLISTED CRIME

The victim in a delinquency proceeding based on an act that is not a listed crime shall have the following rights:

(1) To be notified by the Court of his or her rights as provided by law and his or her responsibilities regarding the confidential nature of juvenile proceedings.

(2) To be notified promptly by the Court when conditions of release are initially ordered or modified by the Court and shall be notified promptly of the identity of the child when the conditions of release relate to the victim or a member of the victim's family or current household. Victims are entitled only to information contained in the conditions of release that pertain to the victim or a member of the victim's family or current household.

(3) To file with the Court a written or recorded statement of the impact of the delinquent act on the victim and the need for restitution.

(4) To be present at the disposition hearing for the sole purpose of presenting to the Court the impact of the delinquent act on the victim and the need for restitution if the Court finds the victim's presence at the disposition hearing is in the best interests of the child and the victim.

(5) To have the Court take a victim's views into consideration in the Court's disposition order.

(6) To be allowed not to be personally present at any portion of the disposition hearing except to present the impact statement unless authorized by the Court.

(7) To be informed by the Court after an adjudication of delinquency has been made of the disposition of the case. Upon request of the victim, the Court may release to the victim the identity of the child if the Court finds that release of the child's identity to the victim is in the best interests of both the child and the victim. Disposition in the case shall include whether the child was placed on probation and information regarding conditions of probation relevant to the victim.

Sec. 5. REPEAL

33 V.S.A. §§ 5226 (notification of conditions of release) and 5233 (victim's statement at disposition) are repealed.

Sec. 6. EFFECTIVE DATES

(a) This section and Sec. 2 of this act shall take effect on passage.

(b) The remaining sections of this act shall take effect on July 1, 2016.

and that after passage the title of the bill be amended to read: "An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court and the rights of victims in delinquency proceedings"

(Committee Vote: 11-0-0)

H. 98

An act relating to reportable disease registries and data

Rep. French of Randolph, for the Committee on **Human Services**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 4 is amended to read:

CHAPTER 4. CANCER REGISTRY

* * *

§ 153. PARTICIPATION IN PROGRAM

(a) Any health care facility diagnosing or providing treatment to ~~cancer~~ patients with cancer shall report each case of cancer to the ~~commissioner~~ Commissioner or his or her authorized representative in a format prescribed by the ~~commissioner~~ Commissioner within ~~120~~ 180 days of admission or diagnosis. If the facility fails to report in a format prescribed by the ~~commissioner~~ Commissioner, the ~~commissioner's~~ Commissioner's authorized

representative may enter the facility, obtain the information, and report it in the appropriate format. In these cases, the facility shall reimburse the ~~commissioner~~ Commissioner or the authorized representative for the cost of obtaining and reporting the information.

(b) Any health care provider diagnosing or providing treatment to ~~cancer~~ patients with cancer shall report each cancer case to the ~~commissioner~~ Commissioner or his or her authorized representative within ~~120~~ 180 days of diagnosis. Those cases diagnosed or treated at a Vermont facility or previously admitted to a Vermont facility for diagnosis or treatment of that instance of cancer are exceptions and do not need to be reported by the health care provider.

(c) All health care facilities and health care providers who provide diagnostic or treatment services to patients with cancer shall report to the ~~commissioner~~ Commissioner any further demographic, diagnostic, or treatment information requested by the ~~commissioner~~ Commissioner concerning any person now or formerly receiving services, diagnosed as having or having had a malignant tumor. Additionally, the ~~commissioner~~ Commissioner or his or her authorized representative shall have physical access to all records ~~which~~ that would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified ~~cancer~~ patient with cancer. Willful failure to grant access to such records shall be punishable by a fine of up to \$500.00 for each day access is refused. Any fines collected pursuant to this subsection shall be deposited in the ~~general fund~~ General Fund.

* * *

§ 155. DISCLOSURE

(a) The ~~commissioner~~ Commissioner may enter into agreements to exchange confidential information with other cancer registries in order to obtain complete reports of Vermont residents diagnosed or treated in other states and to provide information to other states regarding their residents diagnosed or treated in Vermont.

(b) The ~~commissioner~~ Commissioner may furnish confidential information to the National Breast and Cervical Cancer Early Detection Program, other states' cancer registries, federal cancer control agencies, or health researchers in order to collaborate in a national cancer registry or to collaborate in cancer control and prevention research studies. However, before releasing confidential information, the ~~commissioner~~ Commissioner shall first obtain from such state registries, agencies, or researchers an agreement in writing to keep the identifying information confidential and privileged. In the case of

researchers, the ~~commissioner~~ Commissioner shall also first obtain evidence of the approval of their academic committee for the protection of human subjects established in accordance with ~~part 46 of Title 45 of the Code of Federal Regulations~~ 45 C.F.R. part 46.

* * *

Sec. 2. 18 V.S.A. § 1001 is amended to read:

§ 1001. REPORTS TO COMMISSIONER OF HEALTH

(a) When a physician, health care provider, nurse practitioner, nurse, physician assistant, or school health official has reason to believe that a person is sick or has died of a diagnosed or suspected disease, identified by the Department of Health as a reportable disease and dangerous to the public health, or if a laboratory director has evidence of such sickness or disease, he or she shall transmit within 24 hours a report thereof and identify the name and address of the patient and the name of the patient's physician to the Commissioner of Health or designee. In the case of the human immunodeficiency virus (HIV), "reason to believe" shall mean personal knowledge of a positive HIV test result. The Commissioner, with the approval of the Secretary of Human Services, shall by rule establish a list of those diseases dangerous to the public health that shall be reportable. Nonmedical community-based organizations shall be exempt from this reporting requirement. All information collected pursuant to this section and in support of investigations and studies undertaken by the ~~commissioner~~ Commissioner for the purpose of determining the nature or cause of any disease outbreak shall be privileged and confidential. The ~~Health~~ Department of Health shall, by rule, require that any person required to report under this section has in place a procedure that ensures confidentiality. ~~In addition, in relation to the reporting of HIV and the acquired immune deficiency syndrome (AIDS), the Health Department shall, by rule:~~

~~(1) develop procedures, in collaboration with individuals living with HIV or AIDS and with representatives of the Vermont AIDS service organizations, to ensure confidentiality of all information collected pursuant to this section; and~~

~~(2) develop procedures for backing up encrypted, individually identifying information, including procedures for storage, location, and transfer of data.~~

~~(b)(1) Public health records that relate to HIV or AIDS that contain any personally identifying information, or any information that may indirectly identify a person and was developed or acquired by state or local public health agencies, shall be confidential and shall only be disclosed following notice to~~

~~the individual subject of the public health record or the individual's legal representative and pursuant to a written authorization voluntarily executed by the individual or the individual's legal representative. Except as provided in subdivision (2) of this subsection, notice and authorization is required prior to all disclosures, including disclosures to other states, the federal government, and other programs, departments, or agencies of state government.~~

~~(2) Notwithstanding the provisions of subdivision (1) of this subsection, disclosure without notification shall be permitted to other states' infectious disease surveillance programs for the sole purpose of comparing the details of case reports identified as possibly duplicative, provided such Public health records developed or acquired by State or local public health agencies that relate to HIV or AIDS and that contain either personally identifying information or information that may indirectly identify a person shall be confidential and only disclosed following notice to and written authorization from the individual subject of the public health record or the individual's legal representative. Notice otherwise required pursuant to this section shall not be required for disclosures to the federal government; other departments, agencies, or programs of the State; or other states' infectious disease surveillance programs if the disclosure is for the purpose of comparing the details of potentially duplicative case reports, provided the information shall be shared using the least identifying information first so that the individual's name shall be used only as a last resort.~~

~~(c) A disclosure made pursuant to subsection (b) of this section shall include only the information necessary for the purpose for which the disclosure is made. The disclosure shall be made only on agreement that the information shall remain confidential and shall not be further disclosed without additional notice to the individual and written authorization by the individual subject as required by subsection (b) of this section. [Repealed.]~~

(d) A confidential public health record, including any information obtained pursuant to this section, shall not be:

(1) disclosed or discoverable in any civil, criminal, administrative, or other proceeding;

(2) used to determine issues relating to employment or insurance for any individual;

(3) used for any purpose other than public health surveillance, and epidemiological follow-up.

(e) Any person who:

(1) Willfully or maliciously discloses the content of any confidential public health record without written authorization or other than as authorized by law or in violation of subsection (b), (c), or (d) of this section shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$25,000.00, costs and attorney's fees as determined by the court, compensatory and punitive damages, or equitable relief, including restraint of prohibited acts, costs, reasonable attorney's fees, and other appropriate relief.

(2) Negligently discloses the content of any confidential public health record without written authorization or other than as authorized by law or in violation of subsection (b), (c), or (d) of this section shall be subject to a civil penalty in an amount not to exceed \$2,500.00 plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the confidential information.

(3) Willfully, maliciously, or negligently discloses the results of an HIV test to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply without written authorization or other than as authorized by law or in violation of subsection (b), (c), or (d) of this section and that results in economic, bodily, or psychological harm to the subject of the test is guilty of a misdemeanor, punishable by imprisonment for a period not to exceed one year or a fine not to exceed \$25,000.00, or both.

(4) Commits any act described in subdivision (1), (2), or (3) of this subsection shall be liable to the subject for all actual damages, including damages for any economic, bodily, or psychological harm that is a proximate result of the act. Each disclosure made in violation of this chapter is a separate and actionable offense. Nothing in this section shall limit or expand the right of an injured subject to recover damages under any other applicable law.

~~(f) Except as provided in subdivision (a)(2) of this section, the Health Department is prohibited from collecting, processing, or storing any individually identifying information concerning HIV/AIDS on any networked computer or server, or any laptop computer or other portable electronic device. On rare occasion, not as common practice, the Department may accept HIV/AIDS individually identifying information electronically. Once that information is collected, the Department shall, in a timely manner, transfer the information in compliance with this subsection. [Repealed.]~~

(g) Health care providers must, prior to performing an HIV test, inform the individual to be tested that a positive result will require reporting of the result and the individual's name to the Department, and that there are testing sites that provide anonymous testing that are not required to report positive results.

The Department shall develop and make widely available a model notification form.

(h) Nothing in this section shall affect the ongoing availability of anonymous testing for HIV. Anonymous HIV testing results shall not be required to be reported under this section.

~~(i) No later than November 1, 2007, the Health Department shall conduct an information and security audit in relation to the information collected pursuant to this section, including evaluation of the systems and procedures it developed to implement this section and an examination of the adequacy of penalties for disclosure by state personnel. No later than January 15, 2008, the Department shall report to the Senate Committee on Health and Welfare and the House Committee on Human Services concerning options available, and the costs those options would be expected to entail, for maximizing protection of the information collected pursuant to this section. That report shall also include the Department's recommendations on whether the General Assembly should impose or enhance criminal penalties on health care providers for unauthorized disclosures of medical information. The Department shall solicit input from AIDS service organizations and the community advisory group regarding the success of the Department's security measures and their examination of the adequacy of penalties as they apply to HIV/AIDS and include this input in the report to the Legislature. The Department shall annually evaluate the systems and confidentiality procedures developed to implement networked and non-networked electronic reporting, including system breaches and penalties for disclosure to State personnel. The Department shall provide the results of this evaluation to and solicit input from the Vermont HIV/AIDS Community Advisory Group.~~

~~(j) No later than January 1, 2008, the Department shall plan and commence a public campaign designed to educate the general public about the value of obtaining an HIV test. The Department shall collaborate with community-based organizations to educate the public and health care providers about the benefits of HIV testing and the use of current testing technologies.~~

(k) The Commissioner shall maintain a separate database of reports received pursuant to subsection 1141(i) of this title for the purpose of tracking the number of tests performed pursuant to ~~subchapter 5~~ of chapter 21, subchapter 5 of this title and ~~such~~ other information as the Department of Health ~~determines to be~~ finds necessary and appropriate. The database shall not include any information that personally identifies a patient.

Sec. 3. 18 V.S.A. § 1129 is amended to read:

§ 1129. IMMUNIZATION REGISTRY

(a) A health care provider shall report to the ~~department~~ Department all data regarding immunizations of adults and of children ~~under the age of 18 years of age~~ within seven days of the immunization, provided that required reporting of immunizations of adults shall commence within one month after the health care provider has established an electronic health records system and data interface pursuant to the e-health standards developed by the Vermont ~~information technology leaders~~ Information Technology Leaders. A health insurer shall report to the ~~department~~ Department all data regarding immunizations of adults and of children ~~under the age of 18 years of age~~ at least quarterly. All data required pursuant to this subsection shall be reported in a ~~form~~ format required by the ~~department~~ Department.

(b) The ~~department~~ Department may use the data to create a registry of immunizations. Registry information shall remain confidential and privileged, except as provided in subsections (c) and (d) of this section. Registry information regarding a particular adult shall be provided, upon request, to the adult, the adult's health care provider, and the adult's health insurer. ~~A minor child's record also~~ Registry information regarding a particular minor child may be provided, upon request, to school nurses, or in the absence of a nurse on staff, administrators as defined in 16 V.S.A. § 1691a, and upon request and with written parental consent, to licensed day care providers, to document compliance with Vermont immunization laws. Registry information regarding a particular child shall be provided, upon request, ~~to the child after the child reaches the age of majority and to the minor child's parent; or guardian, health insurer, and health care provider, or to the child after the child reaches the age of majority.~~ Registry information shall be kept confidential and privileged and may be shared only in summary, statistical, or other form in which particular individuals are not identified.

(c) The Department may exchange confidential registry information with the immunization registries of other states in order to obtain comprehensive immunization records.

(d) The Department may provide confidential registry information to health care provider networks serving Vermont patients and, with the approval of the Commissioner, to researchers who present evidence of approval from an institutional review board in accordance with 45 C.F.R. § 164.512.

(e) Prior to releasing confidential information pursuant to subsections (c) and (d) of this section, the Commissioner shall obtain from state registries, health care provider networks, and researchers a written agreement to keep any identifying information confidential and privileged.

(f) The Department may share registry information for public health purposes in summary, statistical, or other form in which particular individuals are not identified, except as provided in subsections (c) and (d) of this section.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

(Committee Vote: 9-1-1)

H. 123

An act relating to mobile home parks, habitability standards, and compliance

Rep. Head of South Burlington, for the Committee on **General, Housing & Military Affairs**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 6205 is amended to read:

§ 6205. ENFORCEMENT; PENALTIES

~~(a) Any person who violates or fails to comply with this chapter or with any conditions, restrictions, or limitations contained in a permit issued under this chapter shall be fined not more than \$1,000.00 or imprisoned for not more than six months, or both~~ A mobile home park owner who violates or fails to comply with a provision of this chapter violates 9 V.S.A. § 2453.

~~(b) The superior court for the county in which a violation of this chapter occurs shall have jurisdiction, on application by the department in the case of violations of sections 6236-6243 of this title, to enjoin and restrain the violation, but any election by the department to proceed under this subsection shall not limit or restrict the authority of the state to prosecute for the offense under subsection (a) of this section~~ If a mobile home park owner violates this chapter, the Department shall have the authority:

(1) to impose an administrative penalty of up to \$5,000.00 per violation;

(2) to bring a civil action for damages or injunctive relief, or both, in the Superior Court for the unit in which a violation occurred; and

(3) to refer a violation to the Attorney General or State's Attorney for enforcement pursuant to subsection (a) of this section.

(c)(1) A leaseholder may bring an action against the park owner for a violation of sections 6236-6243 of this title.

(2) The action shall be filed in ~~superior court~~ Superior Court for the unit in which the alleged violation occurred.

(3) No action may be commenced by the leaseholder unless the leaseholder has first notified the park owner of the violation by certified mail at least 30 days prior to bringing the action.

(4) During the pendency of an action brought by a leaseholder, the leaseholder shall pay rent in an amount designated in the lease, or as provided by law, which rental amount shall be deposited in an escrow account as directed by the ~~court~~ Court.

Sec. 2. 10 V.S.A. chapter 153, subchapter 3 is amended to read:

Subchapter 3. Habitability

* * *

§ 6262. PARK OWNER OBLIGATIONS; WARRANTY OF HABITABILITY; RULES

(a) In any lot rental agreement, the park owner shall be deemed to covenant and warrant to deliver over and maintain, throughout the period of the tenancy, premises which are safe, clean, and fit for human habitation. This warranty requires the park owner to provide adequate and reliable utility services, including safe electrical service, potable water, and sewage disposal to a location on each lot from which these utilities can be connected to the mobile home. The warranty also requires the park owner to assure that the roads, common areas, and facilities within the mobile home park are safe and fit for the purpose for which they were reasonably intended.

(b) The ~~department~~ Department, in cooperation with the ~~agency of natural resources, the department of public safety and the department of health~~ Agency of Natural Resources, the Department of Public Safety, and the Department of Health, shall, by rule, adopt standards for safety, cleanliness and fitness for human habitation regarding the rental of a mobile home lot within a mobile home park.

(c) No rental agreement shall contain any provision by which the leaseholder waives the protections of the implied warranty of habitability. Any such waiver shall be deemed contrary to public policy and shall be unenforceable and void.

§ 6263. HABITABILITY; LEASEHOLDER REMEDIES

(a)(1) If the mobile home park owner fails to comply with the obligation of habitability, the park owner shall be deemed to have notice of the noncompliance if the park owner receives actual notice of the noncompliance from the leaseholder, a governmental entity, or a qualified independent inspector.

(2) If the park owner has received notice from any of those sources and fails to make repairs within a reasonable time and the noncompliance materially affects health and safety, the leaseholder may pursue any of the following remedies:

~~(1)(A) Withhold~~ withhold payment of lot rent during the period of the noncompliance;

~~(2)(B) Obtain~~ obtain injunctive relief;

~~(3)(C) Recover~~ recover damages, costs, and reasonable ~~attorney~~ attorney's fees; or

~~(4)(D) Terminate~~ terminate the rental agreement on reasonable notice.

(b)(1) For purposes of subdivision (a)(2) of this section, a mobile home park owner's failure to maintain the roads within a mobile home park in a condition that reasonably ensures access by emergency vehicles shall be deemed noncompliance that materially affects health and safety.

(2) This subsection does not require a mobile home park owner to create a new road or other improvement, or to modify an existing road or other improvement, within an existing mobile home park.

(c) The remedies under this section are not available to a leaseholder if the noncompliance was caused by the negligent or deliberate act or omission of the leaseholder or of a person on the premises with the leaseholder's consent.

§ 6264. MINOR DEFECTS; REPAIR AND DEDUCT

(a)(1) If the park owner fails to repair a minor defect or noncompliance with this chapter or noncompliance with a material provision of the rental agreement within 30 days of receipt of written notice, the leaseholder may repair the defect or noncompliance and deduct from the rent the actual and reasonable cost, not to exceed one-half of one month's lot rent.

(2) No major work on water, sewer, or electrical systems may be performed under this section.

(3) The leaseholder shall provide the owner with written notice of the cost of the repair or service when the cost is deducted from the rent.

(4) The leaseholder shall be responsible for any damage caused by the repair or attempts to repair.

(b) The remedies under this section are not available to a leaseholder if the noncompliance was caused by the negligent or deliberate act or omission of the leaseholder or a person on the premises with the leaseholder's consent.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

(Committee Vote: 5-3-0)

H. 310

An act relating to limited liability companies

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

Sec. 1. REPEAL

11 V.S.A. chapter 21, containing §§ 3001–3184, is repealed.

Sec. 2. 11 V.S.A. chapter 25 is added to read:

CHAPTER 25. LIMITED LIABILITY COMPANIES

Subchapter 1. General Provisions

§ 4001. DEFINITIONS

As used in this chapter:

(1) “Articles of organization” means initial, amended, and restated articles of organization and articles of merger. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed in the Office of the Secretary of State, or comparable office, of the company’s jurisdiction of organization.

(2) “Business” includes every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit.

(3) “Debtor in bankruptcy” means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state, or foreign law governing insolvency.

(4) “Delivery” means transmission by surface mail or by a method of electronic transmission the Secretary of State may prescribe.

(5) “Designated office” means the office of a limited liability company designated pursuant to section 4007 of this title or the principal office of a foreign limited liability company.

(6) “Dissolution” means an event under section 4101 of this title which requires a limited liability company to wind up its affairs and to terminate its existence as a legal entity.

(7) “Dissociation” means a complete termination of a member’s continued membership in a limited liability company for any reason.

(8) “Distribution” means a transfer of money or property from a limited liability company to a member in the member’s capacity as a member or to a transferee of the member’s distributional interest.

(9) “Distributional interest” means the right of a member or transferee to receive a distribution from a limited liability company.

(10) “Document” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) “Entity” means a person other than an individual.

(12) “Foreign limited liability company” means an unincorporated entity organized under laws, other than the laws of this State, which afford limited liability to its owners comparable to the liability under section 4042 of this title.

(13) “Limited liability company” or “company,” except in the phrase “foreign limited liability company,” means an organization formed under this chapter or subject to this chapter following a merger, conversion, or domestication pursuant to subchapter 10 of this chapter.

(14) “L3C” or “low-profit limited liability company” means a limited liability company that elects to be a low-profit limited liability company pursuant to section 4161 of this title and meets the requirements of section 4162 of this title.

(15) “Manager” means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in subsection 4054(c) of this title.

(16) “Manager-managed limited liability company” means a limited liability company that qualifies under subsection 4054(a) of this title.

(17) “Meeting” means any structured communication conducted by participants in person or through an electronic or telecommunications medium that permits simultaneous or sequentially structured communications.

(18) “Member” means a person that has become a member of a limited liability company under section 4051 of this title and has not dissociated under section 4081 of this title.

(19) “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.

(20) “Operating agreement” means any form of description of membership rights and obligations under section 4003 of this title, stored or depicted in any tangible or electronic medium, which is agreed to by the members, including amendments to the agreement.

(21) “Record,” used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(22) “Sign” means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or to logically associate with the record an electronic symbol, sound, or process.

(23) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(24) “Transfer” includes an assignment, a conveyance, a sale, a lease, an encumbrance, including a mortgage or security interest, a gift, and a transfer by operation of law.

(25) “Writing” means a written communication, including a letter, fax, e-mail, or other electronic format that may be prescribed by the Secretary of State.

§ 4002. KNOWLEDGE AND NOTICE

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) has received a notification of the fact;

(2) has reason to know of the fact from all of the facts known to the person at the time in question; or

(3) is deemed to have notice of the fact under subsection (d) of this section.

(c) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person in the ordinary course, whether or not they cause the other person to know the fact.

(d) In the case of a limited liability company’s dissolution, termination, or merger or conversion, a person who is not a member of the company is deemed to have notice as follows:

(1) for a dissolution, 90 days after a statement of dissolution under section 4103 of this title becomes effective;

(2) for a termination, 90 days after the articles of termination under section 4105 of this title become effective; and

(3) for a merger or conversion, upon the effective date of articles of merger or a statement of conversion filed with the Secretary of State.

(e) A person receives a notification when the notification:

(1) comes to the person's attention; or

(2) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(f) A member's knowledge, notice, or receipt of a notification of a fact in the member's capacity as a member does not impute knowledge, notice, or receipt of notification of the fact to the limited liability company.

§ 4003. EFFECT OF OPERATING AGREEMENT; NONWAIVABLE

PROVISIONS

(a) Except as otherwise provided in subsection (b) of this section, an operating agreement regulates the affairs of the company and the conduct of its business and governs relations among the members, among the managers, and among the members, managers, and the limited liability company. To the extent the operating agreement does not otherwise provide, this chapter regulates the affairs of the company, the conduct of its business, and governs relations among the members, among the managers, and among members, managers, and the limited liability company.

(b) An operating agreement may not:

(1) vary a limited liability company's capacity under subsection 4011(e) of this title to sue and be sued in its own name;

(2) except as provided in subchapter 8 of this chapter, vary the law applicable under subsection 4011(g) of this title;

(3) vary the power of the court under section 4040 of this title;

(4) subject to subsections (c) through (f) of this section, eliminate or restrict the duty of loyalty, the duty of care, or any other fiduciary duty;

(5) subject to subsections (c) through (f) of this section, eliminate or restrict the contractual obligation of good faith and fair dealing under subsection 4059(d) of this title;

(6) unreasonably restrict the duties and rights with respect to books, records, and other information stated in section 4058 of this title, but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, or a breach of any reasonable restriction on use;

(7) vary the power of a court to decree dissolution in the circumstances specified in subdivision 4101(4) of this title;

(8) vary the requirement to wind up a limited liability company's business as specified in section 4102 of this title;

(9) unreasonably restrict the right of a member to maintain an action under subchapter 9 of this chapter;

(10) restrict the right to approve a merger, conversion, or domestication under section 4152 of this title to a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or

(11) restrict the rights under this title of a person other than a member, manager, or transferee of any interest in a limited liability company.

(c) Unless unreasonable, the operating agreement may:

(1) restrict the duty:

(A) as required in subdivision 4059(b)(1) and subsection 4059(h) of this title, to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(B) as required in subdivision 4059(b)(3) and subsection 4059(h) of this title, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(C) as required in subdivision 4059(b)(3) and subsection 4059(h) of this title, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

(2) identify the specific types or categories of activities that do not violate the duty of loyalty;

(3) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

(4) alter any other fiduciary duty, including eliminating particular aspects of that duty; and

(5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under subsection 4059(d) of this title.

(d) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(e) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(f) The operating agreement may alter or eliminate the indemnification for a member or manager provided by section 4060 of this title and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for:

(1) breach of the duty of loyalty;

(2) a financial benefit received by the member or manager to which the member or manager is not entitled;

(3) a breach of a duty under subsection 4059(d) of this title;

(4) intentional infliction of harm on the company or a member; or

(5) an intentional violation of criminal law.

(g)(1) The court shall decide any claim under subsection (c) of this section that a term of an operating agreement is manifestly unreasonable.

(2) The court:

(A) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(B) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

(i) the objective of the term is unreasonable; or

(ii) the term is an unreasonable means to achieve the provision's objective.

(h) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(i) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(j)(1) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement.

(2) One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

(k)(1) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition.

(2) An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(l)(1) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement.

(2) Subject only to any court order issued under subdivision 4074(b)(2) of this title, to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(m) If a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under this act contains a provision that would be ineffective under subsection 4003(b) of this title if contained in the operating agreement, the provision is likewise ineffective in the record.

(n) Subject to subsection (c) of this section, if a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under this title conflicts with a provision of the operating agreement:

(1) the operating agreement prevails as to members, dissociated members, transferees, and managers; and

(2) the record prevails as to other persons to the extent they reasonably rely on the record.

§ 4004. SUPPLEMENTAL PRINCIPLES OF LAW

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate shall be 12 percent per annum computed by the actuarial method.

§ 4005. NAME

(a)(1) Except for a low-profit limited liability company, the name of a limited liability company as set forth in its articles of organization shall contain the words “limited liability company” or “limited company” or the abbreviation “L.L.C.,” “LLC,” “L.C.,” or “LC.” The word “limited” may be abbreviated as “Ltd.” and “company” may be abbreviated as “Co.” in a limited liability company name.

(2) The name of a low-profit limited liability company shall contain the abbreviation L3C.

(b) Unless authorized under subsection (c) of this section, the name of a limited liability company shall be distinguishable in the records of the Secretary of State from:

(1) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this State; and

(2) each name reserved under:

(A) sections 1621a, 4006, and 3403 of this title;

(B) 11A V.S.A. § 4.02;

(C) 11B V.S.A. § 4.02; and

(D) 11C V.S.A. § 112.

(c) A person may apply to the Secretary of State for authorization to use a name that does not comply with subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if, as to each noncomplying name:

(1) the present user, registrant, or owner of the name consents to the applicant’s use of the name in a signed record and submits an undertaking in a

form satisfactory to the Secretary of State to change its name to a new name that complies with subsection (b) of this section; or

(2) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this State the name applied for.

(d) Subject to section 4116 of this title, this section applies to a foreign limited liability company transacting business in this State that has a certificate of authority to transact business in this State or which has applied for a certificate of authority.

(e) A person intending to operate a postsecondary school, as defined in 16 V.S.A. §§ 176 and 176a, shall apply for a certificate of approval from the State Board of Education prior to registering a name under this section.

§ 4006. RESERVED NAME

(a)(1) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the Secretary of State for filing.

(2) The application shall state the name and address of the applicant and the name proposed to be reserved.

(3) If the Secretary of State finds that the name applied for is available, the Secretary shall reserve that name for the applicant's exclusive use for a 120-day period.

(b) The owner of a reserved limited liability company name may renew the reservation for successive periods of 120 days each by delivering a renewal application to the Secretary of State during the 45-day period preceding the date of expiration of the reservation.

(c) The owner of a name reserved for a limited liability company may assign the reservation to another person by delivering to the Secretary of State for filing a signed notice of the assignment that states the name and address of the assignee.

(d) The owner of a reserved limited liability company name may terminate the name reservation by delivering to the Secretary of State for filing a signed notice of withdrawal of name reservation.

§ 4007. DESIGNATED OFFICE AND AGENT

(a) A limited liability company and a foreign limited liability company authorized to do business in this State shall designate and continuously maintain:

(1) a designated office for notification purposes, which may but need not be a place of its business, and may but need not be located in this State; and

(2) an agent and street address of the agent for service of process on the limited liability company in this State.

(b) An agent for service of process shall be an individual resident of this State, a domestic corporation, another limited liability company, or a foreign corporation or foreign limited liability company authorized to do business in this State.

§ 4008. CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS

(a) A limited liability company or foreign limited liability company may change its designated office or agent for service of process by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) the name of the company;

(2) the street address, and the mailing address if different from the street address, of its current designated office;

(3) if the current designated office is to be changed, the street address, and the mailing address if different from the street address, of the new designated office;

(4) the name and address of its current agent for service of process; and

(5) if the current agent for service of process is to be changed, the name of the new agent for service of process and the new agent's written consent, either on the statement or attached to it, to the appointment.

(b) If an agent for service of process changes the street address of the agent's business office, the agent may change the street address of the designated office of any limited liability company or foreign limited liability company for which the agent is the agent for service of process by notifying the company in writing of the change and signing, either manually or in facsimile, and filing with the Secretary of State a statement that complies with the requirements of subsection (a) of this section and recites that the company has been notified of the change.

§ 4009. RESIGNATION OF AGENT FOR SERVICE OF PROCESS

(a) To resign as an agent for service of process of a limited liability company or foreign limited liability company, the agent shall deliver to the

Secretary of State for filing a statement of resignation containing the company name and stating that the agent is resigning.

(b) The Secretary of State shall file a statement of resignation delivered under subsection (a) of this section and mail or otherwise deliver a copy to the designated office of the limited liability company.

(c) An agency for service of process terminates on the earlier of:

(1) the 41st day after the Secretary of State files the statement of resignation; or

(2) when a record designating a new agent for service of process is delivered to the Secretary of State for filing on behalf of the limited liability company and becomes effective.

§ 4010. SERVICE OF PROCESS

(a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice or demand required or permitted by law to be served upon the company.

(b) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the agent's address, the Secretary of State is an agent of the company upon whom process, notice, or demand may be served.

(c) Service of any process, notice, or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State duplicate copies of the process, notice, or demand. If the process, notice, or demand is served on the Secretary of State, the Secretary of State shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its registered office. Service on the Secretary of State shall be returnable in not less than 30 days.

(d) The Secretary of State shall keep a record of all processes, notices, and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section shall not affect the right to serve process, notice, or demand upon a limited liability company or foreign limited liability company in any manner otherwise provided by law.

§ 4011. NATURE OF BUSINESS AND POWERS; GOVERNING

LAW

(a) A limited liability company is an entity distinct from its members.

(b) A limited liability company may have any lawful purpose, regardless of whether for profit.

(c) A limited liability company has perpetual duration.

(d)(1) A limited liability company or a foreign limited liability company engaging in a business subject to any other provisions of law of this State governing or regulating business may be formed or authorized to transact business under this chapter only if permitted by, and subject to all limitations of, the other statute.

(2) The following shall not be formed or authorized to transact business under this chapter:

(A) a credit union regulated under Title 8;

(B) an insurance company regulated under Title 8, except that a captive insurance company regulated under 8 V.S.A. chapter 141 may be formed as a limited liability company;

(C) a railroad company regulated under Title 19.

(e) A limited liability company shall possess and may exercise all the powers and privileges granted by this chapter, any other law, its articles of organization, or its operating agreement, together with any powers incidental thereto, so far as the powers and privileges are necessary or convenient to the conduct, promotion, or attainment of the business purposes or activities of the limited liability company, including power to sue and to be sued, complain and defend in its company name, and the power to do all things necessary or convenient to carry on its activities.

(f) The law of this State governs:

(1) the internal affairs of a limited liability company; and

(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

(g)(1) Notwithstanding the provisions of subsections (a) and (b) of this section, a limited liability company or foreign limited liability company shall engage in rendering professional services only to the extent that, and subject to the conditions and limitations under which, a professional corporation may engage in rendering professional services under chapter 4 of this title.

(2) For purposes of applying the provisions, conditions, and limitations of chapter 4 of this title, unless the licensing laws of this State expressly

prohibit the provision of professional services by domestic and foreign limited liability companies:

(A) unless the context clearly requires otherwise, references to 11A V.S.A. chapters 1–20, relating to business corporations shall be treated as references to this chapter, and references to a “corporation” shall be treated as references to a limited liability company or foreign limited liability company;

(B) the members shall be treated in the same manner as shareholders of a professional corporation;

(C) managers shall be treated in the same manner as directors of a professional corporation;

(D) the persons signing the articles of organization of the company shall be treated in the same manner as the incorporators of a professional corporation; and

(E) the name shall comply with sections 4005 and 4116 of this title and, in addition, shall contain the word “Professional” or the abbreviation “P.L.C.,” “PLC,” “P.L.L.C.,” or “PLLC.”

§ 4012. FEES

(a) The Secretary of State shall collect the following fees when a document described in this section is delivered to the Office of the Secretary of State for filing:

<u>(1) Articles of organization</u>	<u>\$125.00</u>
<u>(2) Application for certificate of authority</u>	<u>\$125.00</u>
<u>(3) Amendment of articles or certificate of authority</u>	<u>\$25.00</u>
<u>(4) Cancellation of certificate of authority</u>	<u>\$20.00</u>
<u>(5) Application for reserved name</u>	<u>\$20.00</u>
<u>(6) Notice of transfer of reserved name</u>	<u>No fee</u>
<u>(7) Application for registered name</u>	<u>\$25.00</u>
<u>(8) Application for renewal of registered name</u>	<u>\$25.00</u>
<u>(9) Statement of change of designated agent or designated office, or both</u>	<u>\$25.00</u>
	<u>and</u>
	<u>not to</u>
	<u>exceed</u>

	<u>\$1,000.00</u>
	<u>per</u>
	<u>filer</u>
	<u>per</u>
	<u>calendar</u>
	<u>year</u>
<u>(10) Agent's statement of resignation</u>	<u>no fee</u>
<u>(11) Restatement of articles of organization</u>	<u>\$25.00</u>
<u>(12) Articles of correction</u>	<u>\$25.00</u>
<u>(13) Application for certificate of existence or authorization</u>	<u>\$25.00</u>
<u>(14) Articles of merger</u>	<u>\$50.00</u>
<u>(15) Annual report of a domestic limited liability company</u>	<u>\$35.00</u>
<u>(16) Annual report of a foreign limited liability company</u>	<u>\$140.00</u>
<u>(17) Reinstatement</u>	<u>\$25.00</u>
<u>(18) Any other document required or permitted to be filed by this chapter</u>	<u>\$20.00</u>

(b) The Secretary of State shall collect the following fees:

(1) \$25.00 each time process is served on the Secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if he or she prevails in the proceeding; and

(2) \$25.00 for the certificate certifying the copy of any filed document relating to a limited liability company or a foreign limited liability company.

Subchapter 2. Organization

§ 4021. LIMITED LIABILITY COMPANY AS LEGAL ENTITY

A limited liability company is a legal entity distinct from its members.

§ 4022. ORGANIZATION

(a) One or more persons may organize a limited liability company, consisting of one or more members, by delivering articles of organization to the Office of the Secretary of State for filing. The organizers need not be members of the limited liability company at the time of formation or after formation has occurred.

(b) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

(c) The filing of the articles of organization by the Secretary of State is conclusive proof that the organizers satisfied all conditions precedent to the creation of the organization.

(d) The Secretary of State shall maintain a separate record of the number of limited liability companies that deliver articles of organization to the Secretary for filing by electronic transmission.

§ 4023. ARTICLES OF ORGANIZATION

(a) Articles of organization of a limited liability company shall set forth:

(1) the name of the company;

(2) the address of the initial designated office;

(3) the name and street address of the initial agent for service of process;

(4) the name and address of each organizer;

(5) if the company has no members at the time of filing, a statement to that effect; and

(6) whether the company is an L3C.

(b) Articles of organization of a limited liability company may set forth:

(1) provisions permitted to be set forth in an operating agreement; and

(2) other matters not inconsistent with law.

(c) Articles of organization of a limited liability company may not vary the nonwaivable provisions of subsection 4003(b) of this title. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(1) the operating agreement controls as to managers, members, and members' transferees; and

(2) the articles of organization control as to persons other than managers, members, and their transferees who relied on the articles to their detriment.

§ 4024. AMENDMENT OR RESTATEMENT OF ARTICLES OF ORGANIZATION

(a) Articles of organization of a limited liability company may be amended at any time by delivering articles of amendment to the Secretary of State for filing. The articles of amendment shall set forth the:

- (1) name of the limited liability company;
- (2) date of filing of the articles of organization; and
- (3) amendment to the articles.

(b) The articles of organization of a limited liability company may be amended at any time but shall be amended if:

- (1) there is a change in the name of the company;
- (2) there is a change in any other matter set forth in the articles of organization under subsection 4023(b) of this title; or
- (3) the articles of organization contain a false or erroneous statement.

(c) A limited liability company may restate its articles of organization at any time. Restated articles of organization shall be signed and filed in the same manner as articles of amendment. Restated articles of organization shall be designated as such in the heading and state in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its initial articles of organization.

§ 4025. SIGNING OF DOCUMENTS

(a) Except as otherwise provided in this chapter, a document to be filed by or on behalf of a limited liability company in the Office of the Secretary of State must be signed in the name of the company by:

- (1) a person authorized by the company;
- (2) a person organizing the company, if it is the company's initial articles of organization; or
- (3) a fiduciary, if the company is in the hands of a receiver, trustee or other court-appointed fiduciary.

(b) A document signed under subsection (a) of this section shall state adjacent to the signature the name and capacity of the signer.

(c) Any record filed under this chapter may be signed by an agent.

(d) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

§ 4026. FILING IN OFFICE OF SECRETARY OF STATE

(a) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, of the articles of organization

or any other document required to be filed pursuant to this chapter shall be delivered to the Secretary of State. If the Secretary of State determines that a document conforms to the filing provisions of this chapter, the Secretary of State shall, when all required filing fees have been paid:

(1) endorse each signed original and duplicate copy with the word “filed” and the date and time of the acceptance for filing;

(2) retain the signed original in the Office of the Secretary of State; and

(3) return the duplicate copy to the limited liability company or to its representative.

(b) If the Secretary of State is unable to make the determination required under subsection (a) of this section for filing the articles of organization at the time a document is delivered for filing, the document is deemed to have been filed at the time of delivery if the Secretary of State subsequently determines that:

(1) the document as delivered conforms to the filing provisions of this chapter; or

(2) within 20 days after notification of nonconformance is given by the Secretary to the limited liability company or its representative, the document is brought into conformance.

(c) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subdivision (b)(2) of this section, the document shall not be filed.

(d) A document accepted for filing by the Secretary of State is effective:

(1) on the date it is filed, as evidenced by the Secretary of State maintaining a record of the date and time of the filing;

(2) at the time specified in the document as its effective time; or

(3) on the date and at the time specified in the document if the document specifies a delayed effective date and time.

(e) If a delayed effective date for a document is specified but no time is specified, the document is effective at 12:01 a.m. on that date. A delayed effective date that is later than the 90th day after the document is filed makes the document effective as of the 90th day.

(f) An original copy may consist of an electronic communication received by the Secretary of State’s office, endorsement may consist of an attached electronic record, and the delivery of a duplicate may be done electronically.

§ 4027. CORRECTING FILED DOCUMENT

(a) A limited liability company or foreign limited liability company may correct a document filed by the Secretary of State if the document contains a false or erroneous statement or was defectively signed.

(b) A document is corrected:

(1) by preparing articles of correction that:

(A) describe the document, including its filing date, or attach a copy of it to the articles of correction;

(B) specify the incorrect statement and the reason it is incorrect or the manner in which the signing was defective;

(C) correct the incorrect statement or defective signing; and

(2) by delivering the corrected document to the Secretary of State for filing.

(c) When filed by the Secretary of State, articles of correction filed under subsection (a) of this section are effective retroactively as of the effective date of the record the articles correct, but the articles are effective when filed as to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

§ 4028. CERTIFICATE OF EXISTENCE OR AUTHORIZATION

(a) A person may request the Secretary of State to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

(b) A certificate of existence for a limited liability company shall set forth:

(1) the company's name;

(2) that it is duly organized under the laws of this State and the date of organization; and

(3) that articles of termination have not been filed.

(c) A certificate of authorization for a foreign limited liability company shall set forth:

(1) the company's name used in this State;

(2) that it is authorized to transact business in this State; and

(3) that a certificate of cancellation has not been filed.

(d) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon

as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in this State.

§ 4029. LIABILITY FOR FALSE STATEMENT IN FILED DOCUMENT

If a document filed with the Secretary of State contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from a person who signed the document or caused another to sign it on the person's behalf and knew the statement to be false at the time the document was signed.

§ 4030. FILING BY JUDICIAL ACT

If a person required by section 4025 of this title to sign any document fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Superior Court to direct the signing of the document. If the Court finds that it is proper for the document to be signed and that a person so designated has failed or refused to sign the document, it shall order the Secretary of State to sign and file an appropriate document.

§ 4031. LIMITED LIABILITY COMPANY PROPERTY

Property transferred to or otherwise acquired by a limited liability company is property of the limited liability company and not of the members individually.

§ 4032. WHEN PROPERTY IS LIMITED LIABILITY COMPANY

PROPERTY

(a) Property is limited liability company property if acquired in the name of:

(1) the limited liability company; or

(2) one or more members with an indication in the instrument transferring title to the property of the person's capacity as a member or of the existence of a limited liability company, but without an indication of the name of the limited liability company.

(b) Property is presumed to be limited liability company property if purchased with limited liability company assets, even if not acquired in the name of the limited liability company or of one or more members with an indication in the instrument transferring title to the property of the person's capacity as a member or of the existence of a limited liability company.

(c) Property acquired in the name of one or more of the members, without an indication in the instrument transferring title to the property of the person's capacity as a member or of the existence of a limited liability company and

without use of limited liability company assets, is presumed to be separate property, even if used for limited liability company purposes.

§ 4033. ANNUAL REPORT FOR SECRETARY OF STATE

(a) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this State shall file an annual report with the Secretary of State. The annual report shall set forth the following information:

(1) the name of the company and the state or country under whose law it is organized;

(2) the address of its designated office and the name of its designated agent at that office in this State.

(b) Information in the annual report shall be current as of the date the annual report is signed on behalf of the company.

(c) The annual report shall be delivered to the Secretary of State within three months after the expiration of the company's fiscal year.

§ 4034. INVOLUNTARY TERMINATION

(a)(1) The articles of organization of a limited liability company that fails to file an annual report required by section 4033 of this title shall terminate and the provisions of this section shall apply to the limited liability company.

(2) The certificate of authority of a foreign limited liability company that fails to file an annual report required by section 4033 of this title shall terminate and the Secretary of State shall notify the company of the termination.

(3) If a company that has had its articles of organization terminated or had its certificate of authority terminated files its annual report together with the annual report filing fee and the reinstatement fee for each year the company failed to file its annual report, its articles of organization or certificate of authority, as the case may be, shall be reinstated by the Secretary of State.

(b) When the reinstatement becomes effective, it relates back to and takes effect as of the effective date of termination of the company's articles of organization or the date the company's certificate of authority was terminated under subsection (a) of this section as if the termination never occurred.

(c) A limited liability company or a foreign limited liability company shall lose the right to retain its name if the annual report required under subsection (a) of this section is not filed on or before five years after the date when the report is due.

(d) Involuntary termination under this section does not:

(1) prevent commencement of a proceeding against the limited liability company or the foreign limited liability company in its company name; provided that a proceeding is subject to dismissal unless the company is reinstated in accordance with subsections (a) and (b) of this section;

(2) abate or suspend a proceeding pending by or against the limited liability company or foreign limited liability company on the effective date of involuntary termination; or

(3) terminate the authority of the designated agent of the limited liability company or foreign limited liability company;

(4) alter the limited liability status of members or managers of the limited liability company or foreign limited liability company; or

(5) impair the validity of acts of the limited liability company during the period between involuntary termination and reinstatement.

Subchapter 3. Relations of Members and Managers to Persons

Dealing with Limited Liability Company

§ 4041. NO AGENCY POWER OF MEMBER AS MEMBER

(a) A member is not an agency of a limited liability company solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than this title from imposing liability on a limited liability company because of the person's conduct.

§ 4042. LIABILITY OF MEMBERS AND MANAGERS

(a) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

(1) are solely the debts, obligations, or other liabilities of the company; and

(2) do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or the manager acting as a manager.

(b) The failure of a limited liability company to observe any particular formalities relating to the exercise of its power or management of its activities is not a ground for imposing liability on a member or manager for the debts, obligations, or other liabilities of the company.

Subchapter 4. Relations of Members to Each Other

and to Limited Liability Company

§ 4051. BECOMING A MEMBER

(a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(b) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(c) If articles of organization filed with the Secretary of State contain the statement required by subdivision 4023(a)(5) of this title, a person becomes an initial member of the limited liability company with the consent of a majority of the organizers. The organizers may consent to more than one person simultaneously becoming the company's initial members.

(d) After formation of a limited liability company, a person becomes a member:

(1) as provided in the operating agreement;

(2) as the result of a transaction effective under subchapter 10 of this chapter;

(3) with the affirmative vote or consent of all the members; or

(4) if, within 90 consecutive days after the company ceases to have any members:

(A) the last person to have been a member or the legal representative of that person designates a person to become a member; and

(B) the designated person consents to become a member.

(e) A person may become a member without acquiring a distributional interest and without making or being obligated to make a contribution to the limited liability company.

§ 4052. FORM OF CONTRIBUTION

A contribution may consist of tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, agreements to contribute money or property, or contracts for services to be performed.

§ 4053. MEMBER'S LIABILITY FOR CONTRIBUTIONS

(a) A person's obligation to make a contribution to a limited liability company is not excused by the member's death, disability, or other inability to perform personally. If a person does not make the required contribution, the person's estate is obligated at the option of the company to contribute money equal to that portion of the value of the part of the contribution which has not been made.

(b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (a) of this section, and without notice of any compromise under subdivision 4054(d)(4) of this title, may enforce the original obligation.

§ 4054. MANAGEMENT OF LIMITED LIABILITY COMPANY

(a) A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(A) the company is or will be "manager-managed";

(B) the company is or will be "managed by managers"; or

(C) management of the company is or will be "vested in managers"; or

(2) includes words of similar import.

(b) In a member-managed limited liability company:

(1) the management and conduct of the company are vested in the members;

(2) each member has equal rights in the management and conduct of the company's activities; and

(3) except as otherwise provided in subsection (d) of this section, any matter relating to the activities of the company may be decided by a majority of the members.

(c) In a manager-managed limited liability company:

(1) Except as otherwise provided in subsection (d) of this section, the managers have the exclusive authority to manage and conduct the company's activities.

(2) Each manager has equal rights in the management and conduct of the company's activities.

(3) Except as specified in subsection (d) of this section, any matter relating to the activities of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers.

(4)(A) A manager may be chosen at any time by the affirmative vote or consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates.

(B) A manager may be removed at any time by the affirmative vote or consent of a majority of the members without notice or cause.

(5)(A) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager.

(B) If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(6) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(d) Except as provided in the operating agreement, the affirmative vote or consent of all the members is required to:

(1) amend the operating agreement of a limited liability company;

(2) amend the articles of organization under section 4024 of this title;

(3) compromise an obligation to make a contribution under section 4053 of this title;

(4) compromise, as among members, an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;

(5) make interim distributions under subsection 4055(a) of this title;

(6) admit a new member;

(7) use the company's property to redeem an interest subject to a charging order;

(8) waive the right to have the company's business wound up and the company terminated under subsection 4102(b) of this title; and

(9) sell, lease, exchange or otherwise dispose of all, or substantially all, of the company's property with or without goodwill.

(e)(1) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

(2) An appointment of a proxy is valid for 11 months unless a different time is specified in the appointment instrument.

(3) An appointment is revocable by the member or manager unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest, in which case the appointment is revoked when the coupled interest is extinguished.

(f)(1) An action requiring the affirmative vote or consent of members under this title may be taken without a meeting, if the action is approved in a consent by members having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all members entitled to vote thereon were present and voted.

(2) A member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(g)(1) An action that may be taken at a meeting of the managers may be taken without a meeting if the action is approved by consent of all managers entitled to vote on the action.

(2) The action must be evidenced by one or more consents reflected in a record describing the action taken and signed by all managers entitled to vote on the action.

(h) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(i) This chapter does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

§ 4055. SHARING OF PROFITS AND LOSSES AND RIGHT TO

DISTRIBUTIONS

(a) The profits and losses of a limited liability company shall be allocated among the members or the holders of distributional interests, as the case may be, in proportion to the agreed value, as stated in the limited liability company records required to be kept under this chapter, of the contributions made by

each member, taking into account variations in the capital contributions of each member during the period for which such allocations are made.

(b) Any distributions made by a limited liability company before its dissolution and winding up shall be made among the members or the holders of distributional interests, as the case may be, in proportion to the agreed value of the contributions made by each member as of the date of such distribution.

(c)(1) A member has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution.

(2) A person's dissociation does not entitle the person to a distribution.

(d) A member has no right to receive, and may not be required to accept, a distribution in kind.

(e) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

§ 4056. LIMITATIONS ON DISTRIBUTIONS

(a) A distribution shall not be made if:

(1) the limited liability company would not be able to pay its debts as they become due in the ordinary course of business; or

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) of this section on financial statements prepared on the basis of:

(1) generally accepted accounting practices and principles;

(2) a fair valuation; or

(3) another method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (e) of this section, the effect of a distribution under subsection (a) of this section is measured:

(1) in the case of distribution by purchase, redemption, or other acquisition of a distributional interest in a limited liability company, as of the

date money or other property is transferred or debt incurred by the company; and

(2) in all other cases, as of the date the:

(A) distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(B) payment is made if it occurs more than 120 days after the date of authorization.

(d) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors.

(e) Indebtedness of a limited liability company, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under subsection (a) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to members could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness and not the issuance of the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

§ 4057. LIABILITY FOR UNLAWFUL DISTRIBUTIONS

(a) A member of a member-managed limited liability company or a member or manager of a manager-managed company who votes for or assents to a distribution made in violation of section 4056 of this title, the articles of organization or a written operating agreement is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without violating section 4056 of this title, the articles of organization or a written operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with section 4059 of this title.

(b) A member of a manager-managed limited liability company who knew a distribution was made to such member in violation of section 4056 of this title is personally liable to the limited liability company, but only to the extent that the distribution received by such member exceeded the amount that could properly have been paid under section 4056 of this title.

(c) A member or manager against whom an action is brought under this section may implead in the action all:

(1) other members or managers who voted for or assented to the distribution in violation of subsection (a) of this section and may compel contribution from them; and

(2) members who received a distribution in violation of subsection (b) of this section and may compel contribution from the member in the amount received in violation of subsection (b) of this section.

(d) A proceeding under this section is barred unless it is commenced within two years after the distribution.

§ 4058. INFORMATION RIGHTS

(a) In a member-managed limited liability company, each member has the right, subject to such reasonable standards, including standards governing what information and documents are to be furnished and at what time and location, as may be set forth in the articles of organization, an operating agreement, or otherwise established by the members to obtain from the company from time to time and upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company during the period in which he or she was a member:

(1) information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and duties under the operating agreement or this chapter; and

(2) other information concerning the company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(b) In a manager-managed limited liability company:

(1) the right to receive information as stated in subdivision (a)(1) of this section shall apply to the managers and not the members;

(2) during regular business hours and at a reasonable location specified by the company, a member may inspect and copy information regarding the activities, affairs, financial condition, and other circumstances of the company as is just and reasonable if:

(A) the member seeks the information for a purpose reasonably related to the member's interest as a member;

(B) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(C) the information sought is directly connected to the member's purpose; and

(3) the managers shall have the right to keep confidential from members who are not managers, for such period of time as the managers deem reasonable, any information which the managers reasonably believe to be in the nature of trade secrets or other information the disclosure of which the managers in good faith believe is not in the best interest of the company.

(c) A company may impose a reasonable charge, limited to the costs of labor and material, for copies of records or other information furnished under this section.

(d) A company may maintain its records in other than written form if such form is capable of conversion into written form within a reasonable time or into an electronic form that may be prescribed by the Secretary of State.

(e) Any demand under this section shall:

(1) be in writing;

(2) be made in good faith and for a proper purpose; and

(3) describe with reasonable particularity the purpose and the records or information desired.

(f)(1) A member or person dissociated as a member may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative.

(2) Any restriction or condition imposed by the operating agreement or under subsection (h) of this section applies both to the agent or legal representative of such a member and to a person dissociated as a member.

(g) Subject to section 4075 of this title, the rights under this section do not extend to a person who is a transferee of an interest in a limited liability company, except that a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(h)(1) In addition to any restriction or condition stated in this section or the company's operating agreement, a limited liability company may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient.

(2) In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

(i) Failure of the company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any person for the debts and obligations of the company.

§ 4059. GENERAL STANDARDS OF MEMBER'S AND MANAGER'S

CONDUCT

(a) The only fiduciary duties a member owes to a member-managed limited liability company and its other members are the duty of loyalty and the duty of care imposed by subsections (b) and (c) of this section.

(b) A member's duty of loyalty to a member-managed limited liability company and its other members is limited to the following:

(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of the company's opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

(c) A member's duty of care to a member-managed limited liability company and its other members in the conduct of and winding up of the company's business is limited to refrain from engaging in grossly negligent or reckless conduct, or a knowing violation of the law.

(d) A member shall discharge the duties to a member-managed limited liability company and its other members under this chapter or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A member of a member-managed limited liability company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(f) All the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(g) It is a defense to a claim under subdivision (b)(2) of this section and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(h) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member of the company as if the person were a member.

(i) In a manager-managed limited liability company:

(1) subsections (a), (b), (c), and (g) of this section apply to the manager or managers and not the members, and the duty stated in subdivision (b)(3) of this section continues until winding up is completed;

(2) subsection (d) of this section applies to managers and members;

(3) subsection (e) of this section applies only to members;

(4) the power to ratify under subsection (f) of this section applies only to members;

(5) subject to subsection (d) of this section, a member does not have any duty to the company or to the other members solely by reason of being a member;

(6) a member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct in subsections (a), (b), (c), and (g) of this section to the extent that the member exercises the managerial authority vested in a manager by this chapter; and

(7) a manager is relieved of liability imposed by law for violation of the standards prescribed by subsections (a), (b), (c), and (g) of this section to the extent of the managerial authority delegated to the members by the operating agreement.

(j) In discharging his or her duties, a member or a manager is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more members, managers, officers, or employees of the company whom the member or manager reasonably believes to be reliable and competent in the matter presented;

(2) legal counsel, public accountants, or other persons as to matters the member or manager reasonably believes are within the person's professional or expert competence; or

(3) a committee of the members or managers of which the member or manager is not a member if the member or manager reasonably believes the committee merits confidence.

(k) A member or manager is not acting in good faith if he or she has knowledge concerning the matter if the matter in question that makes reliance permitted by subsection (j) of this section unwarranted.

(1)(1) A member of a member-managed limited liability company or a manager of a manager-managed limited liability company may lend money to and transact other business with the company.

(2) As to each loan or transaction, the rights and obligations of the member or manager, as applicable, are the same as those of a person who is not a member or manager, subject to other applicable law.

(m) A member or manager is not liable for any action taken as a member or manager or any failure to take any action, if the member or manager performed the duties of his or her office in compliance with this section.

§ 4060. REIMBURSEMENT, INDEMNIFICATION, AND INSURANCE

(a) A member-managed limited liability company shall reimburse a member, and a manager-managed limited liability company shall reimburse a manager, for payments made and indemnify the member or manager for liabilities reasonably incurred by the member or manager in the ordinary and proper conduct of the activities of the limited liability company or for the preservation of its activities or property.

(b) A limited liability company may purchase and maintain insurance on behalf of a member or manager against liability asserted against or incurred by the member or manager in that capacity or arising from that status whether or not the operation agreement is permitted to provide for the member or manager to be indemnified against the liability.

(c) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution the member agreed to make.

(d) A payment or advance that gives rise to an obligation of a limited liability company under subsections (a) through (c) of this section constitutes a loan to the company, which accrues interest from the date of the payment or advance.

(e) A member is not entitled to remuneration for services performed for a limited liability company even in the capacity as a manager of a manager-managed company, except for reasonable compensation for services rendered in winding up the activities of the company.

Subchapter 5. Transferees and Creditors of Member

§ 4071. MEMBER'S DISTRIBUTIONAL INTEREST

(a) A distributional interest in a limited liability company is personal property and, subject to sections 4072 and 4073 of this title, may be transferred in whole or in part.

(b) An operating agreement may provide that a distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to section 4073 of this title, may also provide for the transfer of any interest represented by the certificate by a transfer of the certificate.

§ 4072. TRANSFER OF DISTRIBUTIONAL INTEREST

(a) A transfer, in whole or in part, of a distributional interest:

(1) is permissible;

(2) does not by itself cause a member's dissociation or a dissolution and winding up of the company's activities; and

(3) subject to section 4075 of this title, does not entitle the transferee to:

(A) become or to exercise any rights of a member:

(B) participate in the management or conduct of the company's activities; or

(C) except as otherwise provided in subsection 4073(d) of this title, have access to records or other information concerning the company's activities.

(b) A transfer of a distributional interest entitles the transferee to receive, in accordance with the transfer, the distributions to which the transferor would otherwise be entitled with respect to the interest.

(c) Except as otherwise provided in subdivision 4081(4)(B) of this title, if a member transfers a distributional interest, the transferor retains the rights of a member other than the distributional interest transferred and retains all duties and obligations of a member.

(d) A transfer of a distributional interest in violation of a restriction on transfer contained in the operating agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

§ 4073. RIGHTS OF TRANSFEREE

(a) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that all other members consent.

(b)(1) A transferee who has become a member, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement and this chapter to the extent of the membership interest transferred.

(2) A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under section 4053 of this title and for obligations under section 4057 of this title to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the time the transferee becomes a member and which could not be ascertained from the articles of organization or the operating agreement made available to the transferee, and is not personally liable for any obligation of the limited liability company incurred before the transferee's admission as a member.

(c) Whether or not a transferee of a distributional interest becomes a member under subsection (a) of this section, the transferor retains all duties and obligations of a member and is not released from liability to the limited liability company and the other members under the operating agreement or this chapter unless all other members consent.

(d) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business or affairs, require access to information concerning the company's transactions, or inspect or copy any of the company's books and other records, except that in a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(e) A transferee who does not become a member is entitled to:

(1) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) receive, upon dissolution and winding up of the limited liability company's business:

(A) in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(B) a statement of account only from the date of the latest statement of account agreed to by all the members.

(f) A limited liability company need not give effect to a transfer or a transferee's rights under this section until it has notice of the transfer.

§ 4074. CHARGING ORDER

(a)(1) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the distributional interest of the judgment debtor for the unsatisfied amount of the judgment.

(2) Except as provided in subsection (f) of this section, a charging order constitutes a lien on a judgment debtor's distributional interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a) of this section, the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c)(1) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the distributional interest.

(2) Except as provided in subsection (f) of this section, the purchaser at the foreclosure sale obtains only the distributional interest, does not thereby become a member, and is subject to section 4073 of this title.

(d) At any time before foreclosure under subsection (c) of this section, the member or transferee whose distributional interest is subject to a charging order under subsection (a) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before foreclosure under subsection (c) of this section, a limited liability company or one or more members whose distributional interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) This section does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's distributional interest.

(g) If a court orders foreclosure of a charging order lien against the sole member of a limited liability company:

(1) the court shall confirm the sale;

(2) the purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;

(3) the purchaser thereby becomes a member; and

(4) the person whose interest was subject to the foreclosed charging order is dissociated as a member.

(h) This section provides the exclusive remedy by which a person, who in the capacity of a judgment creditor seeks to enforce a judgment against a member or transferee, may satisfy the judgment from the judgment debtor's distributional interest.

§ 4075. POWER OF ESTATE OF DECEASED MEMBER

If a member who is an individual dies, the member's legal representative may exercise the rights of a transferee under section 4073 of this title, and, for purposes of settling the estate, the member's legal representative may exercise the rights the deceased member had under section 4058 of this title.

Subchapter 6. Member's Dissociation

§ 4081. EVENTS CAUSING MEMBER'S DISSOCIATION

A person is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) the company's having notice of the member's express will to withdraw upon the date of notice or, if a later withdrawal date is specified by the member, on the later date;

(2) an event agreed to in the operating agreement as causing the member's dissociation;

(3) the member's expulsion pursuant to the operating agreement;

(4) the member's expulsion by unanimous vote of the other members if:

(A) it is unlawful to carry on the company's business with the person as a member;

(B) there has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes, or a court order charging the member's distributional interest, which has not been foreclosed;

(C) a corporation that is a member fails to obtain a revocation of its certificate of dissolution or a reinstatement of its charter or its right to conduct business within 90 days after the company notifies such member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation; or

(D) a partnership or a limited liability company that is a member has been dissolved and its business is being wound up;

(5) on application by the company or another member, the member's expulsion by judicial determination because the member:

(A) engaged in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's business;

(B) willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under section 4059 of this title; or

(C) engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the person as a member;

(6) in a member-managed limited liability company, the member:

(A) becomes a debtor in bankruptcy;

(B) executes an assignment for the benefit of creditors;

(C) seeks, consents to, or acquiesces in, the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property; or

(D) fails, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or fails within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a member who is an individual:

(A) the member's death; or

(B) in a member-managed limited liability company:

(i) the appointment of a guardian or general conservator for the member; or

(ii) a judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(8) in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's

entire distributional interest in the company, but not merely the substitution of a successor personal representative;

(10) termination of the existence of a member if the member is not an individual, partnership, limited liability company, corporation, estate, or trust;

(11) the company participates in a merger under subchapter 10 of this chapter and:

(A) the company is not the surviving entity; or

(B) the person otherwise ceases to be a member as a result of the merger;

(12) the company participates in a conversion under subchapter 10 of this chapter;

(13) the company participates in a domestication under subchapter 10 of this chapter, and, the person ceases to be a member as a result of the domestication; or

(14) termination of a member's continued membership in a limited liability company for any other reason.

§ 4082. MEMBER'S POWER TO DISSOCIATE; WRONGFUL

DISSOCIATION

(a) A person has the power to dissociate as a member from a limited liability company at any time, rightfully or wrongfully, by express will pursuant to subdivision 4081(1) of this title.

(b) A member's dissociation from a limited liability company is wrongful only if the dissociation:

(1) is in breach of an express provision of the operating agreement or articles of organization; or

(2) occurs before the termination of the company and:

(A) the member withdraws as a member by express will;

(B) the member is expelled as a member by judicial determination under subdivision 4081(5) of this title;

(C) the member is dissociated under subdivision 4081(6)(A) of this title by becoming a debtor in bankruptcy; or

(D) in the case of a member who is not an individual, trust other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(c)(1) A person that wrongfully dissociates as a member from a limited liability company is liable to the company and, subject to section 4131 of this title, to the other members for damages caused by the dissociation.

(2) The liability is in addition to any other debt, obligation, or other liability of the member to the company or to the other members.

§ 4083. EFFECT OF MEMBER'S DISSOCIATION

(a) When a person is dissociated as a member of a limited liability company:

(1) the person's right to participate as a member in the management and conduct of the company's business terminates;

(2) if the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and

(3) subject to section 4075 of this title and subchapter 10 of this chapter, any distributional interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

(b) A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members that the person incurred while a member.

Subchapter 7. Winding Up Of Company Business

§ 4101. EVENTS CAUSING DISSOLUTION AND WINDING UP OF COMPANY BUSINESS

(a) A limited liability company is dissolved, and its business shall be wound up, upon the occurrence of any of the following events:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) consent of the number or percentage of members specified in the operating agreement, or in the absence of a provision governing approval of a dissolution or winding up of the company contained in an operating agreement, the consent of all the members;

(3) the passage of 90 consecutive days during which the company has no members;

(4) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that:

(A) the conduct of all or substantially all of the company's activities is unlawful; or

(B) it is not reasonably practicable to carry on the company's activities in conformance with the certificate of organization and the operating agreement; or

(5) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that the managers or those members in control of the company:

(A) have acted, are acted, or will act in a manner that is illegal or fraudulent; or

(B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

(b) In an action brought under subdivision (a)(5) of this section, the Court may order a remedy other than dissolution.

§ 4102. LIMITED LIABILITY COMPANY CONTINUES AFTER DISSOLUTION

(a) Subject to subsection (b) of this section, a limited liability company continues after dissolution only for the purpose of winding up its business.

(b) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, all of the members, or, if different, the number or percentage of members specified in the operating agreement to dissolve or liquidate the company may waive the right to have the company's business wound up and the company terminated, in which case:

(1) the limited liability company resumes carrying on its business as if dissolution had never occurred and any liability incurred by the company or a member after the dissolution and before the waiver is determined shall be subject to the same limitations on liability as if the dissolution had never occurred; and

(2) the rights of a third party accruing under section 4104 of this title or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

§ 4103. RIGHT TO WIND UP LIMITED LIABILITY COMPANY'S BUSINESS

(a) After dissolution, a member may participate in winding up a limited liability company's business, but on application of any member, member's

legal representative, or transferee, the Superior Court, for good cause shown, may order judicial supervision of the winding up.

(b) In winding up its activities, a limited liability company:

(1) shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company; and

(2) may:

(A) deliver to the Secretary of State for filing a statement of dissolution stating the name of the company and that the company is dissolved;

(B) preserve the company activities and property as a going concern for a reasonable time;

(C) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(D) transfer the company's property;

(E) settle disputes by mediation or arbitration; and

(F) perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under subsection 4054(c) of this title and is deemed to be a manager for the purposes of subdivision 4042(a)(2) of this title.

(d)(1) If the legal representative under subsection (c) of this section declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees who own a majority of the rights to receive distributions as transferees at the time the consent is to be effective.

(2) A person appointed under this subsection:

(A) has the powers of a sole manager under subsection 4054(c) of this title and is deemed to be a manager for purposes of subdivision 4042(a)(2) of this title; and

(B) shall promptly deliver to the Secretary of State for filing an amendment to the company's certificate of organization to:

(i) state that the company has no members;

(ii) state that the person has been appointed pursuant to this subsection (d) to wind up the company; and

(iii) provide the street and mailing addresses of the person.

(e) The Superior Court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities:

(1) on application of a member, if the applicant establishes good cause;

(2) on the application of a transferee, if:

(A) the company does not have any members;

(B) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(C) within a reasonable time following the dissolution, a person has not been appointed pursuant to subsection (c) of this section; or

(3) in connection with a proceeding under subdivision 4101(a)(4) or (5) of this title.

§ 4104. MEMBER'S OR MANAGER'S POWER AND LIABILITY AS
AGENT AFTER DISSOLUTION

A limited liability company is bound by a member's or manager's act after dissolution that:

(1) is appropriate for winding up the company's business; or

(2) would have bound the company under section 4041 of this title before dissolution, if the other party to the transaction did not have notice of the dissolution.

§ 4105. ARTICLES OF TERMINATION

(a) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the Secretary of State articles of termination stating:

(1) the name of the company;

(2) the date of the dissolution; and

(3) that the company's business has been wound up and the legal existence of the company has been terminated.

(b) The existence of a limited liability company is terminated upon the filing of the articles of termination, or upon a later effective date, if specified in the articles of termination.

§ 4106. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED

LIABILITY COMPANY'S BUSINESS

(a) In winding up a limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members who are creditors. Any surplus must be applied to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (b) of this section.

(b) Each member is entitled to a distribution upon the winding up of the limited liability company's business consisting of a return of all contributions which have not previously been returned and a distribution of any remainder in proportion to each member's capital contributions.

§ 4107. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY

(a) A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

(b) A dissolved limited liability company shall notify its known claimants in writing of the dissolution. The notice shall:

(1) specify the information required to be included in a claim;

(2) provide a mailing address where the claim is to be sent;

(3) state the deadline for receipt of the claim, which may not be less than 120 days after the date the written notice is received by the claimant; and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) of this section are met, and:

(1) the claim is not received by the specified deadline; or

(2) in the case of a claim that is timely received but rejected by the company:

(A) the company causes the claimant to receive notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within 90 days after the claimant receives the notice; and

(B) the claimant does not commence the required action within the 90 days.

(d) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

§ 4108. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY

(a) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) The notice shall:

(1) be published at least once in a newspaper of general circulation in the county in which the dissolved limited liability company's principal office is located or, if it has none in this State, in the county in which its designated office is or was last located, and sent to the Office of the Attorney General;

(2) describe the information required to be contained in a claim and provide a mailing address where the claim is to be sent; and

(3) state that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

(c)(1) If the dissolved limited liability company sends notice to the Attorney General and publishes a newspaper notice in accordance with subsection (b) of this section, a cause of action against a dissolved limited liability company, whether arising before or after the dissolution of the limited liability company, may be enforced only as follows:

(A) against the dissolved limited liability company; and

(B) if any of the assets of the dissolved limited liability company have been distributed to its members, against members of the dissolved limited liability company.

(2) A cause of action against a dissolved limited liability company arising under subdivision (1)(A) of this subsection is extinguished unless the claimant commences a proceeding to enforce the cause of action against the dissolved limited liability company prior to the expiration of the statute of limitations applicable to the cause of action.

(3) A cause of action against a dissolved limited liability company arising under subdivision (1)(B) of this subsection is extinguished unless the claimant commences a proceeding to enforce the cause of action against a member of a dissolved limited liability company prior to the earlier of the following:

(A) the expiration of the statute of limitations applicable to the cause of action;

(B) five years after the effective date of the dissolution of the limited liability company.

§ 4109. ENFORCEMENT OF CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY

A claim not barred under section 4108 of this title may be enforced against the dissolved limited liability company:

(1) to the extent of its undistributed assets, including any insurance assets held by the limited liability company that may be available to satisfy claims; or

(2) if the assets have been distributed in liquidation, against a member of the dissolved company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

Subchapter 8. Foreign Limited Liability Companies

§ 4111. LAW GOVERNING FOREIGN LIMITED LIABILITY COMPANIES

(a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of a member as a member, and a manager as a manager, for the debts, obligations, or other liabilities of the foreign limited liability company or series thereof.

(b) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws of another jurisdiction under which the foreign company is formed and the laws of this State.

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this State.

§ 4112. APPLICATION FOR CERTIFICATE OF AUTHORITY

(a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. The application shall set forth:

(1) the name of the foreign company and, if its name is unavailable for use in this State, an alternate name that satisfies the requirements of section 4116 of this title;

(2) the name of the state or country under whose law it is organized;

(3) the address of its initial designated office;

(4) the name and street address, and the mailing address if different from the street address, of its designated agent for service of process in this State.

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a document of similar import, authenticated by the Secretary of State or other official having custody of company records in the state or country under whose law it is organized, dated no earlier than 90 days prior to filing of the application.

§ 4113. ACTIVITIES NOT CONSTITUTING TRANSACTING

BUSINESS

(a) A foreign limited liability company may not transact business in this State until it obtains a certificate of authority from the Secretary of State.

(b) Except as provided in subsection (c) of this section, “doing business” or “transacting business” shall mean and include each act, power, or privilege exercised or enjoyed in this State by a foreign limited liability company.

(c) Among others, the following activities without more do not constitute transacting business for the purpose of determining whether a foreign limited liability company is required to obtain a certificate of authority under subsection (a) of this section:

(1) maintaining, defending, or settling any proceeding;

(2) holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the foreign company’s own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or electronic means, or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(9) owning real or personal property;

(10) conducting an isolated transaction that is not one in the course of repeated transactions of a like nature; or

(11) transacting business in interstate commerce.

§ 4114. ISSUANCE OF CERTIFICATE OF AUTHORITY

If the Secretary of State determines that an application for a certificate of authority complies as to form with the filing requirements of this chapter, and if all filing fees have been paid, the Secretary of State shall file the application and issue a certificate of authority to the foreign limited liability company or its representative.

§ 4115. AMENDED CERTIFICATE OF AUTHORITY

(a) A foreign limited liability company authorized to transact business in this State must obtain an amended certificate of authority from the Secretary of State if it:

(1) changes its name; and

(2) changes the state or country under whose law it is organized.

(b) The requirements of section 4134 of this title for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

§ 4116. NAME OF FOREIGN LIMITED LIABILITY COMPANY

(a)(1) A foreign limited liability company whose name does not comply with section 4005 of this title may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this State, an alternate name that complies with section 4005 of this title.

(2) A foreign limited liability company that adopts an alternate name under this subsection and obtains a certificate of authority with the alternate name need not comply with chapter 15 of this title.

(3) After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this State under the

alternate name unless the company is authorized under chapter 15 of this title to transact business in this State under another name.

(b) If a foreign limited liability company authorized to transact business in this State changes its name to one that does not satisfy the requirements of section 4005 of this title, it may not transact business in this State until it complies with subsection (a) of this section and obtains an amended certificate of authority.

§ 4117. REVOCATION OF CERTIFICATE OF AUTHORITY

(a) The Secretary of State may revoke a certificate of authority of a foreign limited liability company to transact business in this State in the manner provided in subsections (b) and (c) of this section if:

(1) the company does not:

(A) pay, within 60 days after the due date, any fee, tax, or penalty due to the Secretary of State under this chapter;

(B) appoint and maintain an agent for service of process as required by section 4008 of this title; or

(C) deliver for filing a statement of change under section 4009 of this title within 30 days after a change has occurred in the name or address of the agent; or

(2) the Commissioner of Taxes notifies the Secretary of State that a foreign limited liability company has failed to make a return, to pay a tax, to file a bond, or to do any other act required under 32 V.S.A. chapter 211.

(b)(1) To revoke a certificate of authority of a foreign limited liability company, the Secretary of State shall file a notice of revocation and send a copy to the company's agent for service of process in this State, or if the company does not appoint and maintain a proper agent in this State, to the company's designated office.

(2) A notice of revocation shall state:

(A) the effective date of the revocation, which shall be at least 60 days after the date the Secretary of State sends the copy; and

(B) the grounds for revocation under subsection (a) of this section.

(c) The authority of a foreign limited liability company to transact business in this State shall cease on the effective date of the notice of revocation unless, before that date, the company cures each ground for revocation stated in the notice filed under subsection (b) of this section. If the company cures each ground, the Secretary of State shall file a record so stating.

§ 4118. CANCELLATION OF AUTHORITY

A foreign limited liability company may cancel its authority to transact business in this State by filing a certificate of cancellation with the Secretary of State. Cancellation does not terminate the authority of the Secretary of State to accept service of process on the company for claims arising out of the transactions of business in this State.

§ 4119. EFFECT OF FAILURE TO OBTAIN CERTIFICATE OF AUTHORITY

(a) A foreign limited liability company transacting business in this State may not maintain a proceeding or raise a counterclaim, cross-claim, or affirmative defense in any court in this State until it obtains a certificate of authority to transact business in this State.

(b) The failure of a foreign limited liability company to have a certificate of authority to transact business in this State does not impair the validity of a contract or act of the company or prevent the foreign limited liability company from defending an action or proceeding in this State.

(c) A member or manager of a foreign limited liability company is not liable for the debts, obligations, or other liabilities of the company solely because the company transacted business in this State without a certificate of authority.

(d) If a foreign limited liability company transacts business in this State without a certificate of authority, it appoints the Secretary of State as its agent for service of process for claims arising out of the transaction of business in this State.

§ 4120. ACTION BY ATTORNEY GENERAL

The Attorney General may maintain an action to restrain a foreign limited liability company from transacting business in this State in violation of this chapter.

§ 4121. ELECTION

A limited liability company formed under this chapter may elect to be a foreign law limited liability company by complying with all the following:

(1) designating itself as a foreign law limited liability company in its articles of organization filed pursuant to section 4023 of this title;

(2) including in its name either the term “foreign law limited liability company,” the term “Foreign Law Company,” or the abbreviation

“F.L.L.L.C.” or “F.L.C.” in lieu of the words or abbreviations required under subsection 4005(a) of this title; and

(3) complying with the requirements of this subchapter and paying the filing fees pursuant to section 4013 of this title.

§ 4122. DESIGNATION OF CONTROLLING FOREIGN LAW

(a) A foreign law limited liability company shall designate in its articles of organization all the following:

(1) a specific law or body of law of a foreign jurisdiction, either within or outside the United States of America, that will control the internal governance affairs of the company;

(2) the type of organization that will control how the foreign law limited liability company is treated under the foreign law and all matters that are required to be included in the constituent filing for that type of organization under that foreign law;

(3) any variations or limitations on the applicability of the foreign law and any mechanisms for amending, rescinding, or limiting the designation in the future;

(4) the courts, if any, that, in addition to the courts of the State of Vermont and the United States, will have jurisdiction over disputes relating to the internal governance affairs of the foreign law limited liability company; and

(5) a designation of those classes of individuals or officers within the chosen legal structure who shall have authority to act on behalf of the foreign law limited liability company equivalent to the authority of managers under subsections 4054(b) and (c) of this title, and any limitations on or clarification of that authority.

(b) Any bylaws, agreements, or other statements of principles governing the internal governance affairs of the foreign law limited liability company addressed in the applicable foreign law but not required to be in the constituent filing shall be set forth as part of, or in lieu of, the operating agreement required by section 4003 of this title. The prohibitions on a waiver under subsection 4003(b) shall not apply to foreign law limited liability companies.

§ 4123. SCOPE OF DESIGNATED FOREIGN LAW

(a) In any disputes over the internal governance affairs of a foreign law limited liability company, the designated foreign law or body of law shall be applied by any court having jurisdiction over the parties as the binding

authority governing these matters, provided that no designated law shall be enforced that:

(1) is contrary to provisions of Vermont or United States law or public policy;

(2) cause fraud or manifest injustice under Vermont or United States law;

(3) purports to limit the civil or criminal liability of an individual, partnership, or entity under Vermont or United States law; or

(4) varies or limits the filing procedures for creating a limited liability company required by this title.

(b) As used in this subchapter, “internal governance affairs” means the relations among the limited liability company, its members, and managers. Whether an issue is a matter of internal governance affairs of the company shall be determined under Vermont law.

(c) If a court determines that the designated law does not address an internal governance matter or addresses it in a manner that is unenforceable pursuant to subsection (a) of this section, or a limitation or variation relating to the issue is specified in the articles of organization, Vermont law shall apply to the matter at issue.

(d) All the external affairs of the foreign law limited liability company shall be governed by the general provisions of this chapter, the articles of organization other than choice of foreign law, the operating agreement, and applicable Vermont and federal laws.

§ 4124. JURISDICTION

(a) Vermont and other courts designated pursuant to section 4122 of this title shall have jurisdiction over all disputes relating to the internal governance affairs of a foreign law limited liability company.

(b) In adjudicating any dispute relating to the internal governance affairs of a foreign law limited liability company, the court may rely on its own English translation of the designated law and on testimony of experts, opinions of counsel, advisory opinions, or declaratory or binding judgments, and other appropriate evidence.

Subchapter 9. Actions by Members

§ 4141. DIRECT ACTION BY MEMBER

(a) Subject to subsection (b) of this section, a member may maintain a direct action against another member, a manager, or the limited liability

company to enforce the member's rights and protect the member's interests, including rights and interests under the operating agreement, under this title, or arising independently of the membership relationship.

(b) A member who maintains a direct action under this section must prove an actual or threatened injury to the member that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

§ 4132. DERIVATIVE ACTION

A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the other members or the managers do not bring the action within a reasonable time; or

(2) a demand under subsection (a) of this section would be futile.

§ 4133. PROPER PLAINTIFF

A derivative action under section 4132 of this title may be maintained only by a person that is a member of the company at the time the action is commenced, and:

(1) was a member when the conduct giving rise to the action occurred; or

(2) whose status as a member devolved on the person by operation of law or pursuant to the terms of the operating agreement from a person that was a member at the time of the transaction.

§ 4134. PLEADING

In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the response to the demand by the other members or the managers; and

(2) why the demand should be excused as futile.

§ 4135. SPECIAL LITIGATION COMMITTEE

(a)(1) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company.

(2) If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation.

(3) This subsection shall not prevent the court from:

(A) enforcing a person's right to information under section 4033 of this title; or

(B) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee shall be composed of one or more disinterested and independent individuals, who may be members.

(c) A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

(A) by the affirmative vote or consent of a majority of the members not named as parties in the proceeding; or

(B) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

(2) in a manager-managed limited liability company:

(A) by a majority of the managers not named as parties in the proceeding; or

(B) if all managers are named as parties in the proceeding, by a majority of the managers named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

(3) be settled on terms approved by the committee; or

(4) be dismissed.

(e)(1) After making a determination under subsection (d) of this section, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, and shall serve each party with a copy of the determination and report.

(2) The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof.

(3) If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee.

(4) Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) of this section and allow the action to continue under the control of the plaintiff.

§ 4136. PROCEEDS AND EXPENSES

(a) Except as otherwise provided in subsection (b) of this section:

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(b) If a derivative action is successful, in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

(c) A derivative action on behalf of a limited liability company may not be voluntarily dismissed or settled without the approval of the court.

Subchapter 10. Conversions, Mergers, and Domestications

§ 4141. DEFINITIONS

In this subchapter:

(1) "Constituent limited liability company" means a constituent organization that is a limited liability company.

(2) "Constituent organization" means an organization that is party to a merger.

(3) "Conversion" means a transaction authorized sections by 4142 through 4147 of this title.

(4) "Converted organization" means the converting organization as it continues in existence after a conversion.

(5) “Converting organization” means the domestic organization that approves a plan of conversion pursuant to section 4144 of this title or the foreign organization that approves a conversion pursuant to the law of its jurisdiction of formation.

(6) “Domestic,” with respect to an organization, means an organization governed as to its internal affairs by the law of this State.

(7) “Domesticated company” means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to sections 4152 through 4155 of this title.

(8) “Domesticating company” means the company that effects a domestication pursuant to sections 4152 through 4155 of this title.

(9) “General partner” means a partner in a partnership and a general partner in a limited partnership.

(10) “Governing statute” means the statute that governs an organization’s internal affairs.

(11) “Interest holder” means:

(A) a shareholder of a business corporation;

(B) a member of a nonprofit corporation;

(C) a general partner of a general partnership;

(D) a general partner of a limited partnership;

(E) a limited partner of a limited partnership;

(F) a member of a limited liability company;

(G) a shareholder of a general cooperative association;

(H) a member of a limited cooperative association or mutual benefit enterprise;

(I) a member of an unincorporated nonprofit association;

(J) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or

(K) any other direct holder of an interest.

(12) “Limited partner” means a limited partner in a limited partnership.

(13) “Limited partnership” means a limited partnership created under chapter 11 of this title, a predecessor law, or comparable law of another jurisdiction.

(14) “Organization”:

(A) means any of the following, whether a domestic or foreign organization, and regardless of whether organized for profit:

(i) a business corporation;

(ii) a nonprofit corporation;

(iii) a general partnership, including a limited liability partnership;

(iv) a limited partnership, including a limited liability limited partnership;

(v) a limited liability company;

(vi) a general cooperative association;

(vii) a limited cooperative association or mutual benefit enterprise;

(viii) an unincorporated nonprofit association;

(ix) a statutory trust, business trust, or common-law business trust; or

(x) any other person that has:

(I) a legal existence separate from any interest holder of that person; or

(II) the power to acquire an interest in real property in its own name; and

(B) does not include:

(i) an individual;

(ii) a trust with a predominantly donative purpose or a charitable trust;

(iii) an association or relationship that is not an organization listed in subdivision (A) of this subdivision (14) and is not a partnership under chapter 22 or 23 of this title, or a similar provision of the law of another jurisdiction;

(iv) a decedent’s estate; or

(v) a government or a governmental subdivision, agency, or instrumentality.

(15) “Organizational documents” means, whether or not in a record, documents governing the internal affairs of an organization that are binding on all its interest holders, including:

(A) for a domestic or foreign general partnership, its partnership agreement;

(B) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) for a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;

(D) for a business trust, its agreement of trust and declaration of trust;

(E) for a domestic or foreign corporation for profit, its certificate or articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(F) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(16) “Partner” includes a general partner and a limited partner.

(17) “Partnership” means a general partnership under chapter 9 of this title, a predecessor law, or comparable law of another jurisdiction.

(18) “Partnership agreement” means an agreement among the partners concerning the partnership or limited partnership.

(19) “Personal liability” means:

(A) any liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(i) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(ii) by the organization’s organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization; or

(B) an obligation of an interest holder under the organizational documents of an organization to contribute to the organization.

(20) “Private organizational documents” means organizational documents or portions thereof that are not part of the organization’s public record, if any, and includes:

- (A) the bylaws of a business corporation;
- (B) the bylaws of a nonprofit corporation;
- (C) the partnership agreement of a general partnership;
- (D) the partnership agreement of a limited partnership;
- (E) the operating agreement of a limited liability company;
- (F) the bylaws of a general cooperative association;
- (G) the bylaws of a limited cooperative association or mutual benefit enterprise;
- (H) the governing principles of an unincorporated nonprofit association; and
- (I) the trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.

(21) “Protected agreement” means:

- (A) a record evidencing indebtedness and any related agreement in effect on the effective date set forth in section 4171 of this title;
- (B) an agreement that is binding on an organization on the effective date set forth in section 4171 of this title;
- (C) the organizational documents of an organization in effect on the effective date set forth in section 4171 of this title; or
- (D) an agreement that is binding on any of the governors or interest holders of an organization on the effective date set forth in section 4171 of this title.

(22) “Public organizational documents” means the record of organizational documents required to be filed with the Secretary of State to form an organization, and any amendment to or restatement of that record, and includes:

- (A) the articles of incorporation of a business corporation;
- (B) the articles of incorporation of a nonprofit corporation;
- (C) the certificate of limited partnership of a limited partnership;
- (D) the certificate of organization of a limited liability company;
- (E) the articles of incorporation of a general cooperative association;
- (F) the articles of organization of a limited cooperative association or mutual benefit enterprise; and

(G) the certificate of trust of a statutory trust or similar record of a business trust.

(23) “Registered foreign organization” means a foreign organization that is registered to do business in this State pursuant to a record filed by the Secretary of State.

(24) “Surviving organization” means an organization into which one or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

§ 4142. CONVERSION AUTHORIZED

(a) By complying with sections 4142 through 4146 of this title, a domestic limited liability company may become a domestic organization that is a different type of organization.

(b) By complying with sections 4142 through 4146 of this title, a domestic partnership or limited partnership may become a domestic limited liability company.

(c) By complying with sections 4142 through 4146 of this title applicable to foreign organizations, a foreign organization that is not a foreign limited liability company may become a domestic limited liability company if the conversion is authorized by the law of the foreign organization’s jurisdiction of formation.

(d) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a conversion, the provision applies to a conversion of the company as if the conversion were a merger until the provision is amended after the effective date set forth in section 4171 of this title.

§ 4143. PLAN OF CONVERSION

(a) A domestic limited liability company may convert to a different type of organization under section 4142 of this title, by approving a plan of conversion. The plan shall be in a record and contain:

(1) the name of the converting limited liability company;

(2) the name, jurisdiction of formation, and type of organization of the converted organization;

(3) the manner of converting the interests in the converting limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) the proposed public organizational documents of the converted organization if it will be an organization with public organizational documents filed with the Secretary of State;

(5) the full text of the private organizational documents of the converted organization which are proposed to be in a record;

(6) the other terms and conditions of the conversion; and

(7) any other provision required by the law of this State or the operating agreement of the converting limited liability company.

(b) A domestic general partnership or a domestic limited partnership may convert into a domestic limited liability company by approving a plan of conversion setting forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination thereof.

(c) In addition to the requirements of subsection (a) of this section, a plan of conversion may contain any other provision not prohibited by law.

§ 4144. APPROVAL OF CONVERSION

(a) For any conversion of a limited liability company into another type of organization, a plan of conversion is not effective unless it has been approved:

(1) by a domestic converting limited liability company, in accordance with the organizational documents of the limited liability company, or, in the absence of a provision governing approval of conversions, by all the members of the limited liability company entitled to vote on or consent to any matter; and

(2) in a record, by each member of a domestic converting limited liability company which will have personal liability for debts, obligations, and other liabilities that are incurred after the conversion becomes effective, unless:

(A) the operating agreement of the company provides in a record for the approval of a conversion or a merger in which some or all of its members become subject to personal liability by the affirmative vote or consent of fewer than all the members; and

(B) the member voted for or consented in a record to that provision of the operating agreement or became a member after the adoption of that provision.

(b) For a conversion of a domestic general partnership or domestic limited partnership into a domestic limited liability company, the plan of conversion

shall be approved by all of the partners or by a number or percentage of the partners required for the conversion in the partnership agreement.

(c) A conversion involving a domestic converting organization is not effective unless it is approved by the domestic converting organization in accordance with its governing law and organizational documents.

(d) A conversion of a foreign converting organization is not effective unless it is approved by the foreign organization in accordance with the law of the foreign organization's jurisdiction of formation and its organizational documents.

§ 4145. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION

(a) A plan of conversion of a domestic converting limited liability company may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan of conversion, but a member that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the members of the converting company under the plan;

(B) the public organizational documents, if any, or private organizational documents of the converted organization which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted organization under its governing law or organizational documents; or

(C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(b) A plan of conversion of a general or limited partnership may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its general partner or general partners in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the

conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the converting company under the plan;

(B) the public organizational documents, if any, or private organizational documents of the converted organization which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted organization under its governing statute or governing documents; or

(C) any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(c)(1) After a plan of conversion has been approved by a domestic converting limited liability company and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan.

(2) Unless prohibited by the plan, a domestic converting limited liability company may abandon the plan in the same manner as the plan was approved.

(d)(1) If a plan of conversion is abandoned after a statement of conversion has been delivered to the Secretary of State for filing and before the statement becomes effective, a statement of abandonment, signed by the converting organization, shall be delivered to the Secretary of State for filing before the statement of conversion becomes effective.

(2) The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective.

(3) The statement of abandonment must contain:

(A) the name of the converting limited liability company;

(B) the date on which the statement of conversion was filed by the Secretary of State; and

(C) a statement that the conversion has been abandoned in accordance with this section.

§ 4146. STATEMENT OF CONVERSION; EFFECTIVE DATE OF

CONVERSION

(a) A statement of conversion must be signed by the converting organization and delivered to the Secretary of State for filing.

(b) A statement of conversion must contain:

(1) the name, jurisdiction of formation, and type of organization of the converting organization;

(2) the name, jurisdiction of formation, and type of organization of the converted organization;

(3) if the converting organization is a domestic limited liability company, a statement that the plan of conversion was approved in accordance with this subchapter, or, if the converting organization is a foreign organization, a statement that the conversion was approved by the foreign organization in accordance with the law of its jurisdiction of formation;

(4) if the converted organization is a domestic organization, its public organizational documents, as an attachment; and

(5) if the converted organization is a foreign limited liability partnership, its certificate of authority to do business in the State, as an attachment.

(c) In addition to the requirements of subsection (b) of this section, a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted organization is a domestic organization, its public organizational documents, if any, shall satisfy the requirements of the law of this State, except that the public organizational documents do not need to be signed.

(e)(1) A plan of conversion that is signed by a domestic converting limited liability company and meets all the requirements of subsection (b) of this section may be delivered to the Secretary of State for filing instead of a statement of conversion and on filing has the same effect.

(2) If a plan of conversion is filed as provided in this subsection, references in this subchapter to a statement of conversion refer to the plan of conversion filed under this subsection.

(f)(1) If the converted organization is a domestic limited liability company, the conversion becomes effective when the statement of conversion is effective.

(2) In all other cases, the conversion becomes effective on the later of:

(A) the date and time provided by the governing statute of the converted organization; or

(B) when the statement is effective.

§ 4147. EFFECT OF CONVERSION

(a) When a conversion becomes effective:

(1) the converted organization is:

(A) organized under and subject to the governing statute of the converted organization; and

(B) the same organization without interruption as the converting organization;

(2) all property of the converting organization continues to be vested in the converted organization without transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the converting organization continue as debts, obligations, and other liabilities of the converted organization;

(4) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting organization remain in the converted organization;

(5) the name of the converted organization may be substituted for the name of the converting organization in any pending action or proceeding;

(6) the certificate of organization of the converted organization becomes effective;

(7) the provisions of the operating agreement of the converted organization which are to be in a record, if any, approved as part of the plan of conversion become effective; and

(8) the interests in the converting organization are converted, and the interest holders of the converting organization are entitled only to the rights provided to them under the plan of conversion.

(b) Except as otherwise provided in the operating agreement of a domestic converting limited liability company, the conversion does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the converting organization.

(c) When a conversion becomes effective, a person that did not have personal liability with respect to the converting organization and becomes subject to personal liability with respect to a domestic organization as a result of the conversion has personal liability only to the extent provided by the governing statute of the organization and only for those debts, obligations, and other liabilities that are incurred after the conversion becomes effective.

(d) When a conversion becomes effective, the personal liability of a person that ceases to hold an interest in a domestic converting limited liability

company with respect to which the person had personal liability is subject to the following rules:

(1) the conversion does not discharge any personal liability under this title to the extent the personal liability was incurred before the conversion became effective;

(2) the person does not have personal liability under this title for any debt, obligation, or other liability that arises after the conversion becomes effective;

(3) this title continues to apply to the release, collection, or discharge of any personal liability preserved under subdivision (1) of this subsection as if the conversion had not occurred; and

(4) the person has whatever rights of contribution from any other person as are provided by this title, law other than this title, or the organizational documents of the converting organization with respect to any personal liability preserved under subdivision (1) of this subsection as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign organization that is the converted organization may be served with process in this State for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in section 4010 of this title.

(f) If the converting organization is a registered foreign organization, its registration to do business in this State is canceled when the conversion becomes effective.

(g) A conversion does not require the organization to wind up its affairs and does not constitute or cause the dissolution of the organization.

§ 4148. MERGER OF ENTITIES

(a) A limited liability company may merge with one or more other constituent organizations pursuant to this section, sections 4149 through 4151 of this title, and a plan of merger, if:

(1) the governing statute of each of the other organizations authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

(3) each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in a record and must include:

(1) the name and form of each constituent organization;

(2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

§ 4149. ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED

LIABILITY COMPANY

(a) Subject to section 4156 of this title, a plan of merger shall be approved in accordance with the organizational documents of the constituent limited liability company, or, in the absence of a provision governing approval of conversions, by all the members of the limited liability company entitled to vote on or consent to any matter.

(b) Subject to section 4156 of this title and any contractual rights, after a merger is approved, and at any time before the articles of merger are delivered to the Secretary of State for filing under section 4146 of this title, a constituent limited liability company may amend the plan or abandon the merger:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

§ 4150. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE

(a) After each constituent organization has approved a merger, articles of merger shall be signed on behalf of:

(1) each constituent limited liability company, as provided in subsection 4025(a) of this title; and

(2) each other constituent organization, as provided in its governing statute.

(b) Articles of merger under this section shall include:

(1) the name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created by the merger:

(A) if it will be a limited liability company, the company's certificate of organization; or

(B) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;

(5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(7) if the surviving organization is a foreign organization not authorized to transact business in this State, the street and mailing addresses of an office that the Secretary of State may use for the purposes of subsection 4145(b) of this title; and

(8) any additional information required by the governing statute of any constituent organization.

(c) Each constituent limited liability company shall deliver the articles of merger for filing in the Office of the Secretary of State.

(d) A merger becomes effective under this subchapter:

(1) if the surviving organization is a limited liability company, upon the later of:

(A) compliance with subsection (c) of this section; or

(B) subject to section 4026 of this title, as specified in the articles of merger; or

(2) if the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

§ 4151. EFFECT OF MERGER

(a) When a merger becomes effective:

(1) the surviving organization continues or comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

(5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; and

(8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of subchapter 7 of this chapter;

(9) if the surviving organization is created by the merger:

(A) if it is a limited liability company, the certificate of organization becomes effective; or

(B) if it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b)(1) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this State on the debt, obligation, or other liability.

(2) A surviving organization that is a foreign organization and not authorized to transact business in this State appoints the Secretary of State as

its agent for service of process for the purposes of enforcing a debt, obligation, or other liability under this subsection.

(3) Service on the Secretary of State under this subsection must be made in the same manner and has the same consequences as in subsections 116(c) and (d) of this title.

§ 4152. DOMESTICATION

(a) A foreign limited liability company may become a limited liability company pursuant to this section, sections 4153 through 4155 of this title, and a plan of domestication, if:

(1) the foreign limited liability company's governing statute authorizes the domestication;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(b) A limited liability company may become a foreign limited liability company pursuant to this section, sections 4153 through 4155 of this title, and a plan of domestication, if:

(1) the foreign limited liability company's governing statute authorizes the domestication;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(c) A plan of domestication must be in a record and must include:

(1) the name of the domesticating company before domestication and the jurisdiction of its governing statute;

(2) the name of the domesticated company after domestication and the jurisdiction of its governing statute;

(3) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and

(4) the organizational documents of the domesticated company that are, or are proposed to be, in a record.

§ 4153. ACTION ON PLAN OF DOMESTICATION BY

DOMESTICATING LIMITED LIABILITY COMPANY

(a) A plan of domestication must be consented to:

(1) by all the members, subject to section 4156 of this title, if the domesticating company is a limited liability company; and

(2) as provided in the domesticating company's governing statute, if the company is a foreign limited liability company.

(b) Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the Secretary of State for filing under section 4154 of this title, a domesticating limited liability company may amend the plan or abandon the domestication:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

§ 4154. FILINGS REQUIRED FOR DOMESTICATION; EFFECTIVE

DATE

(a) After a plan of domestication is approved, a domesticating company shall deliver to the Secretary of State for filing articles of domestication, which shall include:

(1) a statement, as the case may be, that the company has been domesticated from or into another jurisdiction;

(2) the name of the domesticating company and the jurisdiction of its governing statute;

(3) the name of the domesticated company and the jurisdiction of its governing statute;

(4) the date the domestication is effective under the governing statute of the domesticated company;

(5) if the domesticating company was a limited liability company, a statement that the domestication was approved as required by this title;

(6) if the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction; and

(7) if the domesticated company was a foreign limited liability company not authorized to transact business in this State, the street and mailing

addresses of an office that the Secretary of State may use for the purposes of subsection 4155(b) of this title.

(b) A domestication becomes effective:

(1) when the certificate of organization takes effect, if the domesticated company is a limited liability company; and

(2) according to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

§ 4155. EFFECT OF DOMESTICATION

(a) When a domestication takes effect:

(1) the domesticated company is for all purposes the company that existed before the domestication;

(2) all property owned by the domesticating company remains vested in the domesticated company;

(3) all debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company;

(4) an action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;

(5) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company;

(6) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(7) except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of subchapter 7 of this chapter.

(b)(1) A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this State to enforce any debt, obligation, or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject to suit in this State on the debt, obligation, or other liability.

(2) A domesticated company that is a foreign limited liability company and not authorized to transact business in this State appoints the Secretary of State as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection.

(3) Service on the Secretary of State under this subsection must be made in the same manner and has the same consequences as in section 4010 of this title.

(c) If a limited liability company has adopted and approved a plan of domestication under section 4152 of this title providing for the company to be domesticated in a foreign jurisdiction, a statement surrendering the company's certificate of organization must be delivered to the Secretary of State for filing, setting forth:

(1) the name of the company;

(2) a statement that the certificate of organization is being surrendered in connection with the domestication of the company in a foreign jurisdiction;

(3) a statement the domestication was approved as required by this title; and

(4) the jurisdiction of formation of the domesticated foreign limited liability company.

§ 4156. RESTRICTIONS ON APPROVAL OF MERGERS,

CONVERSIONS, AND DOMESTICATIONS

(a) If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication are ineffective without the consent of the member, unless:

(1) the company's operating agreement provides for approval of a merger, conversion, or domestication with the consent of fewer than all the members; and

(2) the member has consented to the provision of the operating agreement.

(b) A member does not give the consent required by subsection (a) of this section merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

§ 4157. SUBCHAPTER NOT EXCLUSIVE

This subchapter does not preclude an organization from being converted, merged, or domesticated under law other than this title.

Subchapter 11. Low-Profit Limited Liability Companies

§ 4161. ELECTION

A limited liability company organized pursuant to this title may elect to be a low-profit limited liability company if and for so long at it satisfies the requirements of section 4162 of this title.

§ 4162. REQUIREMENTS

A limited liability company shall be organized for a business purpose that satisfies, and shall at all times be operated to satisfy, each of the following requirements:

(1) The company:

(A) significantly furthers the accomplishment of one or more charitable or educational purposes within the meaning of 26 U.S.C. § 170(c)(2)(B); and

(B) would not have been formed but for the company's relationship to the accomplishment of charitable or educational purposes.

(2) No significant purpose of the company is the production of income or the appreciation of property; provided, however, that the fact that a person produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

(3) No purpose of the company is to accomplish one or more political or legislative purposes within the meaning of 26 U.S.C. § 170(c)(2)(D).

§ 4163. FAILURE TO MEET REQUIREMENTS

(a) A limited liability company that elects to be an L3C and subsequently fails to satisfy any one of the requirements set forth in section 4162 of this title shall immediately cease to be a low-profit limited liability company, but by continuing to meet all the other requirements of this chapter, continues to exist as a limited liability company.

(b) In the event an L3C fails to satisfy the requirements of section 4162 of this title, the company shall change its name to conform with subsection 4005(a) of this title.

Sec. 3. 11 V.S.A. § 1621 is amended to read:

§ 1621. REGISTRATION OF BUSINESS NAME BY PERSONS, PARTNERSHIPS, AND ASSOCIATIONS

(a) A person doing business in this State under any name other than his or her own, and every copartnership or association of individuals, except corporations and limited liability companies, doing business in this State, resident or nonresident, shall cause to be recorded with the Secretary of State a return setting forth the name under which such business is carried on, the name of the town wherein such place of business is located, a brief description of the kind of business to be transacted under such name, and the individual names and residences of all persons, general partners, or members so doing business thereunder.

(b) Such returns shall be subscribed and sworn to by one or more of the persons so doing business, and shall be filed with the Secretary of State within ten days after commencement of business.

(c) The Secretary of State shall decline to register any business name ~~that is the same as, deceptively similar to, or likely to be confused with or mistaken for~~ unless the name is distinguishable in the records of the Secretary of State from any other business name of any name registered or reserved under this chapter, or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the Secretary of State, or any name that would lead a reasonable person to conclude that the business is a type of entity that it is not.

* * *

Sec. 4. 11 V.S.A. § 1623 is amended to read:

§ 1623. REGISTRATION BY CORPORATIONS AND LIMITED
LIABILITY COMPANIES

(a) A corporation or limited liability company doing business in this State under any name other than that of the corporation or limited liability company shall be subject to all the provisions of this chapter; and shall file returns sworn to by some officer or member of such corporation or by some member or manager of such limited liability company, setting forth the name other than the corporate or limited liability company name under which such business is carried on, the name of the town wherein such business is to be carried on, a brief description of the kind of business transacted under such name, and the corporate or the limited liability company name and location of the principal office of such corporation or limited liability company.

(b) The Secretary of State shall decline to register any business name ~~that is the same as, deceptively similar to, or likely to be confused with or mistaken for~~ unless the name is distinguishable in the records of the Secretary of State from any other business name of any name registered or reserved under this

chapter or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the Secretary of State, or any name that would lead a reasonable person to conclude that the business is a type of entity that it is not.

Sec. 5. 11 V.S.A. § 3292 is amended to read:

§ 3292. NAME

(a) The name of a limited liability partnership must end with “Registered Limited Liability Partnership,” “Limited Liability Partnership,” “R.L.L.P.,” “L.L.P.,” “RLLP,” or “LLP.”

(b) Except as authorized by subsections (c) and (d) of this section, a limited liability partnership’s name, ~~based upon the records of the secretary of state,~~ shall be distinguishable in the records of the Secretary of State from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ any name granted, registered, or reserved under this chapter, or the name of any other entity, whether domestic or foreign, that is granted, reserved or registered by or with the ~~secretary of state~~ Secretary of State.

(c) A limited liability partnership may apply to the ~~secretary of state~~ Secretary of State for authorization to use a name that is not distinguishable in the records of the Secretary of State from ~~or is the same as, deceptively similar to, or likely to be confused with or mistaken for~~ one or more of the names described in subsection (b) of this section, ~~as determined from review of the records of the secretary of state.~~ The ~~secretary of state~~ Secretary of State shall authorize use of the name applied for if:

(1) the other entity consents to the use in writing and submits an undertaking in a form satisfactory to the ~~secretary of state~~ Secretary of State to change its name to a name that is distinguishable in the records from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ the name of the applying company; or

(2) the applicant delivers to the ~~secretary of state~~ Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this ~~state~~ State.

(d) A limited liability partnership may use the name ~~(including, including the trade name)~~ name, of another domestic or foreign limited liability partnership that is used in this ~~state~~ State if the other partnership is organized or authorized to transact business in this ~~state~~ State and the proposed user partnership:

(1) has merged with the other partnership;

(2) has been formed by reorganization of the other partnership; or

(3) has acquired all or substantially all of the assets, including the name, of the other partnership.

(e) Notwithstanding any other provision of law, a limited liability partnership or foreign limited liability partnership that renders professional service may use as its name all or some of the names of individual present or former partners of the partnership or a predecessor partnership, as permitted by the applicable rules of ethics and by the applicable statutory or regulatory provisions governing the rendering of such professional service.

Sec. 6. 11 V.S.A. § 3402 is amended to read:

§ 3402. NAME

(a) The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain the words “Limited Partnership,” or the letters “L.P.”;

(2) may not contain the name of a limited partner unless it is also the name of a general partner or the corporate name of a corporate general partner, or the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) ~~may not be the same as, or deceptively similar to,~~ shall be distinguishable in the records of the Secretary of State from the name of any corporation, limited liability company, limited liability partnership, or limited partnership organized under the laws of this ~~state~~ State or licensed or registered as a foreign corporation, limited liability company, limited liability partnership or limited partnership in this ~~state~~ State; and

(4) may not contain the following words: “corporation,” “incorporated,” “limited” by itself, “limited liability company,” “limited company,” or the abbreviations “corp.,” “Inc.,” or “Ltd.”

(b) A person intending to operate a postsecondary school, as defined in 16 V.S.A. §§ 176 and 176a, shall apply for a certificate of approval from the ~~state board of education~~ State Board of Education prior to registering a name under this chapter.

Sec. 7. 11 V.S.A. § 3484 is amended to read:

§ 3484. NAME

A foreign limited partnership may register with the ~~secretary of state~~ Secretary of State under any name, whether or not it is the name under which it is registered in its state of organization, and it:

(1) shall contain the words “Limited Partnership,” or the letters “L.P.”;

(2) may not contain the name of a limited partner unless it is also the name of a general partner or the corporate name of a corporate general partner, or the business of the limited partnership had been carried on under the name before the admission of that limited partner;

(3) ~~may not be the same as, or deceptively similar to,~~ shall be distinguishable in the records of the Secretary of State from the name of any corporation, limited liability company, limited liability partnership, or limited partnership organized under the laws of the ~~state~~ State or licensed or registered as a foreign corporation, limited liability company, limited liability partnership or limited partnership in this ~~state~~ State; and

(4) may not contain the following words: “corporation,” “incorporated,” “limited by itself,” “limited liability company,” “limited company,” or the abbreviations “corp.,” “inc.,” or “ltd.”

Sec. 8. 11A V.S.A. § 4.01 is amended to read:

§ 4.01. CORPORATE NAME

(a) A corporate name:

(1) ~~must~~ shall contain the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” or words or abbreviations of like import in another language;

(2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 3.01 of this title and its articles of incorporation;

(3) shall not have the word “cooperative” or any abbreviation thereof as part of its name unless the corporation is a worker cooperative corporation organized under 11 V.S.A. chapter 8 ~~of Title 11~~ or the articles of incorporation contain all of the provisions required of a corporation organized as a cooperative association; and

(4) shall not include any word not otherwise authorized by law.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name, ~~based upon the records of the secretary of state,~~ shall be distinguishable in the records of the Secretary of State from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ any name granted, registered, or reserved under this chapter, or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the ~~secretary of state~~ Secretary of State.

(c) A corporation may apply to the ~~secretary of state~~ Secretary of State for authorization to use a name that is not distinguishable in the records from, ~~or is~~

~~the same as, deceptively similar to, or likely to be confused with or mistaken for one or more of the names described in subsection (b) of this section, as determined from review of the records of the secretary of state.~~ The ~~secretary of state~~ Secretary of State shall authorize use of the name applied for if:

(1) the other corporation or business consents to the use in writing and submits an undertaking in form satisfactory to the ~~secretary of state~~ Secretary of State to change its name to a name that is distinguishable in the records from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ the name of the applying corporation; or

(2) the applicant delivers to the ~~secretary of state~~ Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this ~~state~~ State.

(d) A corporation may use the name (~~including, including~~ the fictitious name) name, of another domestic or foreign corporation that is used in this ~~state~~ State if the other corporation is incorporated or authorized to transact business in this ~~state~~ State and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

Sec. 9. 11A V.S.A. § 4.03 is amended to read:

§ 4.03. REGISTERED NAME

(a) A foreign corporation may register its corporate name, or its corporate name with any addition required by section 15.06 of this title, if the name is distinguishable in the records of the Secretary of State from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ the corporate or business names that are not available under section 4.01(b)(3) of this title.

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by section 15.06 of this title, by delivering to the ~~secretary of state~~ Secretary of State for filing an application:

(1) setting forth its corporate name, or its corporate name with any addition required by section 15.06 of this title, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(2) accompanied by a certificate of good standing (~~or~~ or a document of similar ~~import~~) import from the state or country of incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the ~~secretary of state~~ Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this title or by another foreign corporation thereafter authorized to transact business in this ~~state~~ State. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Sec. 10. 11A V.S.A. § 15.06 is amended to read:

§ 15.06. CORPORATE NAME OF FOREIGN CORPORATION

(a) If the corporate name of a foreign corporation does not satisfy the requirements of section 4.01 of this title, the foreign corporation to obtain or maintain a certificate of authority to transact business in this ~~state~~ State:

(1) may add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name for use in this ~~state~~ State; or

(2) may use an available trade name to transact business in this ~~state~~ State if its corporate name is unavailable and it delivers to the ~~secretary of state~~ Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the trade name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name (~~including, including a trade name~~) name, of a foreign corporation ~~must shall~~ be distinguishable in the records of the Secretary of State from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ any name granted, registered, or reserved under this chapter, or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the ~~secretary of state~~ Secretary of State.

(c) A foreign corporation may apply to the ~~secretary of state~~ Secretary of State for authorization to use in this ~~state~~ State the name of another corporation incorporated or authorized to transact business in this ~~state~~ State that is not

distinguishable ~~in the records from, or is the same as, deceptively similar to, or likely to be confused with or mistaken for~~ one or more of the names described in subsection (b) of this section, ~~as determined from review of the records of the secretary of state,~~ by submitting to the ~~secretary of state~~ Secretary of State a satisfactory written form indicating the other corporation's consent and change of name.

(d) A foreign corporation may use in this ~~state~~ State the name ~~(including, including the trade name)~~ name, of another domestic or foreign corporation that is used in this ~~state~~ State if the other corporation is incorporated or authorized to transact business in this ~~state~~ State and the foreign corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this ~~state~~ State changes its corporate name to one that does not satisfy the requirements of section 4.01 of this title, it may not transact business in this ~~state~~ State under the changed name until it adopts a name satisfying the requirements of section 4.01 and obtains an amended certificate of authority under section 15.04 of this title.

Sec. 11. 11B V.S.A. § 4.01 is amended to read:

§ 4.01. CORPORATE NAME

(a) A corporate name:

(1) ~~must~~ shall contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language;

(2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 3.01 of this title and its articles of incorporation;

(3) shall not have the word "cooperative" or any abbreviation thereof as part of its name; and

(4) shall not include any word not otherwise authorized by law.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name, ~~based upon the records of the secretary of state,~~ shall be distinguishable in the records of the Secretary of State from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ any

name granted, registered, or reserved under this chapter, or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the ~~secretary of state~~ Secretary of State.

(c) A corporation may apply to the ~~secretary of state~~ Secretary of State for authorization to use a name that is not distinguishable in the records from, ~~or is the same as, deceptively similar to, or likely to be confused with or mistaken for~~ one or more of the names described in subsection (b) of this section, ~~as determined from review of the records of the secretary of state~~. The ~~secretary of state~~ Secretary of State shall authorize use of the name applied for if:

(1) the other corporation or business consents to the use in writing and submits an undertaking in form satisfactory to the ~~secretary of state~~ Secretary of State to change its name to a name that is distinguishable in the records from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ the name of the applying corporation; or

(2) the applicant delivers to the ~~secretary of state~~ Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this ~~state~~ State.

(d) A corporation may use the name (~~including~~ including the fictitious ~~name~~) name, of another domestic or foreign corporation that is used in this ~~state~~ State if the other corporation is incorporated or authorized to transact business in this ~~state~~ State and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

Sec. 12. EFFECTIVE DATE; APPLICATION

(a) This section and Secs. 3–11 shall take effect on July 1, 2015.

(b) Sec. 1 shall take effect on July 1, 2016.

(c) Sec. 2 shall take effect on July 1, 2015, and apply only to:

(1) a limited liability company formed on or after July 1, 2015; and

(2) except as otherwise provided in subsection (f) of this section, a limited liability company formed before July 1, 2015 that elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this act.

(d) This act does not affect an action commenced, a proceeding brought, or a right accrued before July 1, 2015.

(e) Except as otherwise provided in subsection (f) of this section, Sec. 2 shall apply to all limited liability companies on and after July 1, 2016.

(f) For the purposes of applying Sec. 2 to a limited liability company formed before July 1, 2015, for the purposes of applying 11 V.S.A. § 4023 and subject to 11 V.S.A. § 4003, language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement.

(Committee Vote: 11-0-0)

H. 320

An act relating to technical corrections

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

* * * Technical Corrections Relating to Public Records * * *

Sec. 1. 1 V.S.A. § 313(a) is amended to read:

(a) No public body may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of State government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except for actions relating to the securing of real estate options under subdivision (2) of this subsection. Minutes of an executive session need not be taken, but if they are, the minutes shall not be made public subject to, notwithstanding subsection 312(b) of this title, be exempt from public copying and inspection under the Public Records Act. A public body may not hold an executive session except to consider one or more of the following:

* * *

Sec. 2. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

* * *

(11) ~~Student records, including records of a home study student, at educational institutions or agencies funded wholly or in part by State revenue; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93-380) and as, 20 U.S.C. § 1232g, as may be amended.~~

* * *

(20) Information ~~which~~ that would reveal the location of archeological sites and underwater historic properties, except as provided in 22 V.S.A. § ~~762~~ 761.

* * *

~~(22) Any documents filed, received, or maintained by the Agency of Commerce and Community Development with regard to administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs tax credit; manufacturer's tax credit), except that all such documents shall become public records under this subchapter when a tax credit certification has been granted by the Secretary of Administration, and provided that the disclosure of such documents does not otherwise violate any provision of Title 32. [Repealed.]~~

* * *

(30) All ~~code and machine-readable structures of state-funded and controlled~~ State-controlled database applications structures and application code, including the vermontvacation.com website and Travel Planner application, which are known only to certain ~~state~~ State departments engaging in marketing activities and which give the ~~state~~ State an opportunity to obtain a marketing advantage over any other state, regional, or local governmental or nonprofit quasi-governmental entity, or private sector entity, unless any such ~~state~~ State department engaging in marketing activities determines that the license or other voluntary disclosure of such materials is in the ~~state's~~ State's best interests.

* * *

(36) Anti-fraud plans and summaries submitted ~~by insurers to the Department of Financial Regulation~~ for the purposes of complying with 8 V.S.A. § 4750.

* * *

(38) Records ~~held by the Agency of Human Services, which~~ that include prescription information containing ~~prescriber identifiable~~ data, that could be used to identify a prescriber, except that the records shall be made available upon request for medical research, consistent with and for purposes expressed in 18 V.S.A. §§ ~~4621, 4631, 4632, 4633, and § 4622~~ or 9410 ~~and~~, 18 V.S.A.

chapter 84, or as provided for in 18 V.S.A. chapter or 84A, and for other law enforcement activities.

* * *

(40) Records of genealogy provided in an application or in support of an application for tribal recognition pursuant to chapter 23 of this title.

* * *

Sec. 3. EFFECT OF REPEAL

Sec. 2 of this act repeals 1 V.S.A. § 317(c)(22), which related to documents filed, received, or maintained by the Agency of Commerce and Community Development with regard to administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs tax credit; manufacturer's tax credit). 32 V.S.A. chapter 151, subchapters 11C and 11D were repealed in 2006, and thus the exemption at 1 V.S.A. § 317(c)(22) is no longer needed. However, if a public agency retains custody of records that qualified as exempt under the former 1 V.S.A. § 317(c)(22), these records shall remain exempt from public inspection and copying after its repeal.

Sec. 4. 8 V.S.A. § 4089a is amended to read:

§ 4089a. MENTAL HEALTH CARE SERVICES REVIEW

* * *

(i) The confidentiality of any health care information acquired by or provided to the independent panel of mental health professionals an independent review organization pursuant to section 4089f of this title shall be maintained in compliance with any applicable State or federal laws. The independent panel shall not constitute a public agency 1 V.S.A. § 317(a), or a public body under section 310 of Title 1. Records of, and internal materials prepared for, specific reviews under this section shall be exempt from public disclosure under 1 V.S.A. § 316 inspection and copying under the Public Records Act.

Sec. 5. EFFECT OF AMENDMENT

Sec. 4 of this act amends 8 V.S.A. § 4089a(i) to eliminate references to independent panels of mental health professionals. Such panels were eliminated in 2011 Acts and Resolves No. 21, Sec. 14, and therefore the references to such panels in subsection (i) likewise should be removed. However, if a public agency obtained and retains custody of records of such panels in connection with specific reviews under 8 V.S.A. § 4089a, the records shall remain exempt from public inspection and copying under the Public Records Act, and shall continue to be maintained in compliance with any

applicable State or federal laws, after the amendments in Sec. 4 of this act take effect.

Sec. 6. 8 V.S.A. § 7041(e) is amended to read:

(e) The notice of hearing held under subsection (a) of this section and any order issued pursuant to subsection (a) shall be served upon the insurer pursuant to the provisions of 3 V.S.A. chapter 25. The notice of hearing shall state the time and place of hearing, and the conduct, condition, or ground upon which the Commissioner may base his or her order. Unless mutually agreed between the Commissioner and the insurer, the hearing shall occur not less than ten days nor more than 30 days after notice is served and shall be held at the offices of the Department of Financial Regulation or in some other place convenient to the parties as determined by the Commissioner. ~~Hearings~~ Unless the insurer requests a public hearing, hearings and hearing records under subsection (a) of this section shall be private and shall not be subject to the provisions of 1 V.S.A. chapter 5, subchapters 2 and 3 (~~public information and access to public records~~), unless the insurer requests a public hearing the Open Meeting Law and the Public Records Act.

Sec. 7. 9 V.S.A. § 4100b is amended to read:

§ 4100b. ENFORCEMENT; TRANSPORTATION BOARD

* * *

(e) The Board shall be empowered to determine the location of hearings, appoint persons to serve at the deposition of out-of-state witnesses, administer oaths, and authorize stenographic or recorded transcripts of proceedings before it. Prior to the hearing on any protest, but no later than 45 days after the filing of the protest, the Board shall require the parties to the proceeding to attend a prehearing conference in which the Chair or designee shall have the parties address the possibility of settlement. If the matter is not resolved through the conference, the matter shall be placed on the Board's calendar for hearing. ~~Conference discussions~~ Settlement communications shall remain confidential ~~and~~, shall be exempt from public inspection and copying under the Public Records Act, shall not be disclosed ~~or~~, and shall not be used as an admission in any subsequent hearing.

* * *

Sec. 8. 17 V.S.A. § 2154(b) is amended to read:

(b) A registered voter's month and day of birth, driver's license number, the last four digits of the applicant's Social Security number, and street address if different from the applicant's mailing address shall ~~not be considered a public record as defined in 1 V.S.A. § 317(b)~~ be kept confidential and are

exempt from public copying and inspection under the Public Records Act. Any person wishing to obtain a copy of all of the statewide voter checklist must swear or affirm, under penalty of perjury pursuant to 13 V.S.A. chapter 65, that the person will not use the checklist for commercial purposes. The affirmation shall be filed with the ~~secretary of state~~ Secretary of State.

Sec. 9. 18 V.S.A. § 5083 is amended to read:

§ 5083. PARTICIPANTS IN ADDRESS CONFIDENTIALITY PROGRAM

(a) If a participant in the program described in 15 V.S.A. chapter 21, subchapter 3 who is the parent of a child born during the period of program participation notifies the physician or midwife who delivers the child, or the hospital at which the child is delivered, not later than 24 hours after the birth of the child, that the participant's confidential address should not appear on the child's birth certificate, then the ~~department~~ Department shall not disclose such confidential address or the participant's town of residence on any public records. A participant who fails to provide such notice shall be deemed to have waived the provisions of this section. If such notice is received, then notwithstanding section 5071 of this title, the attendant physician or midwife shall file the certificate with the ~~supervisor of vital records registration~~ Supervisor of Vital Records within ten days of the birth, without the confidential address or town of residence, and shall not file the certificate with the town clerk.

(b) The ~~supervisor of vital records registration~~ Supervisor of Vital Records shall receive and file for record all certificates filed in accordance with this section, and shall ensure that a parent's confidential address and town of residence do not appear on the birth certificate during the period that the parent is a program participant. A certificate filed in accordance with this section shall be a public document. The ~~supervisor of vital records~~ Supervisor of Vital Records shall notify the ~~secretary of state~~ Secretary of State of the receipt of a birth certificate on behalf of a program participant.

(c) The ~~department~~ Department shall maintain a confidential record of the parent's actual mailing address and town of residence. Such record shall be exempt from public inspection and copying under the Public Records Act.

* * *

Sec. 10. 18 V.S.A. § 5112(c) is amended to read:

(c) A new certificate issued pursuant to subsection (a) of this section shall be substituted for the original birth certificate in official records. The new certificate shall not show that a change in name or sex, or both, has been made. The original birth certificate, the ~~probate court~~ Probate Division order, and any

other records relating to the issuance of the new birth certificate shall be confidential and shall ~~not be subject to~~ be exempt from public inspection ~~pursuant to 1 V.S.A. § 317(e) and copying under the Public Records Act;~~ however an individual may have access to his or her own records and may authorize the ~~state registrar~~ State Registrar to confirm that, pursuant to court order, it has issued a new birth certificate to the individual that reflects a change in name or sex, or both.

Sec. 11. 18 V.S.A. § 5132(c) is amended to read:

(c) The ~~department~~ Department shall maintain a confidential record of the person's actual mailing address and town of residence. Such record shall be exempt from public inspection and copying under the Public Records Act.

Sec. 12. 21 V.S.A. § 516 is amended to read:

§ 516. CONFIDENTIALITY

(a) Any health care information about an individual to be tested shall be ~~taken~~ collected only by a medical review officer ~~and~~. This information shall be confidential and shall not be released to anyone except the individual tested, and may not be obtained by court order or process, except as provided in this subchapter. In addition, a medical review officer shall not reveal the identity of an individual being tested to any person, including the laboratory.

(b) Employers, medical review officers, laboratories, ~~and their~~ the agents of any of these, who receive or have access to information about drug test results, shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, except where such release is compelled by a court of competent jurisdiction in connection with an action brought under this subchapter. ~~A medical review officer shall not reveal the identity of an individual being tested to any person, including the laboratory.~~

(c) If information about drug test results is released contrary to the provisions of this subchapter, it shall be inadmissible as evidence in any judicial or quasi-judicial proceeding, except in a court of competent jurisdiction in connection with an action brought under this subchapter.

Sec. 13. 26 V.S.A. § 1317(c) is amended to read:

(c) Except as provided in section 1368 of this title, information provided to the ~~department of health or of mental health~~ Department of Health, the Department of Mental Health, or the Department of Disabilities, Aging, and Independent Living under this section shall be confidential unless the ~~department~~ Department of Health decides to treat the report as a complaint, in which case, the provisions of section 1318 of this title shall apply.

Sec. 14. 26 V.S.A. § 1368(a) is amended to read:

(a) A data repository is created within the Department of Health which will be responsible for the compilation of all data required under this section ~~and, under this chapter, and under~~ any other law or rule which requires the reporting of such information. Notwithstanding any provision of law to the contrary, licensees shall promptly report and the Department shall collect the following information to create individual profiles on all health care professionals licensed, certified, or registered by the Department, pursuant to the provisions of this title, in a format created by the Department that shall be available for dissemination to the public:

* * *

Sec. 15. 33 V.S.A. § 5205 is amended to read:

§ 5205. FINGERPRINTS; PHOTOGRAPHS

(a) Fingerprint files of a child under the jurisdiction of the Court shall be kept separate from those of other persons under special security measures. Inspection of such files shall be limited to ~~inspection by~~ law enforcement officers only on a need-to-know basis unless otherwise authorized by the Court in individual cases.

* * *

Sec. 16. 33 V.S.A. § 5287(d) is amended to read:

(d) Upon discharge and dismissal under subsection (c) of this section, all records relating to the case in the ~~District Court~~ Criminal Division shall be expunged, and all records relating to the case in the Family Court shall be sealed pursuant to section 5119 of this title.

* * * Technical Corrections Relating to Education; Education Quality Standards * * *

Sec. 17. 16 V.S.A. § 11(a)(8) is amended to read:

(8) “Independent school” means a school other than a public school, which provides a program of elementary or secondary education, or both. An “independent school meeting ~~school~~ education quality standards” means an independent school in Vermont that undergoes the ~~school~~ education quality standards process and meets the requirements of subsection 165(b) of this title.

Sec. 18. 16 V.S.A. § 164 is amended to read:

§ 164. STATE BOARD; GENERAL POWERS AND DUTIES

The State Board shall evaluate education policy proposals, including timely evaluation of policies presented by the Governor and Secretary; engage local

school board members and the broader education community; and establish and advance education policy for the State of Vermont. In addition to other specified duties, the Board shall:

* * *

(18) Ensure that Vermont's students, including students enrolled in secondary career technical education, have access to a substantially equal educational opportunity by developing a system to evaluate the equalizing effects of Vermont's education finance system and ~~school~~ education quality standards under section 165 of this title.

* * *

Sec. 19. 16 V.S.A. § 165 is amended to read:

§ 165. ~~STANDARDS OF QUALITY FOR PUBLIC SCHOOLS~~

EDUCATION QUALITY STANDARDS; EQUAL EDUCATIONAL OPPORTUNITIES; INDEPENDENT SCHOOL MEETING SCHOOL EDUCATION QUALITY STANDARDS

(a) In order to carry out Vermont's policy that all Vermont children will be afforded educational opportunities that are substantially equal in quality, each Vermont public school, including each career technical center, shall meet the following ~~school~~ education quality standards:

(1) The school ~~shall~~, through a process including parents, teachers, students, and community members, ~~develop, implement, and annually update a comprehensive action~~ develops, implements, and annually updates a continuous improvement plan to improve student performance within the school. The plan shall include goals and objectives for improved student learning and educational strategies and activities to achieve ~~their~~ its goals. The plan shall also address the effectiveness of efforts made since the previous ~~action~~ continuous improvement plan to ensure the school maintains a safe, orderly, civil, and positive learning environment that is free from harassment, hazing, and bullying. The school shall assess student performance under the plan using a method or methods of assessment developed under subdivision 164(9) of this title.

(2) The school, at least annually, reports student performance results to community members in a format selected by the school board. In the case of a regional career technical center, the community means the school districts in the service region. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subdivision. The school report shall include:

* * *

(C) Information indicating progress toward meeting the goals of an annual ~~action~~ continuous improvement plan.

* * *

(b) Every two years, the Secretary shall determine whether students in each Vermont public school are provided educational opportunities substantially equal to those provided in other public schools. If the Secretary determines that a school is not meeting the education quality standards listed in subsection (a) of this section or that the school is making insufficient progress in improving student performance in relation to the standards for student performance set forth in subdivision 164(9) of this title, he or she shall describe in writing actions that a district must take in order to meet either or both sets of standards and shall provide technical assistance to the school. If the school fails to meet the standards or make sufficient progress by the end of the next two-year period, the Secretary shall recommend to the State Board one or more of the following actions:

* * *

(e) If the Secretary determines at any time that the failure of a school to meet the ~~school~~ education quality standards listed in subsection (a) of this section is severe or pervasive, potentially results in physical or emotional harm to students, or significant deprivation of equal education opportunities, and the school has either unreasonably refused to remedy the problem or its efforts have proved ineffective, he or she may recommend to the State Board one or more of the actions listed in subsection (b) of this section. The State Board shall then follow the procedure of subsection (c) of this section.

(f) In order to be designated an independent school meeting ~~school~~ education quality standards, an independent school shall participate in the ~~school~~ education quality standards process of subsection (b) of this section. An independent school shall receive technical assistance in accordance with the provisions of subsection (b), but shall not be subject to subdivisions (b)(2)-(4) of this section. The school shall be an independent school meeting ~~school~~ education quality standards unless the State Board, after opportunity for hearing, finds that:

(1) the school has discontinued its participation in the ~~school~~ education quality standards process; or

(2) two or more years following a determination that the school is not meeting the education quality standards or that the school is making

insufficient progress in improving student performance, the school fails to meet the standards or make sufficient progress toward meeting the standards.

Sec. 20. 16 V.S.A. § 212 is amended to read:

§ 212. SECRETARY'S DUTIES GENERALLY

The Secretary shall execute those policies adopted by the State Board in the legal exercise of its powers and shall:

* * *

(12) Distribute at his or her discretion upon request to approved independent schools appropriate forms and materials relating to the ~~school~~ education quality standards for elementary and secondary students.

* * *

Sec. 21. 16 V.S.A. § 821(d) is amended to read:

(d) Notwithstanding subdivision (a)(1) of this section, the electorate of a school district that does not maintain an elementary school may grant general authority to the school board to pay tuition for an elementary student at an approved independent elementary school or an independent school meeting ~~school~~ education quality standards pursuant to sections 823 and 828 of this chapter upon notice given by the student's parent or legal guardian before April 15 for the next academic year.

Sec. 22. 16 V.S.A. § 822 is amended to read:

§ 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS OR PAY TUITION

(a) Each school district shall maintain one or more approved high schools in which high school education is provided for its resident students unless:

(1) the electorate authorizes the school board to close an existing high school and to provide for the high school education of its students by paying tuition to a public high school, an approved independent high school, or an independent school meeting ~~school~~ education quality standards, to be selected by the parents or guardians of the student, within or outside the State; or

* * *

(c)(1) A school district may both maintain a high school and furnish high school education by paying tuition:

* * *

(B) to an approved independent school or an independent school meeting ~~school~~ education quality standards if the school board judges that a

student has unique educational needs that cannot be served within the district or at a nearby public school.

* * *

Sec. 23. 16 V.S.A. § 823(b) is amended to read:

(b) Unless the electorate of a school district authorizes payment of a higher amount at an annual or special meeting warned for the purpose, the tuition paid to an approved independent elementary school or an independent school meeting ~~school~~ education quality standards shall not exceed the least of:

* * *

Sec. 24. 16 V.S.A. § 824(b) is amended to read:

(b) Except as otherwise provided for technical students, the district shall pay the full tuition charged its students attending a public high school in Vermont or an adjoining state or a public or approved independent school in Vermont functioning as an approved area career technical center, or an independent school meeting ~~school~~ education quality standards; provided:

(1) If a payment made to a public high school or an independent school meeting ~~school~~ education quality standards is three percent more or less than the calculated net cost per secondary pupil in the receiving school district or independent school for the year of attendance then the district or school shall be reimbursed, credited, or refunded pursuant to section 836 of this title.

(2) Notwithstanding the provisions of this subsection or of subsection 825(b) of this title, the board of the receiving public school district, public or approved independent school functioning as an area career technical center, or independent school meeting ~~school~~ education quality standards may enter into tuition agreements with the boards of sending districts that have terms differing from the provisions of those subsections, provided that the receiving district or school must offer identical terms to all sending districts, and further provided that the statutory provisions apply to any sending district that declines the offered terms.

Sec. 25. 16 V.S.A. § 826 is amended to read:

§ 826. NOTICE OF TUITION RATES; SPECIAL EDUCATION CHARGES

(a) A school board, or the board of trustees of an independent school meeting ~~school~~ education quality standards, that proposes to increase tuition charges shall notify the school board of the school district from which its nonresident students come, and the Secretary, of the proposed increase on or before January 15 in any year; such increases shall not become effective without the notice and not until the following school year.

(b) A school board or the board of trustees of an independent school meeting ~~school~~ education quality standards may establish a separate tuition for one or more special education programs. No such tuition shall be established unless the State Board has by rule defined the program as of a type that may be funded by a separate tuition. Any such tuition shall be announced in accordance with the provisions of subsection (a) of this section. The amount of tuition shall reflect the net cost per pupil in the program. The announcement of tuition shall describe the special education services included or excluded from coverage. Tuition for part-time students shall be reduced proportionally.

* * *

Sec. 26. 16 V.S.A. § 828 is amended to read:

§ 828. TUITION TO APPROVED SCHOOLS; AGE; APPEAL

A school district shall not pay the tuition of a student except to a public school, an approved independent school, an independent school meeting ~~school~~ education quality standards, a tutorial program approved by the State Board, an approved education program, or an independent school in another state or country approved under the laws of that state or country, nor shall payment of tuition on behalf of a person be denied on account of age. Unless otherwise provided, a person who is aggrieved by a decision of a school board relating to eligibility for tuition payments, the amount of tuition payable, or the school he or she may attend, may appeal to the State Board and its decision shall be final.

Sec. 27. 16 V.S.A. § 1532 is amended to read:

§ 1532. MINIMUM STANDARDS; MEASUREMENT OF STANDARDS

(a) The State Board shall adopt by rule:

(1) Minimum standards for the operation and performance of career technical centers that include the ~~school~~ education quality standards adopted by the State Board under subdivision 164(9) and section 165 of this title.

* * *

Sec. 28. 16 V.S.A. § 3447 is amended to read:

§ 3447. SCHOOL BUILDING CONSTRUCTION; STATE BONDS; CITY AS SCHOOL DISTRICT

The State Treasurer may issue bonds under 32 V.S.A. chapter 13 in such amount as may from time to time be appropriated to assist incorporated school districts, joint contract schools, town school districts, union school districts, regional career technical center school districts, and independent schools meeting ~~school~~ education quality standards that serve as the public high school for one or more towns or cities, or combination thereof, and that both receive

their principal support from public funds and are conducted within the State under the authority and supervision of a board of trustees, not less than two-thirds of whose membership is appointed by the selectboard of a town or by the city council of a city or in part by such selectboard and the remaining part by such council under the conditions and for the purpose set forth in sections 3447–3456 of this title. A city shall be deemed to be an incorporated school district within the meaning of sections 3447–3456 of this title.

Sec. 29. 28 V.S.A. § 120 is amended to read:

§ 120. DEPARTMENT OF CORRECTIONS EDUCATION PROGRAM;
INDEPENDENT SCHOOL

* * *

(b) Applicability of education provisions. The education program shall be approved by the State Board of Education as an independent school under 16 V.S.A. § 166, shall comply with the ~~school~~ education quality standards provided by 16 V.S.A. § 165, and shall be coordinated with adult education, special education, and career technical education.

* * *

Sec. 30. STATUTORY REVISION

In its statutory revision capacity under 2 V.S.A. § 424, the Office of Legislative Council shall, where appropriate, replace the words “school quality standards” with the words “education quality standards” wherever those words appear in the Vermont Statutes Annotated.

* * * Technical Corrections Relating to Education; Miscellaneous * * *

Sec. 31. 16 V.S.A. § 11(a)(30)(B) is amended to read:

(B) The definitions of “educational institution,” “organization,” “pledging,” and “student” shall be the same as those in section ~~140a~~ 570i of this title.

Sec. 32. 16 V.S.A. § 563 is amended to read:

§ 563. POWERS OF SCHOOL BOARDS; FORM OF VOTE IF BUDGET
EXCEEDS BENCHMARK AND DISTRICT SPENDING IS ABOVE
AVERAGE

The school board of a school district, in addition to other duties and authority specifically assigned by law:

* * *

(2) May take any action that is required for the sound administration of the school district. The ~~Commissioner~~ Secretary, with the advice of the Attorney General, upon application of a school board, shall decide whether any action contemplated or taken by a school board under this subdivision is required for the sound administration of the district and is proper under this subdivision. The ~~Commissioner's~~ Secretary's decision shall be final.

* * *

Sec. 33. 16 V.S.A. § 1533(b) is amended to read:

(b) Evaluations of career technical centers shall consider at least the following areas:

* * *

(7) the adequacy and effectiveness of the center in meeting the educational and employment needs of all its eligible students, including its success in taking steps to encourage each student to consider enrolling in courses not traditional for that student's ~~sex~~ gender.

Sec. 34. 16 V.S.A. § 1542(b) is amended to read:

(b) A regional advisory board, with the consent of the Workforce ~~Development Council~~ Investment Board, may delegate its responsibilities to the grantee that performs workforce development activities in the region pursuant to 10 V.S.A. § 542. In this case, the grantee shall become the regional advisory board unless and until the school board that operates the career technical center requests that the regional advisory board be reconstituted pursuant to subsection (a) of this section.

Sec. 35. 16 V.S.A. § 1546(b) is amended to read:

(b) A comprehensive high school shall charge and receive tuition pursuant to section 824 of this title. A comprehensive high school shall be a career technical center for the purposes of receiving funding for grants per full-time equivalent student under section 1561 of this title, for tryout classes under section 1562 of this title, ~~for equipment replacement under section 1564 of this title, for incentive grants under section 1566 of this title,~~ and for reporting requirements under section 1568 of this title. Funds received under this section shall be used for support of career technical education programs within the comprehensive high school.

Sec. 36. 16 V.S.A. § 1562 is amended to read:

§ 1562. TRYOUT CLASSES

From the monies annually available for use in career technical education, the State Board may reimburse part of the program cost attributable to

programs designed to assist students in deciding whether to enroll in career technical courses. As a condition of such assistance, the program shall demonstrate that it has taken steps to encourage each student to consider enrolling in courses not traditional for that student's ~~sex~~ gender.

Sec. 37. 16 V.S.A. § 1940(b)(1)(C) is amended to read:

(C) In the absence of an open estate or Probate Division of the Superior Court decree of distribution, and where the deceased member's account is valued at less than \$1,000.00 to the surviving spouse of the deceased owner, or, if there is no surviving spouse, then to the next of kin according to ~~14 V.S.A. § 551~~ 14 V.S.A. § 314.

Sec. 38. 16 V.S.A. § 1941(a)(1)(B)(iii) is amended to read:

(iii) In the absence of an open estate or Probate Division of the Superior Court decree of distribution, and when the deceased member's account is valued at less than \$1,000.00 to the surviving spouse of the deceased owner, or, if there is no surviving spouse, then to the next of kin according to ~~14 V.S.A. § 551~~ 14 V.S.A. § 314.

Sec. 39. 16 V.S.A. § 1943(a) is amended to read:

(a) The members of the Vermont Pension Investment Committee established in 3 V.S.A. chapter 17 shall be the trustees of the Fund created by this ~~subchapter~~ chapter, and with respect to them may invest and reinvest the assets of the Fund, and hold, purchase, sell, assign, transfer, and dispose of the securities and investments in which the assets of the Fund have been invested and reinvested. Investments shall be made in accordance with the standard of care established by the prudent investor rule under ~~9 V.S.A. chapter 147~~ 14A V.S.A. chapter 9.

Sec. 40. 16 V.S.A. § 2281(f) is amended to read:

(f) Control of funds appropriated ~~and of the work carried on under the terms of section 2321 of this title~~ shall be vested in the Board of Trustees of the University of Vermont and State Agricultural College. All funds appropriated to the Agricultural College shall be kept in a separate account and shall be audited annually by an independent accounting firm registered in the State of Vermont in accordance with government auditing standards issued by the ~~United States~~ U.S. Government Accountability Office.

Sec. 41. 16 V.S.A. § 4028(d) is amended to read:

(d) Notwithstanding ~~32 V.S.A. § 502(b)(2)~~ 2 V.S.A. § 502(b)(2), the Joint Fiscal Office shall prepare a fiscal note for any legislation that requires a supervisory union or school district to perform any action with an associated cost, but does not provide money or a funding mechanism for fulfilling that

obligation. Any fiscal note prepared under this subsection shall be completed no later than the date that the legislation is considered for a vote in the first committee to which it is referred.

* * * Technical Corrections Relating to Health Care and Human Services * * *

Sec. 42. 9 V.S.A. § 2466a(c)(2)(A) is amended to read:

(A) “Manufacturer of prescription drugs” means a person authorized by law to manufacture, bottle, or pack drugs or biological products, a licensee or affiliate of that person, or a labeler that receives drugs or biological products from a manufacturer or wholesaler and repackages them for later retail sale and has a labeler code from the federal Food and Drug Administration under ~~21 C.F.R. 2027.20 (1999)~~ 21 C.F.R. § 202.20.

Sec. 43. 16 V.S.A. § 3856(j) is amended to read:

(j) In the case of bonds issued in connection with a new health care project subject to the provisions of 18 V.S.A. chapter 221, subchapter 5, the Agency shall not authorize bonds on behalf of an eligible institution defined under subdivision 3851(c)(5) of this title, unless the project and the capital expenditures associated with the project have been approved by the ~~Commissioner of Financial Regulation~~ Green Mountain Care Board, pursuant to 18 V.S.A. chapter 221, subchapter 5. The Agency shall consider the recommendations of the ~~Commissioner~~ Board in connection with any such proposed authorization.

Sec. 44. 18 V.S.A. § 1905(21) is amended to read:

(21) In conducting its reviews, the licensing agency shall evaluate the quality and financial indicators published by the ~~department of financial regulation~~ Commissioner of Health under subsection 9405b(c) of this title.

Sec. 45. 18 V.S.A. § 5227 is amended to read:

§ 5227. RIGHT TO DISPOSITION

(a) If there is no written directive of the decedent, in the following order of priority, one or more competent adults shall have the right to determine the disposition of the remains of a decedent, including the location, manner, and conditions of disposition and arrangements for funeral goods and services:

(1) an individual appointed to arrange for the disposition of decedent’s remains pursuant to chapter 231 (advance directives) of this title;

(2) a surviving spouse, ~~civil union partner, or reciprocal beneficiary, as defined in 15 V.S.A. § 1302,~~ of the decedent;

* * *

Sec. 46. 18 V.S.A. § 5250i is amended to read:

§ 5250i. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S
BODY OR PART

(a) Subject to subsections (b) and (c) of this section and unless barred by section 5250g or 5250h of this title, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

* * *

(3) ~~the decedent's reciprocal beneficiary, as defined in 15 V.S.A. § 1302;~~ [Repealed.]

* * *

Sec. 47. 18 V.S.A. § 9701(18) is amended to read:

(18) "Interested individual" means:

(A) the principal's spouse, adult child, parent, adult sibling, adult grandchild, ~~reciprocal beneficiary~~, or clergy person; or

* * *

Sec. 48. 18 V.S.A. § 9703(c) is amended to read:

(c) Neither the agent appointed by the principal nor the principal's spouse, ~~reciprocal beneficiary~~, parent, adult sibling, adult child, or adult grandchild may witness the advance directive.

Sec. 49. 33 V.S.A. § 7301 is amended to read:

§ 7301. NURSING HOME RESIDENTS' BILL OF RIGHTS

The General Assembly hereby adopts the Nursing Home Residents' Bill of Rights as follows:

(1) The governing body of the facility shall establish written policies regarding the rights and responsibilities of residents and, through the administrator, is responsible for development of, and adherence to, procedures implementing such policies. These policies and procedures shall be made available to residents, to any guardians, next of kin, ~~reciprocal beneficiaries~~, sponsoring agency, or representative payees selected pursuant to subsection 205(j) of the Social Security Act, and Subpart Q of ~~20 CFR Part 404~~ 20 C.F.R. part 404, and to the public.

(2) The staff of the facility shall ensure that, at least, each individual admitted to the facility:

* * *

(N) If married ~~or in a reciprocal beneficiaries relationship~~, is assured privacy for visits by the resident's spouse ~~or reciprocal beneficiary~~; if both are residents of the facility, they are permitted to share a room.

* * *

(3) The staff of the facility shall ensure that the residents and their families, ~~including a reciprocal beneficiary~~:

* * *

Sec. 50. 33 V.S.A. § 7306 is amended to read:

§ 7306. RESIDENT'S REPRESENTATIVE

(a) The rights and obligations established under this chapter shall devolve to a resident's ~~reciprocal beneficiary~~, guardian, next of kin, sponsoring agency, or representative payee (except when the facility itself is a representative payee) if the resident:

* * *

Sec. 51. 18 V.S.A. chapter 221, subchapter 1 is redesignated to read:

Subchapter 1. ~~Health Information Technology~~ Quality, Resource Allocation, and Cost Containment

Sec. 52. 18 V.S.A. § 9718 is amended to read:

§ 9718. PETITION FOR REVIEW BY PROBATE DIVISION OF THE SUPERIOR COURT

(a) ~~A~~ A petition may be filed in Probate Division of the Superior Court under this section by:

* * *

(4) a representative of the State-designated protection and advocacy system if the principal is in the custody of the Department of ~~Health~~ Mental Health; or

* * *

Sec. 53. 33 V.S.A. § 1116(d) is amended to read:

(d) A participant may cure a sanction by coming into compliance in accordance with the Department's rules. During the first 60 months of the family's receipt of financial assistance, a participating adult may have all previous sanctions forgiven by demonstrating 12 consecutive months of compliance with family development plan requirements or work requirements

or any combination of the two. Subsequent acts of noncompliance after a sanctioned adult has completed a successful 12-month sanction forgiveness period will be treated in accordance with ~~subdivisions (c)(1) through (5)~~ subdivisions (c)(1) and (2) of this section without consideration of the sanctions that have been forgiven.

Sec. 54. 33 V.S.A. § 1812(b)(1) is amended to read:

(b)(1) An individual or family with income at or below 300 percent of the ~~federal poverty guideline~~ federal poverty level shall be eligible for cost-sharing assistance, including a reduction in the out-of-pocket maximums established under Section 1402 of the Affordable Care Act.

Sec. 55. 33 V.S.A. § 1827(h) is amended to read:

(h) Any prescription drug coverage offered by Green Mountain Care shall be consistent with the standards and procedures applicable to the pharmacy best practices and cost control program established in ~~sections 1996 and~~ section 1998 of this title.

Sec. 56. 33 V.S.A. § 1906 is amended to read:

§ 1906. RECOUPMENT OF AMOUNTS SPENT ON CHILD MEDICAL CARE

(a) The State Medicaid agency, any State agency administering health benefits or a health benefit plan for which Medicaid is a source of funding, or the ~~office of child support~~ Office of Child Support may recoup the amounts paid by the State for child medical expenses from any person who:

(1) is required by court or administrative order to provide coverage of the cost of health services to a child eligible for medical assistance under Medicaid; and who either:

(~~2~~)(A)(1) ~~has~~ Has received payment from a third party for the costs of such services, but has not used the payments to reimburse either the other parent or guardian of the child or the provider of the services. Claims for current and past due child support shall take priority over these claims; ~~or,~~

(~~B~~)(2) ~~has~~ Has failed to give any notice required by 15 V.S.A. § 663(d).

(b) In addition to any other remedies available at law, all remedies available for the collection and enforcement of child support under 15 V.S.A. chapter 11 shall apply to medical support recoupment under this section.

Sec. 57. 33 V.S.A. § 2001(e)(3) is amended to read:

(3) The Commissioner shall not enter into a contract with a pharmacy benefit manager who has entered into an agreement or engaged in a practice described in subdivision (2) of this subsection, unless the Commissioner determines, ~~and certifies in the fiscal report required by subdivision (d)(4) of this section,~~ that such the agreement or practice furthers the financial interests of Vermont, and does not adversely affect the medical interests of Vermont beneficiaries.

Sec. 58. 33 V.S.A. § 2114(c) is amended to read:

(c) A family is eligible if:

(1) The family includes at least one dependent child.

(2)(A) The family is in imminent danger of losing its housing due to circumstances that could not reasonably have been avoided, including:

(i) the rent or mortgage payments were not made because the family experienced an extraordinary event that appropriately required the use of the funds;

(ii) a family member has a disability which contributed to the circumstances that could not reasonably have been avoided and resulted in the rent or mortgage payments not being made; or

(iii) the family's essential expenses exceeded the family's income or the family's gross housing expenses were equal to or greater than 60 percent of the family's income; ~~or.~~

(B) The family is likely to be eligible for temporary housing assistance, and payment under this section would be more cost-effective than providing temporary housing.

(3) The payment of all or a portion of that arrearage will prevent, not merely postpone, homelessness.

* * *

Sec. 59. 33 V.S.A. § 4304a is amended to read:

§ 4304a. ADVISORY BOARD

(a) An Advisory Board is created to advise the Secretary of Education and the Commissioners of Mental Health and for Children and Families about children and adolescents with a severe emotional disturbance and their families.

(b) The Advisory Board shall also advise the Secretary and the Commissioners on the development of the system of care plan described in subsection 4305(c) of this title.

* * *

Sec. 60. 33 V.S.A. § 4305(b)(2) is amended to read:

(2) Local interagency teams shall submit procedures developed in accordance with the rules adopted under subdivision (1)(A) of this subsection to the Advisory Board for review and comment. Thereafter, the proposed procedures shall be submitted to the Secretary and the Commissioners, who shall approve the procedures if all the elements specified in subdivision (1)(A) of this subsection are satisfied.

Sec. 61. 33 V.S.A. § 5308 is amended to read:

§ 5308. TEMPORARY CARE ORDER

(a) The Court shall order that legal custody be returned to the child's custodial parent, guardian, or custodian unless the Court finds by a preponderance of the evidence that a return home would be contrary to the child's welfare because any one of the following exists:

* * *

(4) The custodial parent, guardian, or ~~guardian~~ custodian has abandoned the child.

* * *

Sec. 62. 33 V.S.A. § 5316 is amended to read:

§ 5316. DISPOSITION CASE PLAN

(a) The Department shall file a disposition case plan ordered pursuant to subsection 5315(g) of this title no later than 28 days from the date of the finding by the Court that a child is in need of care or supervision.

(b) A disposition case plan shall include, as appropriate:

(1) ~~A permanency goal.~~ The long-term goal for a child found to be in need of care and supervision is a safe and permanent home. A disposition case plan shall include a permanency goal and an estimated date for achieving the permanency goal. The plan shall specify whether permanency will be achieved through reunification with a custodial parent, guardian, or custodian; adoption; permanent guardianship; or other permanent placement. In addition to a primary permanency goal, the plan may identify a concurrent permanency goal.

* * *

Sec. 63. 33 V.S.A. § 6902(7) is amended to read:

(7)(A) “Neglect” means purposeful or reckless failure or omission by a caregiver to:

(A)(i) provide care or arrange for goods or services necessary to maintain the health or safety of a vulnerable adult, including food, clothing, medicine, shelter, supervision, and medical services, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or his or her representative, or an advance directive, as defined in 18 V.S.A. § 9701;

* * *

Sec. 64. 33 V.S.A. § 6902(10) is amended to read:

(10) “Representative” means a court-appointed guardian, or an agent acting under a ~~durable power of attorney for health care~~ an advance directive executed pursuant to 18 V.S.A. chapter 231, unless otherwise specified in the terms of the power of attorney.

Sec. 65. 2014 Acts and Resolves No. 142, Sec. 112 is amended to read:

Sec. 112. REPORT REPEAL DELAYED

The reports set forth in this section shall not be subject to expiration under the provisions of 2 V.S.A. § 20(d) (expiration of required reports) until July 1, 2018:

* * *

(6) 18 V.S.A. §§ 1756 (lead poisoning report), 7402 (Commissioner of Mental Health report), ~~8725(d) (System of Care Plan report)~~, 9505 (Vermont Tobacco Evaluation and Review Board conflict of interest policy report), and 9507(a) (Vermont Tobacco Evaluation and Review Board report).

* * *

Sec. 66. 2014 Acts and Resolves No. 158, Sec. 11 is amended to read:

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

§ 8839. DEFINITIONS

As used in this subchapter:

* * *

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

(A)(i) a ~~mentally retarded~~ person with an intellectual disability, which means significantly subaverage intellectual functioning existing

concurrently with deficits in adaptive behavior that were manifest before 18 years of age; or

(ii) a person with a traumatic brain injury;

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

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

* * * Technical Corrections Relating to Updates Reflecting Language as Used in the Administrative Procedures Act * * *

Sec. 67. 3 V.S.A. § 209 is amended to read:

§ 209. EFFICIENCY AND COOPERATION; TRANSFER OF PERSONNEL; REGULATIONS OF GOVERNOR

The ~~governor~~ Governor shall provide for and require a practical working system to ~~insure~~ ensure efficiency and mutual helpfulness among the departments herein specified. The ~~governor~~ Governor may transfer, temporarily or permanently, subordinates of any one of such departments to another department as the needs of the ~~state~~ State may seem to him or her to require. He or she shall ~~make, promulgate~~ adopt and have power to enforce such rules ~~and regulations~~ as he or she may see fit for the conduct of such departments and alter or add to the same in his or her discretion.

Sec. 68. 5 V.S.A. § 205(c) is amended to read:

(c) The ~~agency~~ Agency shall perform acts, issue and amend orders, ~~and make, promulgate, adopt~~ and amend reasonable general or special rules; ~~regulations~~, and procedure, and establish minimum standards, consistent with the provisions of this part, as the ~~agency~~ Agency shall deem necessary to carry out the provisions of this part.

Sec. 69. 5 V.S.A. § 426 is amended to read:

§ 426. HELICOPTERS; AIRCRAFT ENGAGED IN CROP SPRAYING OR DUSTING

The ~~agency~~ Agency may ~~promulgate~~ adopt rules necessary to regulate the operation in flight of helicopters, or of aircraft engaged in crop spraying or dusting. The provisions of section 421 of this title shall not apply to these rules.

Sec. 70. 5 V.S.A. § 773 is amended to read:

§ 773. RULES

The ~~secretary~~ Secretary is authorized to ~~promulgate~~ adopt rules governing the provisions of this subchapter.

Sec. 71. 6 V.S.A. § 367 is amended to read:

§ 367. INSPECTION; SAMPLING; ANALYSIS

For the purpose of enforcing this chapter and determining whether or not fertilizers and limes distributed in this ~~state~~ State endanger the health and safety of Vermont citizens, the ~~secretary~~ Secretary upon presenting appropriate credentials is authorized:

(1) ~~to~~ To enter any public or private premises except domiciles during regular business hours and stop and enter any vehicle being used to transport or hold fertilizer or lime;

(2) ~~to~~ To inspect blending plants, warehouses, establishments, vehicles, equipment, finished or unfinished materials, containers, labeling, and records relating to distribution, storage, or use;

(3) ~~to~~ To sample and analyze any fertilizer or lime. The methods of sampling and analysis shall be those adopted by the Association of Official Analytical Chemists. In cases not covered by this method, or in cases where methods are available in which improved applicability has been demonstrated, the ~~secretary~~ Secretary may authorize and adopt methods which reflect sound analytical procedures;

(4) ~~to~~ To develop any reasonable means necessary to monitor and ~~promulgate~~ adopt rules for the use of fertilizers and agricultural limes on Vermont soils where monitoring indicates environmental or health problems. In addition, the ~~secretary~~ Secretary may develop and ~~promulgate~~ adopt rules for the proper storage of fertilizers and limes held for distribution or sale.

Sec. 72. 6 V.S.A. § 611 is amended to read:

§ 611. SERVICE FOR CERTIFICATION OF SEED; STANDARDS AND REGULATIONS RULES

(a) The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall establish and make available to the people of the ~~state~~ State a service for the inspection of fields of potatoes for the purpose of certifying the product thereof for seed purposes. The ~~secretary~~ Secretary shall have authority to establish certification standards which shall specify the maximum percentages of diseases and other defects which will be permitted in fields, the product of which is certified for seed. The ~~secretary~~ Secretary shall

also have authority to ~~promulgate~~ adopt rules and ~~regulations~~ regarding the growing, roguing, grading, and shipping of certified seed potatoes and the conditions under which the service shall be available and a certificate granted.

* * *

Sec. 73. 6 V.S.A. § 1153 is amended to read:

§ 1153. RULES

(a) The ~~secretary~~ Secretary shall ~~promulgate~~ adopt rules necessary for the discovery, control, and eradication of contagious diseases and for the slaughter, disposal, quarantine, vaccination, and transportation of animals found to be diseased or exposed to a contagious disease. The ~~secretary~~ Secretary may also ~~promulgate~~ adopt rules requiring the disinfection and sanitation of real estate, buildings, vehicles, containers, and equipment which have been associated with diseased livestock.

(b) The ~~secretary~~ Secretary shall adopt rules establishing fencing and transportation requirements for deer.

(c) The ~~secretary~~ Secretary shall adopt rules necessary for the inventory, registration, tracking, and testing of deer.

Sec. 74. 6 V.S.A. § 2672(20) is amended to read:

(20) “Additional definitions”: The Secretary may (after due notice and public hearing) in accordance with 3 V.S.A. chapter 25, ~~promulgate~~ adopt, amend, or rescind definitions of other dairy products, including modified milk, dairy processes, and rules relating to specially trained personnel.

Sec. 75. 6 V.S.A. § 2681 is amended to read:

§ 2681. ADDITIVES

The ~~secretary~~ Secretary may, in accordance with ~~chapter 25 of Title 3,~~ ~~promulgate~~ 3 V.S.A. chapter 25, adopt a list of food grade additives which may be added to milk. The additives used in milk sold in retail packages shall be conspicuously stated in descending order of volume on the label of the package in a manner approved by the ~~secretary~~ Secretary.

Sec. 76. 6 V.S.A. § 2701 is amended to read:

§ 2701. ~~REGULATIONS~~ RULES

(a) The ~~secretary~~ Secretary, in accordance with ~~chapter 25 of Title 3~~ 3 V.S.A. chapter 25, shall ~~promulgate~~ adopt, and may amend and rescind, dairy sanitation ~~regulations~~ rules relating to dairy products to enforce this chapter, including ~~but not limited to:~~ labeling, weighing, measuring and testing facilities, buildings, equipment, methods, procedures, health of animals, health

and capability of personnel, and quality standards. In addition, the uniform regulation for sanitation requirements, as adopted by the National Conference on Interstate Milk Shippers, and published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Grade A Pasteurized Milk Ordinance (PMO), together with amendments, supplements, and revisions thereto, are adopted as part of this chapter, except as modified or rejected by ~~regulation rule~~. When adherence to the PMO is deemed unreasonable by the ~~agency~~ Agency for non-Grade "A" products, the most current version of the Recommended Requirements of the ~~United States~~ U.S. Department of Agriculture, Agricultural Marketing Service, Milk for Manufacturing Purposes and its Production and Processing may be used.

(b) The ~~secretary~~ Secretary shall ~~promulgate~~ adopt and from time to time amend or terminate ~~regulations rules~~ concerning but not limited to the taking and storing of samples, sampling equipment, approved tests, testing equipment, methods and procedures for performing tests, and related trade practices which are used as a basis for payment or acceptance for dairy products. The ~~secretary~~ Secretary shall ~~make~~ adopt, amend, or terminate ~~regulations rules~~ concerning examination for and the granting and terminating of dairy technician's licenses.

Sec. 77. 6 V.S.A. § 3029(b) and (c) are amended to read:

(b) The ~~secretary~~ Secretary may, by ~~regulation rule~~, create a permit program to allow persons to operate hives without removable frames for exhibition purposes. The owner of such a hive will not be in violation of this section so long as he or she holds a valid permit and is in compliance with all applicable ~~regulations rules~~ which the ~~secretary~~ Secretary may ~~promulgate~~ adopt.

(c) Upon determination that an owner has violated the terms of this section or any ~~regulation promulgated rule adopted~~ pursuant to this section, the ~~secretary~~ Secretary may destroy the hive or hives. Any determination of a violation shall be appealable to the ~~secretary~~ Secretary, who shall provide the owner a hearing within ten days of the determination of the violation, during which the order to destroy shall be stayed.

Sec. 78. 6 V.S.A. § 3030 is amended to read:

§ 3030. ~~REGULATIONS~~ RULES

The ~~secretary~~ Secretary may ~~adopt, promulgate~~ and enforce such rules ~~and regulations~~ which may provide for inspection, disinfection, seizure, destruction, or other disposition of bees, equipment, or bee products capable of carrying or transmitting any disease.

Sec. 79. 6 V.S.A. § 4012 is amended to read:

§ 4012. ~~RULES AND REGULATIONS~~

The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets may ~~promulgate~~ adopt any rules ~~and regulations~~ necessary to carry out the purposes of this chapter.

Sec. 80. 7 V.S.A. § 104 is amended to read:

§ 104. DUTIES; AUTHORITY TO RESOLVE ALLEGED VIOLATIONS

The Board shall have supervision and management of the sale of spirituous liquors within the State in accordance with the provisions of this title, and through the Commissioner of Liquor Control shall:

* * *

(5) ~~Make and promulgate regulations~~ Adopt rules necessary for the execution of its powers and duties and of the powers and duties of all persons under its supervision and control.

* * *

(9) ~~Make and promulgate regulations~~ Adopt rules regarding labeling and advertising of malt or vinous beverages and spirituous liquors by adoption of federal regulations or otherwise, and collaborate with federal agencies in respect thereto and the enforcement thereof.

(10) ~~Make and promulgate regulations~~ Adopt rules relating to extension of credit by and to licensees or permittees.

(11) ~~Make and promulgate regulations~~ Adopt rules regarding intrastate transportation of malt and vinous beverages.

Sec. 81. 7 V.S.A. § 238(c) is amended to read:

(c) The Liquor Control Board shall ~~promulgate~~ adopt rules ~~or regulations~~ as it deems necessary to effectuate the purposes of this section.

Sec. 82. 7 V.S.A. § 807 is amended to read:

§ 807. ~~RULES AND REGULATIONS; PROMULGATION~~ ADOPTION

The ~~liquor control board~~ Liquor Control Board shall ~~promulgate~~ adopt rules ~~or regulations~~ as it deems necessary to effectuate the purposes of this chapter.

Sec. 83. 8 V.S.A. § 4160(a)(2) is amended to read:

(2) If the Association fails to submit a suitable plan of operation within 180 days following April 27, 1972 or if at any time thereafter the Association fails to submit suitable amendments to the plan, the Commissioner shall, after

notice and hearing, adopt ~~and promulgate~~ such reasonable rules as are necessary or advisable to effectuate the provisions of this subchapter. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the Association and approved by the Commissioner.

Sec. 84. 8 V.S.A. § 4990 is amended to read:

§ 4990. RULES; ENFORCEMENT

The Commissioner may ~~promulgate~~ adopt reasonable rules to carry out the purposes of this chapter, and may suspend or revoke, after reasonable notice and a hearing, the certificate of authority or license to transact the business of insurance in this State of any member or other person that fails to comply with the provisions of this chapter, rules ~~promulgated~~ adopted hereunder, or any plan.

Sec. 85. 8 V.S.A. § 5102 is amended to read:

§ 5102. APPLICATION; CERTIFICATION, FILING, AND LICENSE FEES

* * *

(b) Application for a certificate of authority shall be made to the Commissioner and include such information and in such form as the Commissioner prescribes, including the following:

* * *

(7) A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of the initial operating results anticipated, and a statement as to the sources of working capital as well as any other sources of funding. The Commissioner shall ~~promulgate~~ adopt such rules ~~and regulations~~ relating to financial reserves of the health maintenance organization as he or she deems necessary. ~~Such regulations~~ These rules shall require financial reserves to be computed in relation to the health maintenance organization's financial risks and the impact of those risks on the health maintenance organization's ability to fulfill its contractual and financial obligations to its members.

* * *

(e)(1) Continuance by the Commissioner of a certificate of authority issued under this section shall be contingent upon satisfactory performance by the organization as to the delivery, continuity, accessibility, and quality of the services to which enrolled members are entitled, compliance with the provisions of Vermont law and rules ~~and regulations promulgated~~ adopted thereunder, and the continuing fiscal soundness of the organization.

* * *

Sec. 86. 8 V.S.A. § 5111 is amended to read:

§ 5111. ~~REGULATIONS~~ RULES

The Commissioner may, after notice and hearing, ~~promulgate~~ adopt reasonable rules ~~and regulations adopted~~ under 3 V.S.A. chapter 25, as are necessary or proper to carry out the provisions of this chapter.

Sec. 87. 8 V.S.A. § 14407(b) is amended to read:

(b) In addition to any other rules ~~which~~ that the Commissioner finds necessary or desirable for the administration of this section, the Commissioner may ~~promulgate regulations~~ adopt rules on the following:

* * *

Sec. 88. 9 V.S.A. § 103(c) is amended to read:

(c) The Commissioner of Financial Regulation may ~~promulgate~~ adopt rules specifying the form, content, and timing of commitment letters required by this section. The Commissioner may order any person to make restitution to any person injured as a result of a violation of this subchapter and may impose an administrative penalty of up to \$1,000.00 for a violation of this subchapter. The Commissioner may order any person to cease violating this subchapter.

Sec. 89. 9 V.S.A. § 104 is amended to read:

§ 104. HIGH RATE LOANS

(a) The Commissioner may ~~promulgate~~ adopt disclosure rules for loans secured by a first lien on residential real estate in which the borrower is expected to be charged in excess of four points or interest in excess of three percent over the rate established pursuant to 32 V.S.A. § 3108, or both, on the loan. The rules may provide for restrictions on representations by the lender regarding the disclosures required by the rules.

* * *

Sec. 90. 9 V.S.A. § 2461b(b) and (c) are amended to read:

(b) For the purpose of promoting business practices which are uniformly fair to sellers and which protect consumers, the Attorney General shall ~~promulgate~~ adopt necessary rules ~~and regulations~~, including notice prior to disconnection, repayment agreements, minimum delivery, discrimination, security deposits, and the assessment of fees and charges.

(c)(1) A violation of this section, or a rule ~~or regulation promulgated~~ adopted under this section not inconsistent with this section, shall constitute an unfair and deceptive act in commerce in violation of section 2453 of this title.

(2) No contract for propane services shall contain any provision that conflicts with the obligations and remedies established by this section or by any rule ~~or regulation promulgated~~ adopted under this section, and any conflicting provision shall be unenforceable and void.

Sec. 91. 9 V.S.A. § 2514(c) is amended to read:

(c) In addition to its other authority under Title 30, the Public Service Board shall have the authority to regulate compliance with this section, and to ~~promulgate~~ adopt any other ~~regulations~~ rules to protect consumers that the ~~board~~ Board finds necessary and appropriate, and in accordance with this chapter, including ~~regulations~~ rules concerning periodic notification of the passage of time to a caller while using interactive pay-per-call services, and ~~regulations~~ rules setting specific caps for any type of pay-per-call service.

Sec. 92. 9 V.S.A. § 3683a(d) is amended to read:

(d) The Agency of Transportation is authorized to ~~make and promulgate~~ adopt such ~~regulations~~ rules and standards as may, in its judgment, be necessary to carry out the policy of this State as set forth in subchapter 2 of chapter 93 of this title, provided ~~such regulations~~ the rules and standards are not less restrictive than any national standards promulgated by the ~~United States~~ U.S. Secretary of Commerce pursuant to Title 23, ~~United States Code of the U.S. Code~~, or any other appropriate officer or agency of the United States.

Sec. 93. 9 V.S.A. § 4113 is amended to read:

§ 4113. INVENTORY REPORTING; CONFIDENTIALITY

(a) The Commissioner may ~~promulgate regulations which~~ adopt rules that require any person owning or leasing primary storage facilities within the State to report to the Commissioner data concerning storage, inventory, and product receipts.

* * *

Sec. 94. 9 V.S.A. § 4133 is amended to read:

§ 4133. PETROLEUM SET-ASIDE

(a) The Commissioner shall ~~promulgate~~ adopt rules establishing a petroleum set-aside system for liquid fossil fuels. The fuel set-aside system established pursuant to this chapter shall not go into effect in whole or in part except where the federal government terminates, suspends, or fails to implement all or part of the federal petroleum allocation program. After a determination has been made by the Governor that the program is required to meet a petroleum supply shortage within the State which will significantly impair essential public services or essential economic activity, and after the

Governor has complied with any notice requirements and has received any approval required by federal law, the Commissioner shall implement only that portion of the State set-aside program necessary to prevent and alleviate any energy hardships or shortages. The State set-aside program shall continue in effect for no more than 90 days and shall terminate when the federal petroleum allocation program is renewed or implemented or when the energy hardship or shortage ceases to exist. Rules adopted by the Commissioner shall direct that prime suppliers set aside an amount of liquid fossil fuel, as determined by the Commissioner, which amount shall be a percentage of the monthly volume of liquid fossil fuels which prime suppliers intend to sell into the State distribution system for consumption within the State.

* * *

Sec. 95. 9 V.S.A. § 4174 is amended to read:

§ 4174. VERMONT MOTOR VEHICLE ARBITRATION BOARD

* * *

(b) The Board shall ~~promulgate~~ adopt rules under the provisions of 3 V.S.A. chapter 25 to implement the provisions of this chapter.

* * *

Sec. 96. 10 V.S.A. § 555(c) is amended to read:

(c) Any person operating or responsible for the operation of an air contaminant source emitting more than five tons of contaminants per year shall register the source with the ~~secretary~~ Secretary and renew the registration annually. Each day of operating an air contaminant source without a valid, current registration shall constitute a separate violation and subject the operator to a civil penalty not to exceed \$100.00 per violation. The ~~secretary~~ Secretary shall, after notice and opportunity for public hearing, ~~promulgate~~ adopt rules to carry out this section.

Sec. 97. 10 V.S.A. § 663 is amended to read:

§ 663. ADMINISTRATION

(a) The ~~department of economic development~~ Department of Economic Development, through the Vermont ~~department of tourism and marketing~~ Department of Tourism and Marketing, shall administer the travel promotion matching funds program with such flexibility so as to bring about the most effective and economical travel promotion program possible. The ~~department will promulgate~~ Department shall adopt rules and procedures necessary and appropriate to the proper operation of the matching funds program. These

rules shall also establish which travel promotion organizations are eligible to apply for matching funds.

(b) The ~~department will~~ Department shall make available complete instructions as to the applicant's duties and responsibilities and ~~will~~ shall establish forms necessary to carry out the purposes of this chapter.

Sec. 98. 10 V.S.A. § 1105 is amended to read:

§ 1105. INSPECTION OF DAMS

The ~~state~~ State agency having jurisdiction shall employ an engineer to make periodic inspections of nonfederal dams in the ~~state~~ State to determine their condition and the extent, if any, to which they pose a potential or actual threat to life and property, or shall ~~promulgate~~ adopt rules pursuant to ~~chapter 25 of Title 3~~ 3 V.S.A. chapter 25 to require an adequate level of inspection by an independent registered engineer experienced in the design and investigation of dams. The agency shall provide the owner with the findings of the inspection and any recommendations.

Sec. 99. 10 V.S.A. § 2603(c)(1) is amended to read:

(c)(1) The Commissioner, subject to the direction and approval of the Secretary, shall ~~promulgate~~ adopt and publish ~~regulations~~ rules in the name of the Agency for the use of State forests, or park lands, including reasonable fees or charges for the use of the lands, roads, camping sites, buildings, and other facilities and for the harvesting of timber or removal of minerals or other resources from such lands, notwithstanding 32 V.S.A. § 603.

Sec. 100. 10 V.S.A. § 6608a is amended to read:

§ 6608a. ECONOMIC POISONS

(a) The ~~commissioner of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall be responsible for and have the authority to implement and enforce those statutes enacted by the ~~general assembly~~ General Assembly, including ~~but not limited to~~ sections 6610a and 6612 of this title, and, those rules ~~and regulations~~ concerning the generation, transportation, treatment, storage, and disposal of economic poisons which are ~~promulgated~~ adopted by the ~~secretary~~ Secretary of Natural Resources in order to operate a hazardous waste management program that is equivalent to the federal program under Subtitle C of the Resource Conservation and Recovery Act of 1976 and amendments thereto, codified as 42 U.S.C. Chapter 82, subchapter 3. Procedures and funding for the interdepartmental implementation of a waste economic poison management program shall be established between the ~~secretary~~ Secretary of Natural Resources and the ~~commissioner of agriculture, food and markets~~ Commissioner of Agriculture, Food and Markets.

(b) The ~~secretary~~ Secretary of Natural Resources shall not ~~promulgate~~ adopt rules ~~or regulations~~ concerning the management of waste economic poisons ~~which that~~ that are more stringent than the statutory and regulatory requirements under Subtitle C of the Resource Conservation and Recovery Act of 1976 without the concurrence of the ~~commissioner of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets.

* * *

Sec. 101. 10 V.S.A. § 6608b is amended to read:

§ 6608b. RADIOACTIVE WASTES MIXED WITH HAZARDOUS WASTES

(a) The ~~commissioner of health~~ Commissioner of Health shall be responsible for and have the authority to implement and enforce those statutes enacted by the ~~general assembly~~ General Assembly, including ~~but not limited to~~ sections 6610a and 6612 of this title, and, those rules ~~and regulations~~ concerning the generation, transportation, treatment, storage, and disposal of radioactive wastes mixed with hazardous wastes which are ~~promulgated~~ adopted by the ~~secretary~~ Secretary in order to operate a hazardous waste management program that is equivalent to the federal program under Subtitle C of the Resource Conservation and Recovery Act of 1976 and amendments thereto, codified as 42 U.S.C. Chapter 82, subchapter 3. Procedures and funding for the interdepartmental implementation of a mixed radioactive waste management program shall be established between the ~~secretary~~ Secretary and the ~~commissioner of health~~ Commissioner of Health.

(b) The ~~secretary~~ Secretary shall not ~~promulgate~~ adopt rules ~~or regulations~~ concerning the management of radioactive wastes mixed with hazardous wastes ~~which that~~ that are more stringent than the statutory and regulatory requirements under Subtitle C of the Resource Conservation and Recovery Act of 1976 without the concurrence of the ~~commissioner of health~~ Commissioner of Health.

* * *

Sec. 102. 11 V.S.A. § 926 is amended to read:

§ 926. REDEMPTION

Scrip shall not be issued unless its redemption is secured by:

* * *

(3) Deposits in banks having their principal place of business within this ~~state~~ State and approved by the ~~commissioner~~ Commissioner. Scrip may not be issued against the security of such deposits to an amount in excess of

one-third of the principal of such deposits assigned to the scrip corporation. The ~~commissioner~~ Commissioner may ~~promulgate~~ adopt rules limiting the percentage and maximum amount and providing for the minimum amounts exceeding the usual percentage of any single bank deposit which may be so assigned as security. Such amount and percentages may be varied with respect to the class of deposits, whether savings or commercial or on certificate of deposit, and also with respect to the amount of such deposits.

Sec. 103. 11 V.S.A. § 927 is amended to read:

§ 927. LIMITATION OF AMOUNT OF SCRIP ISSUED

The ~~commissioner~~ Commissioner may ~~promulgate~~ adopt rules ~~and regulations~~ governing and limiting the amount of scrip which may be issued against any one or all of the classes of security mentioned in section 926 of this title.

Sec. 104. 18 V.S.A. § 102 is amended to read:

§ 102. DUTIES OF BOARD

The ~~board~~ Board shall supervise and direct the execution of all laws vested in the ~~department of health~~ Department of Health by virtue of this title, and shall formulate and carry out all policies relating thereto, and shall ~~make and promulgate~~ adopt such rules ~~and regulations~~ as are necessary to administer this title and shall make a biennial report with recommendations to the ~~governor~~ Governor and to the ~~general assembly~~ General Assembly. The ~~board~~ Board may delegate such powers and assign such duties to the ~~commissioner~~ Commissioner as it may deem appropriate and necessary for the proper execution of provisions of this title. The authority of the ~~board~~ Board to ~~make and promulgate~~ adopt the rules ~~and regulations~~ shall extend to all matters relating to the preservation of the public health and consistent with the duties and responsibilities of the ~~board~~ Board. The ~~board's~~ Board's jurisdiction over sewage disposal includes emergent conditions which create a risk to the public health as a result of sewage treatment and disposal, or its effects on water supply, but does not include rulemaking on design standards for on-site sewage disposal systems.

Sec. 105. 18 V.S.A. § 112 is amended to read:

§ 112. CIRCULARS OF INFORMATION

The ~~board~~ Board shall prepare and distribute to local boards of health, physicians, and other persons such printed circulars as it deems necessary and such rules ~~and regulations~~ as the ~~board~~ Board may ~~promulgate~~ adopt and, upon request of the ~~board~~ Board, the ~~commissioner~~ Commissioner thereof shall give information relative to the cause and prevention of disease and directions as to

modes of management, quarantine, and means of prevention of contagious and infectious diseases.

Sec. 106. 18 V.S.A. § 1908 is amended to read:

§ 1908. ~~RULES;~~ EXCEPTIONS

(a) The licensing agency shall adopt, ~~promulgate,~~ and enforce rules, ~~regulations,~~ and standards with respect to the different types of hospitals to be licensed hereunder as may be designed to further the accomplishment of the purposes herein set forth; such rules, ~~regulations~~ and standards shall be modified, amended, or rescinded from time to time by the licensing agency as may be in the public interest.

(b) No such rules, ~~regulations,~~ and standards shall be adopted or enforced which would have the effect of denying a license to a hospital solely by reason of the school or system of practice employed or permitted to be employed by physicians therein; provided that such school or system of practice is recognized by the laws of the ~~state~~ State. Provided, however, that no ~~regulation~~ rule or requirement shall be made under this chapter for any hospital conducted for those who rely upon treatment by spiritual means or prayer in accordance with the creed or tenets of any recognized church or religious denomination, except as to the sanitary and safe condition of the premises, cleanliness of operation, and its physical equipment.

Sec. 107. 18 V.S.A. § 4051(6) is amended to read:

(6)(A) The term “device” (except when used in subdivision (18) of this section and in ~~sections~~ subdivisions 4052(10), 4060(6), ~~4064(e)~~ 4064(3), and 4067(3) of this title) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

~~(6)(i)~~ for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ humans or other animals; or ~~(B) to affect the structure of any function of the body of man or other animals. The term “device” shall not mean professional diagnostic instruments.~~

~~(6)(ii)~~ to affect the structure of any function of the body of ~~man~~ humans or other animals.

~~(6)(B)~~ The term “device” shall not mean professional diagnostic instruments.

Sec. 108. 18 V.S.A. § 4053 is amended to read:

§ 4053. ~~REGULATIONS~~ RULES AND HEARINGS

(a) The authority to enforce this chapter is vested in the ~~board~~ Board. The ~~board~~ Board shall from time to time for the efficient enforcement of this chapter ~~promulgate regulations~~ adopt rules after public hearing following due notice at least ten days in advance of the hearings to interested persons.

* * *

Sec. 109. 18 V.S.A. § 4058 is amended to read:

§ 4058. ~~REGULATIONS~~ RULES; STANDARDS

Whenever in the judgment of the ~~board~~ Board such action will promote honesty and fair dealing in the interest of consumers, the ~~board~~ Board shall ~~promulgate regulations~~ adopt rules fixing and establishing for any food or class of food a reasonable definition and standard of identity, or reasonable standard of quality or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the ~~board~~ Board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standard so ~~promulgated~~ adopted shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act.

Sec. 110. 18 V.S.A. § 4061(a) is amended to read:

§ 4061. REGULATIONS OF PERMITS; INVESTIGATION

(a) Whenever the ~~board~~ Board finds after investigation that the distribution in Vermont of any class of food may, by reason of contamination with micro-organisms during manufacture, processing, or packing thereof in any locality, be injurious to health, and that the injurious nature cannot be adequately determined after the articles have entered commerce, it then, and in that case only, shall ~~promulgate regulations~~ adopt rules providing for the issuance to manufacturers, processors, or packers of that class of food in that locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of that class of food and for such temporary period of time, as may be necessary to protect the public health; and after the effective date of the ~~regulations~~ rules and during the temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless the manufacturer, processor, or packer holds a permit issued by the ~~board~~ Board as provided by the ~~regulations~~ rules.

Sec. 111. 18 V.S.A. § 4062 is amended to read:

§ 4062. SUBSTANCES ADDED TO FOOD; ~~REGULATIONS~~ RULES

Any poisonous or deleterious substance added to any food except where the substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of subdivision 4059(1)(B) of this title; but when the substance is so required or cannot be so avoided, the ~~board~~ Board shall ~~promulgate regulations~~ adopt rules limiting the quantity therein or thereon to such extent as the ~~board~~ Board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of subdivision 4059(1)(B) of this title. While such a ~~regulation~~ rule is in effect limiting the quantity of any such substance in the case of any food, the food shall not, by reason of bearing or containing any added amount of the substance, be considered to be adulterated within the meaning of subdivision 4059(1)(A) of this title. In determining the quantity of the added substance to be tolerated in or on different articles of food, the ~~board~~ Board shall take into account the extent to which the use of the substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

Sec. 112. 18 V.S.A. § 4064 is amended to read:

§ 4064. MISBRANDED DRUGS OR DEVICE

A drug or device is misbranded²²:

~~(a)~~(1) If its labeling is false or misleading in any particular.

~~(b)~~(2) If in package form unless it bears a label containing:

~~(1)~~(A) the name and place of business of the manufacturer, packer, or distributor; and

~~(2)~~(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under this subdivision ~~(2)~~(B) reasonable variations shall be permitted, and exemptions as to small packages shall be established by ~~regulations prescribed~~ rules adopted by the ~~board~~ Board.

~~(c)~~(3) If any word, statement, or other information required by or under authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

~~(d)~~(4) If it is for use by ~~man~~ humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, ~~marihuana~~ marijuana, morphine, opium, paraldehyde, peyote, sulphonmethane or other recognized narcotic or hypnotic substances or any chemical derivative of those substances, which derivative has been by the ~~board~~ Board, after investigation, found to be, and by ~~regulations~~ rules under this chapter, designated as, habit forming, unless its label bears the name and quantity or proportion of the substance or derivative and in juxtaposition therewith the statement “warning—may be habit forming.”;

~~(e)~~(5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:

~~(1)~~(A) the common or usual name of the drug, if such there be; and

~~(2)~~(B) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient including the kind and quantity or proportion of any alcohol, and also including whether active or not the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or other synthetic compounds, or any derivative or preparation of any of those substances, contained therein; provided, that to the extent that compliance with the requirements of this subdivision ~~(2)~~(B) is impracticable, exemptions shall be established by ~~regulations promulgated~~ rules adopted by the ~~board~~ Board.

~~(f)~~(6) Unless its labeling bears:

~~(1)~~(A) adequate directions for use; and

~~(2)~~(B) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided, that where any requirement of this ~~subdivision (1) of this subsection~~, as applied to any drug or device, is not necessary for the protection of the public health, the ~~board~~ Board shall ~~promulgate regulations~~ adopt rules exempting the drug or device from the requirements.

~~(g)~~(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided, that the method of packing may be modified with consent of the ~~board~~ Board. Whenever a drug is recognized in both the ~~United States~~ U.S. Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it

shall be subject to the requirements of the ~~United States~~ U.S. Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the ~~United States~~ U.S. Pharmacopoeia.

~~(h)~~(8) If it has been found by the ~~board~~ Board to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the ~~board~~ Board shall by ~~regulations~~ rule require as necessary for the protection of public health. No such ~~regulation~~ rule shall be established for any drug recognized in an official compendium until the ~~board~~ Board informs the appropriate body charged with the revision of the compendium of the need for the packaging or labeling requirements and that body fails within a reasonable time to prescribe the requirements.

~~(i)~~(9)(A) If it is a drug and its container is so made, formed, or filled as to be misleading;

~~(2)~~(B) if it is an imitation of another drug; or

~~(3)~~(C) if it is offered for sale under the name of another drug.

~~(j)~~(10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

~~(k)~~(11) If ~~(1)~~ it is a drug sold at retail and contains any quantity of aminopyrine, barbituric acid, cinchophen, pituitary, thyroid, or their derivatives; or ~~(2)~~ it is a drug or device sold at retail and its label (as originally packed) directs that it is to be dispensed or sold only on prescription, unless it is dispensed or sold on a written prescription signed by a practitioner who is licensed by law to administer the drug or device and its label (as dispensed) bears the name and place of business of the dispenser or seller, the serial number and date of the prescription, and the name of the licensed practitioner. Those prescriptions shall not be refilled except on the specific authorization of the prescribing practitioner, provided, that where any requirement of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the ~~board~~ Board shall ~~promulgate regulations~~ adopt rules exempting the drug or device from the requirement.

~~(l)~~(12) A drug sold on a written prescription signed by a member of the medical, dental, or veterinary profession (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirement of this section if²:

~~(1)(A)~~ the member of the medical, dental, or veterinary profession is licensed by law to administer the drug or recognized synthetic compounds; and

~~(2)(B)~~ the drug bears a label containing the name and place of business of the seller, the serial number and date of the prescription, and the name of the member of the medical, dental, or veterinary profession.

Sec. 113. 18 V.S.A. § 4069 is amended to read:

§ 4069. ~~REGULATIONS~~ RULES; AUTHORITY

(a) The authority to ~~promulgate regulations~~ adopt rules for the efficient enforcement of this chapter is hereby vested in the ~~board~~ Board. The ~~board~~ Board may make the ~~regulations promulgated~~ rules adopted under this chapter conform, insofar as practicable, with those promulgated under the federal act.

(b) Hearings authorized or required by this chapter shall be conducted by the ~~board~~ Board or such officer, agent, or employee as the ~~board~~ Board may designate for the purpose.

(c) Before ~~promulgating~~ adopting any ~~regulations~~ rules contemplated by section 4058; 4060(10); 4061; ~~4064(d), (f), (g), (h), and (k)~~ 4064(4), (6), (7), (8), and (11); or 4068(b) of this title, the ~~board~~ Board shall give appropriate notice of the proposal and of the time and place for a hearing. The ~~regulation rule~~ so ~~promulgated~~ adopted shall ~~become effective~~ take effect on a date fixed by the ~~board~~ Board, which date shall not be earlier than 60 days after its ~~promulgation~~ adoption. The ~~regulation rule~~ may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a ~~regulation rule~~ amending or repealing any such ~~regulation rule~~ the ~~board~~ Board, to such extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

Sec. 114. 18 V.S.A. § 4442 is amended to read:

§ 4442. ~~REGULATIONS~~ RULES AND INSPECTION BY STATE BOARD OF HEALTH

The ~~board~~ Board shall ~~promulgate~~ adopt and enforce rules ~~and regulations~~ as the public health may require in respect to the sanitary conditions of bakeries as defined herein. The ~~board~~ Board is hereby authorized to inspect any such bakery at all reasonable times through its duly appointed officers, inspectors, agents, or assistants.

Sec. 115. 18 V.S.A. § 4471 is amended to read:

§ 4471. CANNABIS THERAPEUTIC RESEARCH PROGRAM;
ESTABLISHMENT; PARTICIPATION

(a) There is established in the ~~department of health~~ Department of Health the cannabis therapeutic research program. The program shall be administered by the ~~commissioner of health~~ Commissioner of Health who shall ~~promulgate~~ adopt rules ~~and regulations~~ necessary to enable physicians entitled to prescribe regulated drugs under chapter 84 of this title to prescribe cannabis. In ~~promulgating~~ adopting such rules ~~and regulations~~, the ~~department~~ Department shall take into consideration those pertinent rules and regulations promulgated by the federal Drug Enforcement Agency, the federal Food and Drug Administration, and the National Institute on Drug Abuse.

* * *

Sec. 116. 18 V.S.A. § 8101(b) is amended to read:

(b) The ~~commissioner~~ Commissioner shall ~~promulgate~~ adopt, pursuant to 3 V.S.A. chapter 25, ~~regulations which~~ rules that set forth in detail the levels of income, resources, expenses, and family size at which persons are deemed able to pay given amounts for the care and treatment of a patient, and the circumstances, if any, under which the rates of payment so established may be waived or modified. A copy of the payment schedule so ~~promulgated~~ adopted shall be made available in the admissions office at the Vermont State Hospital or its successor in interest.

Sec. 117. 19 V.S.A. § 1109 is amended to read:

§ 1109. AGENCY OF TRANSPORTATION RULES ON ABUSE OF HIGHWAYS

The ~~agency of transportation~~ Agency of Transportation shall ~~promulgate~~ adopt rules as it deems necessary to prevent the abuse of any highway or portion of a highway during any period of any season of the year.

Sec. 118. 19 V.S.A. § 2104 is amended to read:

§ 2104. RULES

The ~~agency~~ Agency is authorized to ~~promulgate~~ adopt rules consistent with federal regulations necessary to administer this chapter.

Sec. 119. 21 V.S.A. § 224 is amended to read:

§ 224. RULES AND STANDARDS

(a) The ~~commissioner~~ Commissioner shall ~~make and promulgate~~ adopt rules and standards necessary to implement the purposes and duties set forth in this subchapter insofar as they relate to safety, and to enforcement of the VOSHA Code.

(b) ~~The secretary of human services~~ Secretary of Human Services shall ~~make and promulgate~~ adopt rules and standards necessary to implement the purposes of the VOSHA Code and duties thereunder, insofar as they relate to health. ~~The secretary of human services~~ Secretary of Human Services shall furnish the ~~department~~ Department certified copies of the rules made under this subsection, and the rules shall be published under the rules of the ~~department~~ Department by the ~~secretary of state~~ Secretary of State.

* * *

Sec. 120. 21 V.S.A. § 1359 is amended to read:

§ 1359. ADMINISTRATION OF UNEMPLOYMENT COMPENSATION FUND

(a) ~~The fund~~ Fund shall be administered in trust and used solely to pay benefits and refunds upon vouchers drawn on the ~~fund~~ Fund by the ~~commissioner~~ Commissioner pursuant to this chapter and to such rules ~~and regulations~~ as the ~~board~~ Board is authorized to ~~promulgate~~ adopt, except that money credited to this ~~state's~~ State's account under ~~section~~ Section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subsection (b) of this section. There shall be maintained within ~~said fund~~ the Fund three separate fund accounts; (1) a clearing account; (2) an unemployment trust fund account; and (3) a benefit account. All ~~moneys~~ monies payable to the ~~fund~~ Fund upon receipt thereof shall be immediately deposited in the clearing account, and, after clearance thereof, shall, except that ~~said moneys~~ the monies may be expended for the payment of refunds under this chapter, be deposited immediately with the ~~secretary of the treasury of the United States of America~~ U.S. Secretary of the Treasury to the credit of the unemployment trust fund account of the ~~state~~ State of Vermont in the unemployment trust fund established and maintained pursuant to the act of Congress designated as the Social Security Act, as amended. ~~The commissioner~~ Commissioner shall requisition from ~~said~~ the Vermont unemployment trust fund account such amounts from time to time as are necessary for and to be used solely in the payment of benefits and refunds under this chapter. ~~Such~~ The requisitioned sums shall be deposited in the benefit account. Any ~~moneys~~ monies so withdrawn shall not be used for expenses of administration or any purpose other than the payment of benefits and refunds under this chapter. Requirements with respect to specific appropriation or other formal release by ~~state~~ State officers of ~~moneys~~ monies belonging to the ~~state~~ State shall not be applicable to withdrawals from ~~said fund~~ the Fund.

Sec. 121. 23 V.S.A. § 304a(f) is amended to read:

(f) Persons who have a temporary ambulatory disability may apply for a temporary removable windshield placard to the Commissioner on a form prescribed by him or her. The placard shall be valid for a period of up to six months and displayed as required under the provisions of subsection (c) of this section. The application shall be signed by a licensed physician, certified physician assistant, or licensed advanced practice registered nurse. The validation period of the temporary placard shall be established on the basis of the written recommendation from a licensed physician, certified physician assistant, or licensed advanced practice registered nurse. The Commissioner shall ~~promulgate~~ adopt rules to implement the provisions of this subsection.

Sec. 122. 23 V.S.A. § 801 is amended to read:

§ 801. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED

(a) The Commissioner shall require proof of financial responsibility to satisfy any claim for damages, by reason of personal injury to or the death of any person, of at least \$25,000.00 for one person and \$50,000.00 for two or more persons killed or injured and \$10,000.00 for damages to property in any one accident, as follows:

(1) From a person who is convicted of any of the following violations of this title:

* * *

(G) Any moving violation as defined in section 4 of this title if the person has five points assessed against the person's license at the time the moving violation occurs. At the time a ticket or a citation for a moving violation is issued, the law enforcement officer shall give the defendant an insurance verification certificate, which shall not be an SR-22 certificate. The defendant shall complete the certificate and mail or deliver it to the Commissioner within 21 days of being issued the ticket or citation. The Commissioner shall prescribe the form of the insurance verification certificate and administer the insurance verification process by ~~promulgating~~ adopting rules and may, pursuant to 3 V.S.A. chapter 25, ~~promulgate~~ adopt rules to administer the insurance verification process.

* * *

Sec. 123. 23 V.S.A. § 1006a(c) is amended to read:

(c) Under 3 V.S.A. chapter 25, the Traffic Committee shall ~~make and promulgate~~ adopt such rules as are necessary to administer this section and may delegate this authority to the Agency of Transportation.

Sec. 124. 24 V.S.A. § 2206(c) is amended to read:

(c) The ~~secretary~~ Secretary shall ~~promulgate~~ adopt rules pursuant to ~~chapter 25 of Title 3~~ 3 V.S.A. chapter 25 to implement the provisions of this section.

Sec. 125. 24 V.S.A. § 5104(b) is amended to read:

(b) The authority shall be a body politic and corporate with the powers incident to a municipal corporation under the laws of the State of Vermont consistent with the purposes of the authority, and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its functions, including the following:

* * *

(12) to ~~prescribe and promulgate~~ adopt necessary rules ~~and regulations~~;

* * *

Sec. 126. 24 V.S.A. § 5125(b) is amended to read:

(b) The district may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its functions, including, ~~but not limited to~~, the following:

* * *

(7) to ~~prescribe and promulgate~~ adopt necessary rules ~~and regulations~~;

* * *

Sec. 127. 24 V.S.A. App. chapter 127 § 104 is amended to read:

§ 104. ADDITIONAL POWERS

The general grant of authority in section 103 of this chapter shall include the following:

* * *

(13) The enumeration of powers herein shall not be deemed to limit the general grant of authority to ~~promulgate~~ adopt ordinances conferred by section 103 of this Charter.

Sec. 128. 24 V.S.A. App. chapter 801 § 4(c) is amended to read:

(c) The Authority is granted the authority to exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including the following rights and powers:

* * *

(12) to ~~prescribe and promulgate~~ adopt necessary rules and regulations consistent with the provisions hereof;

* * *

Sec. 129. 26 V.S.A. § 1743 is amended to read:

§ 1743. MEDICAID REIMBURSEMENT

The ~~secretary of the agency of human services~~ Secretary of Human Services shall, pursuant to the ~~Administrative Procedure Act~~ 3 V.S.A. chapter 25, ~~promulgate~~ adopt rules providing for a fee schedule for reimbursement under Title XIX of the Social Security Act and 33 V.S.A. chapter 19, relating to medical assistance which recognizes reasonable cost differences between services provided by physicians and those provided by physician assistants under this chapter.

Sec. 130. 26 V.S.A. § 2665 is amended to read:

§ 2665. POWERS AND DUTIES OF THE DIRECTOR

(a) The ~~director~~ Director shall:

(1) ~~Promulgate~~ Adopt only those rules and regulations necessary for the full and efficient performance of its duties;

* * *

(b) The ~~director~~ Director shall not:

(2) ~~Promulgate~~ Adopt any rules and regulations specifically designed to limit the number of opticians in this ~~state~~ State.

* * *

Sec. 131. 28 V.S.A. § 505 is amended to read:

§ 505. COOPERATION OF CORRECTIONAL FACILITY OFFICIALS

(a) The ~~board~~ Board shall ~~promulgate regulations~~ adopt rules regarding and shall direct, control, and supervise the administration of a system of paroles from any appropriate correctional facility.

* * *

Sec. 132. 28 V.S.A. § 903 is amended to read:

§ 903. ACCESS TO TREATMENT PENDING APPEAL; RULE

Treatment, assessment, evaluation, screening, or programming shall not be restricted or denied to inmates on the basis of any anticipated or pending direct or collateral appeal of any criminal conviction, nor on the basis of any position taken by the appellant in any such action. The ~~commissioner~~ Commissioner

shall ~~promulgate~~ adopt rules pursuant to ~~chapter 25 of Title 3~~ 3 V.S.A. chapter 25 regarding the confidentiality of communications by an inmate made for the purposes of treatment, assessment, evaluations, screening, or programming while an appeal is pending. This provision neither expands nor contracts the duty of the ~~commissioner~~ Commissioner to adopt rules pursuant to ~~chapter 25 of Title 3~~ 3 V.S.A. chapter 25.

Sec. 133. 29 V.S.A. § 152 is amended to read:

§ 152. DUTIES OF COMMISSIONER

(a) The Commissioner of Buildings and General Services, in addition to the duties expressly set forth elsewhere by law, shall have the authority to:

* * *

(14) ~~The Commissioner of Buildings and General Services may promulgate~~ Adopt rules and regulations to govern access to and conduct upon the grounds of and within the structures and buildings which fall within his or her jurisdiction. Specifically, and without limitation of the foregoing, the Commissioner is empowered to ~~promulgate~~ adopt rules governing access to property; littering; alcoholic beverages and narcotics; soliciting, debt collection and campaigning; photographs for advertising or commercial purposes; pets and animals; and firearms and explosives while in State buildings under his or her jurisdiction or upon the grounds of these buildings, and in or upon property leased to the State and under the jurisdiction of the Commissioner.

* * *

(30) Provide services to the traveling public, lease space, sell products, and conduct any other activities within limits set forth in the federal Surface Transportation Act and Randolph-Sheppard Act and rules ~~promulgated~~ adopted thereunder, to administer the information and welcome centers; and use funds generated in the centers to supplement funds for maintaining and operating the centers.

* * *

Sec. 134. 30 V.S.A. § 11 is amended to read:

§ 11. PLEADINGS; RULES OF PRACTICE; FINDINGS OF FACT

(a) The forms, pleadings, and rules of practice and procedure before the Board shall be prescribed by it. The Board shall ~~promulgate and~~ adopt rules which include, among other things, provisions that:

* * *

Sec. 135. 31 V.S.A. § 654 is amended to read:

§ 654. POWERS AND DUTIES

The ~~commission~~ Commission shall ~~promulgate~~ adopt rules pursuant to ~~chapter 25 of Title 3~~ 3 V.S.A. chapter 25, governing the establishment and operation of the state State lottery. The rules may include, ~~but shall not be limited to~~, the following:

* * *

Sec. 136. 33 V.S.A. § 1913(10) is amended to read:

(10) “Units sold” means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or “roll-your-own” tobacco containers) bearing the excise tax stamp of the State. The Department of Taxes shall ~~promulgate regulations~~ adopt rules as are necessary to ascertain the amount of the State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Sec. 137. 33 V.S.A. § 1922 is amended to read:

§ 1922. QUARTERLY ESCROW DEPOSITS

To promote compliance with the provisions of this subchapter, the Attorney General may ~~promulgate regulations~~ adopt rules requiring a nonparticipating manufacturer to make the escrow deposits required by subchapter 1A of this chapter in quarterly installments during the year in which the sales covered by such deposits are made.

* * * Miscellaneous Technical Corrections * * *

Sec. 138. 2 V.S.A. § 264b(b) is amended to read:

(b) Every lobbying firm shall file a disclosure report on the same day as lobbyist disclosure reports are due under subsection 264(a) of this title which shall include:

* * *

(4) Contractual agreements in excess of \$100.00 per year or direct business relationships that are in existence or were entered into within the previous 12 months between the lobbying firm and:

(A) a legislator or administrator;

(B) a legislator’s or administrator’s spouse ~~or civil union partner~~; or

* * *

Sec. 139. 3 V.S.A. § 212 is amended to read:

§ 212. DEPARTMENTS CREATED

The following administrative departments are hereby created, through the instrumentality of which the Governor, under the Constitution, shall exercise such functions as are by law assigned to each Department respectively:

- (1) The Department of Mental Health
- (2) ~~The Agency of Agriculture, Food and Markets~~ [Repealed.]
- (3) The Department of Financial Regulation
- (4) The Department of Corrections
- (5) The Department of ~~Economic~~, Housing, and Community Development
- (6) [Repealed.]
- (7) [Repealed.]
- (8) The Department of Fish and Wildlife
- (9) The Department of Forests, Parks and Recreation
- (10) The Department of Health
- (11) ~~The Department of Highways~~ [Repealed.]
- (12) The Department of Labor
- (13) The Department of Libraries
- (14) The Department of Liquor Control
- (15) [Repealed.]
- (16) The Military Department
- (17) The Department of Motor Vehicles
- (18) The Department of Public Safety
- (19) The Department of Public Service
- (20) The Department for Children and Families
- (21) The Department of Taxes
- (22) The Department of Environmental Conservation-
- (23) The Department of Disabilities, Aging, and Independent Living
- (24) The Department of Vermont Health Access.

Sec. 140. 3 V.S.A. § 253 is amended to read:

§ 253. DEPUTY OFFICERS

* * *

(c)(1) ~~The Commissioner of Financial Regulation, with the approval of the governor~~ Governor, shall appoint a Deputy Commissioner of Banking, a Deputy Commissioner of Insurance, a Deputy Commissioner of Captive Insurance, and a Deputy Commissioner of Securities, ~~and a Deputy Commissioner of Health Care Administration~~. The Commissioner of Financial Regulation may remove the deputy commissioners at pleasure and shall be responsible for their acts. The functions and duties that relate to banks and banking shall be in the charge of the Deputy Commissioner of Banking; those that relate to the business of insurance shall be in the charge of the Deputy Commissioner of Insurance; those that relate to the business of captive insurance shall be in the charge of the Deputy Commissioner of Captive Insurance; and those that relate to the business of securities shall be in the charge of the Deputy Commissioner of Securities; ~~and those that relate to health care administration shall be in the charge of the Deputy Commissioner of Health Care Administration.~~

(2) In the case of a vacancy in the Office of the Commissioner of Financial Regulation, one of the deputies appointed by the Commissioner shall assume and discharge the duties of that office until the vacancy is filled or the Commissioner returns.

(d) In case a vacancy occurs in the office of any appointing official who by law is authorized to appoint a deputy, or such official is absent, his or her deputy shall assume and discharge the duties of such office until ~~such~~ the vacancy is filled; or ~~such~~ the official returns. ~~In the case of a vacancy in the office of the Commissioner of Financial Regulation, one of the deputies appointed by the Commissioner shall assume and discharge the duties of that office until the vacancy is filled or the Commissioner returns. In case a vacancy occurs in the office of the Secretary of Agriculture, Food and Markets, the Deputy Commissioner for administration and enforcement shall assume and discharge the duties of the Secretary until such vacancy is filled, or the Secretary returns.~~

(e)(1) The Secretary of Agriculture, Food and Markets, with the approval of the Governor, shall appoint a Deputy ~~Commissioner for administration and enforcement~~ Secretary. The Secretary of Agriculture, Food and Markets may remove the Deputy ~~Commissioner~~ Secretary at pleasure, and he or she shall be responsible for the Deputy ~~Commissioner's~~ Secretary's acts. The Agency of Agriculture, Food and Markets shall be so organized that, subject to the supervision of the Secretary of Agriculture, Food and Markets, the functions

and duties that relate to administration and enforcement shall be in the charge of the Deputy ~~Commissioner of Administration and Enforcement~~ Secretary.

(2) In case a vacancy occurs in the Office of the Secretary of Agriculture, Food and Markets, the Deputy Secretary shall assume and discharge the duties of the Secretary until the vacancy is filled or the Secretary returns.

* * *

Sec. 141. 6 V.S.A. § 981 is amended to read:

§ 981. ADOPTION OF COMPACT

* * *

(g) The Insurance Fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation, gift, or grant accepted by the governing board pursuant to this subsection or services borrowed pursuant to subsection (h) of this article shall be reported in the annual report of the Insurance Fund. The report shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

* * *

(i) The Insurance Fund annually shall make to the Governor and Legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports ~~to the Governor and Legislature of party states~~ as it may deem desirable.

* * *

Sec. 142. 6 V.S.A. § 2777(f) is amended to read:

(f) Producers selling ~~6~~ more than 87.5 gallons to 280 gallons (more than 350 to 1,120 quarts) of unpasteurized milk per week shall meet the requirements of subsections (a) through (d) of this section as well as the following standards:

* * *

Sec. 143. 9 V.S.A. § 2480ff(b) is amended to read:

(b) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section

2480dd of this title, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

- (1) a copy of any court order approving the settlement;
- (2) a written description of the underlying basis for the settlement;
- (3) a copy of the transferee's application;
- (4) a copy of the transfer agreement;
- (5) a copy of the disclosure statement required under section ~~2481b~~ 2480cc of this title;

* * *

Sec. 144. 9 V.S.A. § 4502(f) is amended to read:

(f) It is a violation of this section for a public accommodation to fail to comply with the provisions or rules pertaining to public buildings pursuant to ~~21 V.S.A. chapter 4~~ 20 V.S.A. chapter 174.

Sec. 145. 12 V.S.A. § 4634(b) is amended to read:

(b) The report required by subsection (a) of this section shall not disclose the mediator's assessment of any aspect of the case or substantive matters discussed during the mediation, except as is required to report the information required by this section. The report shall contain all of the following items:

* * *

(6)(A) A statement as to whether any person required under subsection 4633(d) of this title to participate in the mediation failed to:

* * *

Sec. 146. 20 V.S.A. § 2056h is amended to read:

§ 2056h. DISSEMINATION OF CRIMINAL HISTORY RECORDS TO THE
DEPARTMENT OF FINANCIAL REGULATION

(a) The Department of Financial Regulation shall obtain from the Vermont Crime Information Center a Vermont criminal record, an out-of-state criminal record, and a record from the Federal Bureau of Investigation (FBI) ~~or~~ for any applicant for a banking division examiner position who has given written authorization, on a release form prescribed by the Center, pursuant to the provisions of this subchapter and the user's agreement filed by the Commissioner of Financial Regulation with the Center. The user's agreement shall require the Department to comply with all federal and State statutes,

rules, regulations, and policies regulating the release of criminal history records, and the protection of individual privacy. The user's agreement shall be signed and kept current by the Commissioner. Release of interstate and FBI criminal history records is subject to the rules and regulations of the FBI's National Crime Information Center.

* * *

Sec. 147. 20 V.S.A. § 3550(h) is amended to read:

(h) The civil penalty shall be paid to the enforcing agency or enforcing legislative body. If the respondent fails to pay the penalty within the time prescribed, the legislative body or Secretary may bring a collection action ~~in Small Claims Court or~~ including a small claims action, in the Civil Division of the Superior Court.

Sec. 148. 24 V.S.A. § 1173 is amended to read:

§ 1173. TOWN OR VILLAGE REPORTS

The clerk of a municipality shall supply annually each library in such municipality with two copies of the municipal report, upon its publication. The clerk shall also send to the State Library ~~two copies~~ one copy thereof, and one copy each to the Secretary of State, Commissioner of Taxes, State Board of Health, Commissioner for Children and Families, Commissioner of Vermont Health Access, Auditor of Accounts, and Board of Education. Officers making these reports shall supply the clerk of the municipality with the ~~printed~~ copies necessary for him or her to comply with the provisions of this section and section 1174 of this title.

Sec. 149. 24 App. V.S.A. chapter 129 § 306 is amended to read:

§ 306. APPOINTED OFFICERS

(a) The Selectboard shall appoint:

- (1) Planning Commission
- (2) Zoning Board of Adjustment
- (3) Cemetery Commission
- (4) Chittenden County Regional Planning Commission member
- (5) Chittenden ~~Regional~~ Solid Waste District member
- (6) Civil Defense Director

(b) The Selectboard may appoint such additional officers, commissions, or committees as they feel to be in the best interest of the Town, including:

- (1) Fire Warden
- (2) Collector of Taxes
- (3) Tree Warden
- (4) Constable

* * *

Sec. 150. 30 V.S.A. § 53(d)(4) is amended to read:

(4) Provision of a certificate as required by subdivision (1) of this subsection and of a certificate as required by subdivision (2) of this subsection shall be conditions precedent to:

* * *

(B) issuance by a municipality of a certificate of occupancy for ~~residential construction~~ commercial construction commencing on or after July 1, 2013, if the municipality requires such a certificate under 24 V.S.A. chapter 117.

* * *

Sec. 151. 30 V.S.A. § 248(g) is amended to read:

(g) ~~However, notwithstanding the above~~ Notwithstanding the 45 days' notice required by subsection (f) of this section, plans involving the relocation of an existing transmission line within the State must be submitted to the municipal and regional planning commissions no less than 21 days prior to application for a certificate of public good under this section.

Sec. 152. REPEALS

The following shall be repealed on July 1, 2015:

(1) 15 V.S.A. § 1101(6) (including a reciprocal beneficiary in the definition of "family" for purposes of abuse prevention).

(2) 18 V.S.A. § 1853 (reciprocal beneficiary's patient visitation and health care decision-making rights).

(3) 18 V.S.A. § 5087(c) (referencing birth information council report).

(4) 18 V.S.A. § 5220 (reciprocal beneficiary's decision-making rights over a decedent's remains).

(5) 33 V.S.A. § 102(10) (defining Secretary to mean Secretary of U.S. Department of Health and Human Services).

Sec. 153. INTERPRETATION

It is the intent of the General Assembly that the technical amendments in this act shall not supersede substantive changes contained in other acts passed by the General Assembly. Where possible, the amendments in this act shall be interpreted to be supplemental to other amendments to the same sections of statute; to the extent the provisions conflict, the substantive changes in other acts shall take precedence over the technical changes in this act.

* * * Effective Date * * *

Sec. 154. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

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

H. 371

An act relating to creating a Joint Legislative Information Technology Oversight Committee

Rep. Higley of Lowell, for the Committee on **Government Operations**, recommends the bill be amended as follows:

in Sec. 1, in 2 V.S.A. § 990:

First: In subsection (a), by adding after the word “Executive” the following: “, Legislative,”

Second: In subdivision (c)(2)(B), by adding after “Appropriations,” the following: “the House and Senate Committees on Government Operations,”

Third: In subdivision (g)(1), by striking out the word “April” and inserting in lieu thereof the word “May”

Fourth: In subsection (i), by striking out the year “2017” and inserting in lieu thereof the year “2016”

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

NOTICE CALENDAR

Committee Bill for Second Reading

H. 483

An act relating to home improvement fraud.

(**Rep. Conquest of Newbury** will speak for the Committee on **Judiciary**.)

H. 484

An act relating to miscellaneous agricultural subjects.

(Rep. Eastman of Orwell will speak for the Committee on Agriculture & Forest Products.)

H. 487

An act relating to direct enrollment in Exchange plans and to presuit mediation in medical malpractice claims.

(Rep. Donahue of Northfield will speak for the Committee on Health Care.)

Favorable with Amendment

H. 76

An act relating to the requirement of mandatory binding arbitration and to the elimination of strikes and imposed contracts in connection with collective bargaining for teachers' and school administrators' contracts

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

Sec. 1. 16 V.S.A. § 2011 is added to read:

§ 2011. STRIKES AND CONTRACT IMPOSITION PROHIBITED

(a) A strike, which shall have the same meaning as provided in 21 V.S.A. § 1722(16), shall be prohibited.

(b) The imposition of contractual terms by the school board shall be prohibited.

Sec. 2. 16 V.S.A. § 2003 is amended to read:

§ 2003. TIME TO BEGIN

The teacher or administrator organizations holding exclusive negotiating rights shall make a request for commencement of negotiations either to their school board or to the school board negotiations council no later than ~~120~~ 180 days prior to the earliest school district annual meeting conducted within the supervisory union.

Sec. 3. 16 V.S.A. § 2005 is amended to read:

§ 2005. WRITTEN AGREEMENT

(a) The negotiations councils for the school board and the teachers' or administrators' organization shall enter into a written agreement or agreements incorporating therein matters agreed to in negotiation.

(b)(1) In the event the negotiations councils for the school board and the negotiations council for the teachers' or administrators' organization are unable to arrive at an agreement before the expiration date of the existing contract, the existing contract shall remain in force until a new contract is ratified by the parties.

(2) Except as provided in subdivision (c) of this section and in the absence of a provision of the existing contract to the contrary, wages and benefits shall continue at levels and amounts that are no greater than those in effect on the expiration date of the existing contract and no wage step increases shall occur after the expiration date.

(c) Nothing in this section 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 ratified by the parties.

(d)(1) In the event the negotiations councils for the school board and the negotiations council for the teachers' or administrators' organization are unable to arrive at an agreement within six months after the expiration date of the existing contract, the parties shall submit any and all unresolved issues to the Vermont Labor Relations Board.

(2) As soon as practicable, the Board shall hold a hearing on the dispute pursuant to rules established by the Board. The Board may issue subpoenas of persons and documents for the hearings. Upon completion of the hearings, the Board shall make and file with both parties written findings and recommend a reasonable basis for the settlement of the dispute.

(3) Nothing in this subsection (d) shall prohibit the Board from endeavoring to mediate the dispute at any time prior to issuing its recommendation for the settlement of the dispute.

(e) In the event the negotiations councils for the school board and the negotiations council for the teachers' or administrators' organization are unable to arrive at an agreement within one year after the expiration date of the existing agreement then the following shall apply:

(1) When the parties enter into an agreement to replace the existing agreement, it shall not include any retroactive wages or benefits at levels and amounts that are greater than those in effect on the expiration date of the existing agreement.

(2) The school district's base statewide education tax rate shall be increased by one cent on all homestead property located within the district. The increase shall apply to the district's statewide education tax rate for the next fiscal year and shall remain in force through the fiscal year in which the parties enter into the new agreement.

Sec. 4. 16 V.S.A. § 2006 is amended as follows:

§ 2006. MEDIATOR

If, ~~after negotiation has taken place on all matters properly before them within 90 days after commencing negotiations,~~ the negotiations councils for the school board and teachers' or administrators' organization are unable to reach agreement on specific negotiable items, they ~~may~~ shall jointly agree upon the services and person of a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms that are mutually acceptable. If agreement cannot be reached upon the person of a mediator within 5 days, ~~either party may~~ the parties shall request mediation upon ~~any and~~ all unresolved issues to be conducted by the American Arbitration Association or its designee. The parties shall meet with the mediator and make ~~such~~ information available to the mediator as required.

Sec. 5. 16 V.S.A. § 2007 is amended as follows:

§ 2007. FACT-FINDING COMMITTEE

(a) ~~If mediation fails to resolve outstanding differences or is not requested the parties are unable to resolve their outstanding differences within 45 days of commencing mediation and a continuing disagreement persists, either party may, after negotiation on all matters properly before them, request that any or the parties shall submit~~ all unresolved issues ~~be submitted~~ shall submit to a fact-finding committee ~~by notifying the other party of their intention and setting forth in writing the issues to be submitted to fact finding.~~

(b) The fact-finding committee, which shall be activated as soon as practicable ~~upon request,~~ shall be composed of one member selected by the school board negotiations council, one member selected by the negotiations council for the teachers' or administrators' organization, and one member who shall serve as chair, to be chosen by the other two members. In the event that agreement cannot be reached on a third member for the fact-finding committee within five days after the appointment of the other two members, the American Arbitration Association shall be asked to appoint the third member.

(c) The fact-finding committee shall convene as soon as practicable after its appointment, hold informal hearings as necessary, and provide adequate opportunity to all parties to testify fully on, and present evidence regarding,

their respective positions. All parties to the dispute shall furnish the fact-finding committee upon its request all records, papers, and information in their possession pertaining to any matter properly in issue before the fact-finding committee. The fact-finding committee shall make a written report and shall deliver it to both parties recommending a reasonable basis for the settlement of the disagreement within 30 days after the appointment of all members of the committee. Upon receipt of the report, the parties shall continue to negotiate on all issues remaining in dispute, and may jointly agree upon the services and person of a mediator to assist them in reaching a settlement of the disagreement.

(d) The report of the fact-finding committee shall be advisory only and shall not be binding on either party. The report shall be made public by the fact-finding committee if the issues in dispute have not been resolved within ten days of the delivery of the report.

(e) All expenses of fact-finding and mediation shall be borne jointly by the parties to the dispute.

Sec. 6. 16 V.S.A. § 2010 is amended to read:

§ 2010. INJUNCTIONS

~~No restraining order or temporary or permanent injunction shall be granted in any case brought with respect to any action taken by a representative organization or an official thereof or by a school board or representative thereof in connection with or relating to pending or future negotiations, except on the basis of findings of fact made by a court of competent jurisdiction after due hearing prior to the issuance of the restraining order or injunction that the commencement or continuance of the action poses a clear and present danger to a sound program of school education that in the light of all relevant circumstances it is in the best public interest to prevent. Any restraining order or injunction issued by a court as herein provided shall prohibit only a specific act or acts expressly determined in the findings of fact to pose a clear and present danger.~~ Upon application by either party, a Superior Court may issue a temporary restraining order or other injunctive relief and may award costs, including reasonable attorney's fees, in connection with any action taken or about to be taken by a representative organization, its officials, or its members or by a school board or its representative in relation to pending or future negotiations that is in violation of this chapter.

Sec. 7. 16 V.S.A. § 2008 is amended to read:

§ 2008. ~~FINALITY OF DECISIONS~~

~~All decisions of the school board regarding matters in dispute in negotiations shall, after full compliance with this chapter, be final. [Repealed.]~~

Sec. 8. 16 V.S.A. § 2021 is amended to read:

§ 2021. NEGOTIATED BINDING INTEREST ARBITRATION

* * *

~~(c) A strike, which shall have the same meaning as provided in 21 V.S.A. § 1722(16), shall be prohibited if it occurs after both parties have voluntarily submitted a dispute to final and binding arbitration or after a decision or award has been issued by the arbitrator. A school board may petition for an injunction or other appropriate relief from the Superior Court within the county wherein such strike in violation of this section is occurring or is about to occur. [Repealed.]~~

* * *

Sec. 9. 3 V.S.A. § 924 is amended to read:

§ 924. POWERS AND DUTIES

* * *

(e) In addition to its responsibilities under this chapter, the Board shall carry out the responsibilities given to it under 16 V.S.A. § 2005, 21 V.S.A. chapters 19 and 22, and chapter 28 of this title and when so doing shall exercise the powers and follow the procedures set out in that chapter.

* * *

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2015, and apply to negotiations beginning on or after that date.

and that after passage the title of the bill be amended to read: “An act relating to the prohibition of strikes and contract imposition, and mandatory mediation and fact-finding in connection with collective bargaining for teachers and school administrators”

(Committee Vote: 8-3-0)

Public Hearings

March 24, 2015 - Room 11 - 6:00-8:00 pm - Renewable Energy Siting - House and Senate Committees on Natural Resources and Energy