

# House Calendar

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Tuesday, March 22, 2016

78th DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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**ORDERS OF THE DAY**

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**Action Postponed Until March 22, 2016**

**Committee Bill for Second Reading**

**H. 867**

An act relating to classification of employees and independent contractors.

**(Rep. Botzow of Pownal will speak for the Committee on Commerce & Economic Development.)**

**Amendment to be offered by Rep. Pearson of Burlington to H. 867**

First: In Sec. 1, 21 V.S.A. § 601, in subdivision (14)(F), after subdivision (i)(II), by adding a subdivision (III) to read as follows:

(III) The person who is providing the individual or partner owner with compensation for the services has not hired multiple sole proprietors, partnerships, or single-member corporations or L.L.C.s to perform the same work as the individual or partner owner is performing on the project or jobsite.

Second: In Sec. 1, 21 V.S.A. § 601, in subdivision (14)(H), after subdivision (i)(II), by adding a subdivision (III) to read as follows:

(III) The person who is providing the corporation or L.L.C. with compensation for the services has not hired multiple sole proprietors, partnerships, or single-member corporations or L.L.C.s to perform the same work as the corporate executive officer or the L.L.C. manager or member is performing on the project or jobsite.

Third: In Sec. 1, 21 V.S.A. § 601, in subdivision (31), by striking out subdivision (A)(v) in its entirety and inserting a new subdivision (A)(v) to read as follows:

(v) offers its services to the general public and does not work exclusively for or with another person; and

Fourth: By striking out Sec. 2, 21 V.S.A. § 1301, in its entirety and inserting a new Sec. 2 to read as follows:

Sec. 2. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings unless the context clearly requires otherwise:

\* \* \*

(6)(A)(i) "Employment," subject to the other provisions of this subdivision (6), means service within the jurisdiction of this State, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this State may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this State. And whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the Commissioner, upon his or her approval of said election as to any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this State.

\* \* \*

(B) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that the individual:

~~(i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and~~

~~(ii) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and~~

~~(iii) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.~~

is free from the direction and control of the employing unit, both under the individual's contract of service and in fact;

(ii) controls the means and manner of the services performed;

(iii) operates a separate and distinct business from that of the person with whom he or she contracts;

(iv) holds him- or herself out as in business for him- or herself;

(v) offers his or her services to the general public and does not work exclusively for or with another person; and

(vi) is not treated as an employee for purposes of income or employment taxation with regard to the services performed.

(C) Notwithstanding any provision of subdivision (B) of this subdivision (6), multiple individuals performing the same work on a project or job site shall be deemed to be performing services in employment.

(D) The term “employment” shall not include:

\* \* \*

~~(D)~~(E) Notwithstanding any other provisions of this subdivision, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.

Fifth: By striking out Sec. 10, 21 V.S.A. § 625, in its entirety and inserting a new Sec. 10 to read as follows:

Sec. 10. 21 V.S.A. § 625 is amended to read:

§ 625. CONTRACTING OUT FORBIDDEN

(a) ~~As~~ Except as provided in subdivisions 601(3) and (14) of this chapter, an employer shall not be relieved in whole or in part from liability created by the provisions of this chapter by any contract, rule, regulation, or device whatsoever.

(b) Any person who, for the purpose of avoiding its obligations under this title, coerces an employee or prospective employee into becoming an independent contractor, after notice and an opportunity for a hearing, may be assessed an administrative penalty of not more than \$5,000.00.

**Amendment to be offered by Rep. Donovan of Burlington to H. 867**

First: In Sec. 1, 21 V.S.A. § 601, by striking out subdivision (31) in its entirety and inserting in lieu thereof a new subdivision (31) to read as follows:

(31)(A) “Independent contractor” means a person who meets all of the following:

(i) is free from the direction and control of the employing unit, both under the person’s contract of service and in fact;

(ii) controls the means and manner of the work performed;

(iii) operates a separate and distinct business from that of the person with whom it contracts;

(iv) holds itself out as in business for itself;

(v) offers its services to the general public;

(vi) is not treated as an employee for purposes of income or employment taxation with regard to the work performed; and

(vii) has purchased workers' compensation coverage for itself.

(B) An independent contractor shall purchase workers' compensation coverage for its employees as provided in this chapter.

Second: In Sec. 2, 21 V.S.A. § 1301, by striking out subdivision (6)(B) and inserting in lieu thereof a new subdivision (6)(B) to read as follows:

(B) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that the individual:

~~(i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and~~

~~(ii) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and~~

~~(iii) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.~~

is free from the direction and control of the employing unit, both under the individual's contract of service and in fact;

(ii) controls the means and manner of the services performed;

(iii) operates a separate and distinct business from that of the person with whom he or she contracts;

(iv) holds him- or herself out as in business for him- or herself;

(v) offers his or her services to the general public;

(vi) is not treated as an employee for purposes of income or employment taxation with regard to the services performed; and

(vii) has purchased workers' compensation coverage pursuant to chapter 9 of this title for him- or herself.

## **ACTION CALENDAR**

### **Third Reading**

#### **H. 130**

An act relating to the Agency of Public Safety

## H. 743

An act relating to fair and impartial policing

### Favorable with Amendment

## H. 206

An act relating to regulating notaries public

**Rep. Cole of Burlington**, 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. 26 V.S.A. chapter 101 is added to read:

### CHAPTER 101. NOTARIES PUBLIC

#### Subchapter 1. General Provisions

#### § 5201. SHORT TITLE

This chapter may be cited as the Uniform Law on Notarial Acts.

#### § 5202. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

#### § 5203. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

#### § 5204. DEFINITIONS

As used in this chapter:

(1) “Acknowledgment” means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

(2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) “Electronic signature” means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

(4) “In a representative capacity” means acting as:

(A) an authorized officer, agent, partner, trustee, or other representative for a person other than an individual;

(B) a public officer, personal representative, guardian, or other representative, in the capacity stated in a record;

(C) an agent or attorney-in-fact for a principal; or

(D) an authorized representative of another in any other capacity.

(5) “Notarial act” means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this State. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(6) “Notarial officer” means a notary public or other individual authorized to perform a notarial act.

(7) “Notary public” means an individual commissioned to perform a notarial act by the Office.

(8) “Office” means the Office of the Secretary of State.

(9) “Official stamp” means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

(10) “Person” means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) “Record” 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.

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

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

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



(13) “Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.

(14) “Stamping device” means:

(A) a physical device capable of affixing to or embossing on a tangible record an official stamp; or

(B) an electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

(15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) “Verification on oath or affirmation” means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

#### § 5205. EXEMPTIONS

(a) Generally.

(1) The persons set forth in subdivision (2) of this subsection shall be exempt from the following requirements of this chapter:

(A) the examination set forth in § 5241(b);

(B) continuing education set forth in § 5243;

(C) the penalties set forth in § 5242;

(D) the certificate and official stamp described in § 5267, if acting within the scope of his or her official duties; and

(E) maintaining the journal described in § 5271, if acting within the scope of his or her official duties.

(2)(A) Notaries public employed by the Judiciary, including judges, Superior Court clerks, court operations managers, Probate registers, case managers, docket clerks, and after-hours relief from abuse contract employees.

(B) Notaries public employed as law enforcement officers certified under 20 V.S.A. chapter 151, who are noncertified constables, or who are employed by Vermont law enforcement agencies; the Departments of Public Safety, of Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and Families; the Office of the Defender General; the Attorney General; or a State’s Attorney or Sheriff.

(b) Attorneys. Attorneys licensed and in good standing in this State are exempt from the following requirements of this chapter:

(1) the examination requirement set forth in § 5241(b); and

(2) the continuing education requirement set forth in § 5243.

(c) Fees. The following persons are exempt from the fee required under section 5225 of this chapter:

(1) a judge, clerk, or other court staff, as designated by the Court Administrator;

(2) State's Attorneys and their deputies;

(3) justices of the peace and town clerks and their assistants; and

(4) State Police officers, municipal police officers, fish and game wardens, sheriffs and deputy sheriffs, motor vehicle inspectors, employees of the Department of Corrections, and employees of the Department for Children and Families.

#### Subchapter 2. Administration

#### § 5221. SECRETARY OF STATE'S OFFICE DUTIES

The Office shall:

(1) provide general information to applicants for commissioning as a notary public;

(2) administer fees as provided under section 5225 of this chapter;

(3) explain appeal procedures to notaries public and applicants and explain complaint procedures to the public;

(4) receive applications for commissioning, review applications, refer applications for commissioning to the Assistant Judges in the county of jurisdiction, and renew commissions;

(5) refer all disciplinary matters to the Assistant Judges in the county of jurisdiction; and

(6) impose administrative penalties, issue warnings or reprimands, or revoke, suspend, reinstate, or condition commissions, as ordered by the Assistant Judges.

#### § 5222. ASSISTANT JUDGE'S DUTIES

The Assistant Judges in a county of jurisdiction shall:

(1) receive applications for commissioning from the Secretary of State's office and commission applicants;

(2) receive disciplinary matters referred by the Secretary of State's office; and

(3) impose administrative penalties, issue warnings or reprimands, or revoke, suspend, reinstate, or condition commissions after notice and an opportunity for a hearing.

#### § 5223. ADVISOR APPOINTEES

(a) The Secretary of State shall appoint two notaries public to serve as advisors in matters relating to notarial acts. The advisors shall be appointed for staggered five-year terms and serve at the pleasure of the Secretary. One of the initial appointments shall be for less than a five-year term.

(b) Each appointee shall have at least three years of experience as a notary public during the period immediately preceding appointment and shall be actively commissioned in Vermont and remain in good standing during incumbency.

(c) The Office shall seek the advice of the advisor appointees in carrying out the provisions of this chapter. The appointees shall be entitled to compensation and reimbursement of expenses as set forth in 32 V.S.A. § 1010 for attendance at any meeting called by the Office for this purpose.

#### § 5224. RULES

(a) The Office, with the advice of the advisor appointees and the Assistant Judges, may adopt rules to implement this chapter. The rules may:

(1) prescribe the manner of performing notarial acts regarding tangible and electronic records;

(2) include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;

(3) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;

(4) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking or otherwise disciplining a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public; and

(5) include provisions to prevent fraud or mistake in the performance of notarial acts.

(b) Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. In adopting, amending, or repealing rules regarding notarial acts with respect to electronic records, the Office shall consider, as far as is consistent with this chapter:

(1) the most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State;

(2) standards, practices, and customs of other jurisdictions that substantially enact this chapter; and

(3) the views of governmental officials and entities and other interested persons.

#### § 5225. FEES

For the issuance of a commission as a notary public, the Secretary of State shall collect a fee of \$30.00, of which \$9.00 shall accrue to the State, \$9.00 shall accrue to the county, and \$12.00 shall accrue to the Secretary of State.

#### Subchapter 3. Commissions

#### § 5241. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO IMMUNITY OR BENEFIT

(a) An individual qualified under subsection (b) of this section may apply to the Office for a commission as a notary public. The applicant shall comply with and provide the information required by rules adopted by the Office and pay the application fee set forth in section 5225 of this chapter.

(b) An applicant for a commission as a notary public shall:

(1) be at least 18 years of age;

(2) be a citizen or permanent legal resident of the United States;

(3) be a resident of or have a place of employment or practice in this State;

(4) not be disqualified to receive a commission under section 5242 of this chapter; and

(5) pass an examination approved by the Office based on the statutes, rules, and ethics relevant to notarial acts.

(c) Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office and submit it to the Office.

(d) Upon compliance with this section, the Office, with the approval of the Assistant Judges in the county of jurisdiction, shall issue a commission as a notary public to an applicant for a term of two years.

(e) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this State on public officials or employees.

§ 5242. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE, SUSPEND, OR CONDITION COMMISSION OF NOTARY PUBLIC

(a) The Office, with the approval of the Assistant Judges in the county of jurisdiction, may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:

(1) failure to comply with this chapter;

(2) a fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission as a notary public submitted to the Office;

(3) a conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty, or deceit;

(4) a finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty, or deceit;

(5) failure by the notary public to discharge any duty required of a notary public, whether by this chapter, rules of the Office, or any federal or State law;

(6) use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right, or privilege that the notary does not have;

(7) violation by the notary public of a rule of the Office regarding a notary public;

(8) denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state; or

(9) committing any of the conduct set forth in 3 V.S.A. § 129a(a).

(b) If the Office, with the approval of the Assistant Judges in the county of jurisdiction, denies, refuses to renew, revokes, suspends, or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with 3 V.S.A. chapter 25.

§ 5243. RENEWALS; CONTINUING EDUCATION

(a) Commissions shall be renewed every two years upon payment of the fee set forth in section 5225 of this chapter, provided the person applying for renewal completes continuing education approved by the Office, which shall not be required to exceed more than two hours, during the preceding two-year period.

(b) The Office, with the advice of the advisor appointees, shall establish by rule guidelines and criteria for continuing education credit.

(c) Biennially, the Office shall provide a renewal notice to each licensee. Upon receipt of a licensee's completed renewal, fee, and evidence of eligibility, the Office shall issue to him or her a new commission.

#### § 5244. DATABASE OF NOTARIES PUBLIC

The Office shall maintain an electronic database of notaries public:

(1) through which a person may verify the authority of a notary public to perform notarial acts; and

(2) that indicates whether a notary public has notified the Office that the notary public will be performing notarial acts on electronic records.

#### § 5245. PROHIBITIONS; OFFENSES

(a) A person shall not perform or attempt to perform a notarial act or hold himself or herself out as being able to do so in this State without first having been commissioned.

(b) A person shall not use in connection with the person's name any letters, words, or insignia indicating or implying that the person is a notary public unless commissioned in accordance with this chapter.

(c) A person shall not perform or attempt to perform a notarial act while his or her commission has been revoked or suspended.

(d) A person who violates a provision of this section shall be subject to a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Prosecution may occur upon the complaint of the Attorney General or a State's Attorney and shall not act as a bar to civil or administrative proceedings involving the same conduct.

(e) A commission as a notary public shall not authorize an individual to:

(1) assist a person in drafting legal records, give legal advice, or otherwise practice law;

(2) act as an immigration consultant or an expert on immigration matters;

(3) represent a person in a judicial or administrative proceeding relating to immigration to the United States, U.S. citizenship, or related matters; or

(4) receive compensation for performing any of the activities listed in this subsection.

(f) A notary public, other than an attorney licensed to practice law in this State, shall not use the term "notario" or "notario publico."

(g)(1) A notary public, other than an attorney licensed to practice law in this State, shall not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law.

(2) If a notary public who is not an attorney licensed to practice law in this State in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media, and the Internet, the notary public shall include the following statement, or an alternate statement authorized or required by Office, in the advertisement or representation, prominently and in each language used in the advertisement or representation: "I am not an attorney licensed to practice law in this State. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities." If the form of advertisement or representation is not broadcast media, print media, or the Internet and does not permit inclusion of the statement required by this subsection because of size, it shall be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(h) Except as otherwise allowed by law, a notary public shall not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.

#### Subchapter 4. Notarial Acts

##### § 5261. NOTARIAL ACTS IN THIS STATE; AUTHORITY TO PERFORM

(a) A notarial act may only be performed in this State by a notary public commissioned under this chapter.

(b) The signature and title of an individual performing a notarial act in this State are prima facie evidence that the signature is genuine and that the individual holds the designated title.

##### § 5262. AUTHORIZED NOTARIAL ACTS

(a) A notarial officer may perform a notarial act authorized by this chapter or otherwise by law of this State.

(b) A notarial officer shall not perform a notarial act with respect to a record to which the officer or the officer's spouse is a party, or in which either of them has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

##### § 5263. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS

(a) Acknowledgments. A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer

and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

(b) Verifications. A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

(c) Signatures. A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.

(d) Copies. A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or item.

(e) Protests. A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in 9A V.S.A. § 3-505(b) (protest; certificate of dishonor).

#### § 5264. PERSONAL APPEARANCE REQUIRED

If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

#### § 5265. IDENTIFICATION OF INDIVIDUAL

(a) Personal knowledge. A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(b) Satisfactory evidence. A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(1) by means of:

(A) a passport, driver's license, or government issued non-driver identification card, which is current or expired not more than three years before performance of the notarial act; or

(B) another form of government identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual, and is satisfactory to the officer; or



(2) by a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license, or government issued non-driver identification card, which is current or expired not more than three years before performance of the notarial act.

(c) Additional information. A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

#### § 5266. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN

If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

#### § 5267. CERTIFICATE OF NOTARIAL ACT

(a) A notarial act shall be evidenced by a certificate. The certificate shall:

(1) be executed contemporaneously with the performance of the notarial act;

(2) be signed and dated by the notarial officer and be signed in the same manner as on file with the Office;

(3) identify the jurisdiction in which the notarial act is performed;

(4) contain the title of office of the notarial officer; and

(5) indicate the date of expiration of the officer's commission.

(b)(1) If a notarial act regarding a tangible record is performed by a notary public, an official stamp shall be affixed to or embossed on the certificate.

(2) If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in subdivisions (a)(2)–(4) of this section, an official stamp may be attached to or logically associated with the certificate.

(c) A certificate of a notarial act is sufficient if it meets the requirements of subsections (a) and (b) of this section and:

(1) is in a short form as set forth in section 5068 of this chapter;

(2) is in a form otherwise permitted by the law of this State;

(3) is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or

(4) sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in sections 5262–5264 of this chapter or a law of this State other than this chapter.

(d) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in sections 5263–5265 of this chapter.

(e) A notarial officer shall not affix the officer’s signature to, or logically associate it with, a certificate until the notarial act has been performed.

(f)(1) If a notarial act is performed regarding a tangible record, a certificate shall be part of, or securely attached to, the record.

(2) If a notarial act is performed regarding an electronic record, the certificate shall be affixed to, or logically associated with, the electronic record.

(3) If the Office has established standards by rule pursuant to section 5224 of this chapter for attaching, affixing, or logically associating the certificate, the process shall conform to those standards.

§ 5268. SHORT FORM CERTIFICATES

The following short form certificates of notarial acts shall be sufficient for the purposes indicated, if completed with the information required by subsections 5267(a) and (b) of this chapter:

(1) For an acknowledgment in an individual capacity:

State of \_\_\_\_\_ [County] of \_\_\_\_\_  
This record was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_  
Date \_\_\_\_\_ Name(s) of individual(s) \_\_\_\_\_  
Signature of notarial officer  
Stamp [ \_\_\_\_\_ ]  
Title of office \_\_\_\_\_ [My commission expires: \_\_\_\_\_]

(2) For an acknowledgment in a representative capacity:

State of \_\_\_\_\_ [County] of \_\_\_\_\_  
This record was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_  
Date \_\_\_\_\_ Name(s) of individual(s) \_\_\_\_\_  
as \_\_\_\_\_ (type of authority, such as officer or trustee) of \_\_\_\_\_ (name of party on behalf of whom \_\_\_\_\_ record was \_\_\_\_\_ executed).  
Signature of notarial officer

Stamp [ \_\_\_\_\_ ]

Title of office \_\_\_\_\_ [My commission expires: \_\_\_\_\_ ]

(3) For a verification on oath or affirmation:

State of \_\_\_\_\_ [County] of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on \_\_\_\_\_  
by \_\_\_\_\_

Date \_\_\_\_\_

Name(s) of individual(s) making statement \_\_\_\_\_

Signature of notarial officer \_\_\_\_\_

Stamp [ \_\_\_\_\_ ]

Title of office \_\_\_\_\_ [My commission expires: \_\_\_\_\_ ]

(4) For witnessing or attesting a signature:

State of \_\_\_\_\_ [County] of \_\_\_\_\_

Signed [or attested] before me on \_\_\_\_\_ by \_\_\_\_\_

Date \_\_\_\_\_ Name(s) of individual(s) \_\_\_\_\_

Signature of notarial officer \_\_\_\_\_

Stamp [ \_\_\_\_\_ ]

Title of office \_\_\_\_\_ [My commission expires: \_\_\_\_\_ ]

(5) For certifying a copy of a record:

State of \_\_\_\_\_ [County] of \_\_\_\_\_

I certify that this is a true and correct copy of a record in the possession  
of \_\_\_\_\_.

Dated \_\_\_\_\_

Signature of notarial officer \_\_\_\_\_

Stamp [ \_\_\_\_\_ ]

Title of office \_\_\_\_\_ [My commission expires: \_\_\_\_\_ ]

§ 5269. OFFICIAL STAMP

The official stamp of a notary public shall:

(1) include the notary public's name, jurisdiction, and other information  
required by the Office; and

(2) be capable of being copied together with the record to which it is  
affixed or attached or with which it is logically associated.

§ 5270. STAMPING DEVICE

(a) A notary public is responsible for the security of the notary public's stamping device and shall not allow another individual to use the device to perform a notarial act.

(b) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the Office on discovering that the device is lost or stolen.

§ 5271. JOURNAL

(a) A notary public shall maintain a journal in which the notary public chronicles all notarial acts that the notary public performs. The notary public shall retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.

(b) A journal may be created on a tangible medium or in an electronic format. A notary public shall maintain only one journal at a time to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records.

(1) If the journal is maintained on a tangible medium, it shall be a permanent, bound register with numbered pages.

(2) If the journal is maintained in an electronic format, it shall be in a permanent, tamper-evident electronic format complying with the rules of the Office.

(c) An entry in a journal shall be made contemporaneously with the performance of the notarial act and contain the following information:

(1) the date and time of the notarial act;

(2) a description of the record, if any, and type of notarial act;

(3) the full name and address of each individual for whom the notarial act is performed;

(4) if identity of the individual is based on personal knowledge, a statement to that effect;

(5) if identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of any identification credential; and

(6) the fee, if any, charged by the notary public.

(d) If a notary public's journal is lost or stolen, the notary public promptly shall notify the Office on discovering that the journal is lost or stolen.

(e) On resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with subsection (a) of this section and inform the Office where the journal is located.

(f) Instead of retaining a journal as provided in subsection (e) of this section, a current or former notary public may transmit the journal to the Office or a repository approved by the Office.

(g) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall transmit it to the Office or a repository approved by the Office.

§ 5272. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL ACT ON ELECTRONIC RECORD; SELECTION OF TECHNOLOGY.

(a) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person shall not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(b) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, the notary public shall notify the Office that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the Office has established standards by rule for approval of technology pursuant to section 5223 of this chapter, the technology shall conform to the standards. If the technology conforms to the standards, the Office shall approve the use of the technology.

§ 5273. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT

(a) A notarial officer shall refuse to perform a notarial act if the officer is not satisfied that:

(1) the individual executing the record is competent or has the capacity to execute the record; or

(2) the individual's signature is knowingly and voluntarily made.

(b) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than this chapter.

§ 5274. VALIDITY OF NOTARIAL ACTS

(a) Except as otherwise provided in subsection 5273(b) of this chapter, the failure of a notarial officer to perform a duty or meet a requirement specified in this chapter shall not invalidate a notarial act performed by the notarial officer.

(b) The validity of a notarial act under this chapter shall not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this State other than this chapter or law of the United States.

(c) This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

§ 5275. NOTARIAL ACT IN ANOTHER STATE

(a) A notarial act performed in another state has the same effect under the law of this State as if performed by a notarial officer of this State, if the act performed in that state is performed by:

(1) a notary public of that state;

(2) a judge, clerk, or deputy clerk of a court of that state; or

(3) any other individual authorized by the law of that state to perform the notarial act.

(b) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (a)(1) or (2) of this section conclusively establish the authority of the officer to perform the notarial act.

§ 5276. NOTARIAL ACT UNDER AUTHORITY OF FEDERALLY RECOGNIZED INDIAN TRIBE

(a) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this State, if the act performed in the jurisdiction of the tribe is performed by:

(1) a notary public of the tribe;

(2) a judge, clerk, or deputy clerk of a court of the tribe; or

(3) any other individual authorized by the law of the tribe to perform the notarial act.

(b) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (a)(1) or (2) of this section conclusively establish the authority of the officer to perform the notarial act.

#### § 5277. NOTARIAL ACT UNDER FEDERAL AUTHORITY

(a) A notarial act performed under federal law has the same effect under the law of this State as if performed by a notarial officer of this State, if the act performed under federal law is performed by:

(1) a judge, clerk, or deputy clerk of a court;

(2) an individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;

(3) an individual designated a notarizing officer by the U.S. Department of State for performing notarial acts overseas; or

(4) any other individual authorized by federal law to perform the notarial act.

(b) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of an officer described in subdivision (a)(1), (2), or (3) of this section shall conclusively establish the authority of the officer to perform the notarial act.

#### § 5278. FOREIGN NOTARIAL ACT

(a) In this section, “foreign state” means a government other than the United States, a state, or a federally recognized Indian tribe.

(b) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this State as if performed by a notarial officer of this State.

(c) If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

(d) The signature and official stamp of an individual holding an office described in subsection (c) of this section are prima facie evidence that the signature is genuine and the individual holds the designated title.

(e) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(f) A consular authentication issued by an individual designated by the U.S. Department of State as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

## Sec. 2. REPEAL

The following are repealed:

(1) 24 V.S.A. chapter 5, subchapter 9 (notaries public);

(2) 32 V.S.A. § 1403(b) (county clerk; notaries public without charge or fee);

(3) 32 V.S.A. § 1436 (fee for certification of appointment as notary public); and

(4) 32 V.S.A. § 1759 (notaries public fees).

## Sec. 3. APPLICABILITY; NOTARY PUBLIC COMMISSION IN EFFECT

(a)(1) This act shall apply to a notarial act performed on or after the effective date of this act.

(2) A notary public, in performing notarial acts on and after the effective date of this act, shall comply with the provisions of this act.

(b)(1) A commission as a notary public in effect on the effective date of this act shall continue until its date of expiration.

(2) A notary public who applies to renew a commission as a notary public on or after the effective date of this act shall comply with the provisions of this act.

## Sec. 4. SAVINGS CLAUSE

This act shall not affect the validity or effect of a notarial act performed prior to the effective date of this act.

## Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

**( Committee Vote: 9-1-1)**



**Rep. Young of Glover**, for the Committee on **Ways & Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Government Operations**.

(Committee Vote: 10-0-1)

## H. 552

An act relating to threatened and endangered species

**Rep. Deen of Westminster**, 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:

Sec. 1. 10 V.S.A. § 5401 is amended to read:

### § 5401. DEFINITIONS

As used in this chapter:

- (1) “Agency” means the Agency of Natural Resources.
- (2) “Secretary” means the Secretary of Natural Resources.
- (3) “Species” ~~includes all subspecies of~~ means wildlife or wild plants and any subspecies or other group of wildlife or wild plants of the same species, the members of which may interbreed when mature.
- (4) “Wildlife” means any member of a nondomesticated species of the animal kingdom, whether reared in captivity or not, including, without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and also including any part, product, egg, offspring, dead body, or part of the dead body of any such wildlife.
- (5) “Plant” means any member of the plant kingdom, including seeds, roots, and other parts thereof. As used in this chapter, plants shall include fungi.
- (6) “Endangered species” means a species listed ~~on the state endangered species list~~ as endangered under this chapter or ~~determined to be an “endangered species”~~ under the federal Endangered Species Act.
- (7) “Threatened species” means a species listed ~~on the State~~ as a threatened species ~~list~~ under this chapter or determined to be a “threatened species” under the federal Endangered Species Act.
- (8) “Endangered Species Act” and “federal Endangered Species Act” means the Endangered Species Act of 1973, Public Law 93-205, as amended.
- (9) “Habitat” means the physical and biological environment in which a particular species of plant or animal lives.

(10) “Conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures ~~both~~ for maintaining or increasing:

(A) the number of individuals within a population of a species;

(B) the number of populations of a species; and

(C) populations of wildlife or wild plants to the optimum carrying capacity of the habitat, and for maintaining those numbers.

(11) “Optimum carrying capacity” for a species means a population level of that species which, in that habitat, can ~~indefinitely~~ sustainably coexist with healthy populations of all wildlife and wild plant species normally present.

(12) “Methods” and “procedures” means all activities associated with ~~scientific~~ natural resources management, including, ~~without limitation,~~ scientific research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplanting. The terms also include the periodic or continuous protection of species or populations, where appropriate, and the regulated taking of individuals of the species or population in extraordinary cases where population pressures within a habitat cannot be otherwise relieved.

(13) “Possession” ~~of a member of a species means the state of possessing~~ means holding, controlling, exporting, importing, processing, selling, offering to sell, delivering, carrying, transporting, or shipping by any means a member of ~~that~~ a species.

(14) ~~“Taking,”~~ “Take” or “taking”:

(A) ~~with~~ With respect to wildlife ~~means “taking” as defined in section 4001 of this title, and~~ designated a threatened or endangered species, means:

(i) pursuing, shooting, hunting, killing, capturing, trapping, harming, snaring, and netting wildlife;

(ii) an act that creates a risk of injury to wildlife, whether or not the injury occurs, including harassing, wounding, or placing, setting, drawing, or using any net or other device used to take animals; or

(iii) attempting to engage in or assisting another to engage in an act set forth under subdivision (A)(i) or (ii) of this subdivision (14).

(B) ~~with~~ With respect to wild plants designated a threatened or endangered species, means uprooting, transplanting, gathering seeds or fruit, cutting, injuring, harming, or killing or any attempt to do the same or assisting another who is doing or is attempting to do the same.

(15) “Accepted silvicultural practices” means the accepted silvicultural practices defined by the Commissioner of Forests, Parks and Recreation, including the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont adopted by the Commissioner of Forests, Parks and Recreation.

(16) “Critical habitat” for a threatened species or endangered species means:

(A) a delineated location within the geographical area occupied by the species that:

(i) has the physical or biological features that are identifiable, concentrated, and decisive to the survival of a population of the species; and

(ii) is necessary for the conservation or recovery of the species; and

(iii) may require special management considerations or protection; or

(B) a delineated location outside the geographical area occupied by a species at the time it is listed under section 5402 of this title that:

(i)(I) was historically occupied by a species; or

(II) contains habitat that is hydrologically connected or directly adjacent to occupied habitat; and

(ii) contains habitat that is identifiable, concentrated, and decisive to the continued survival of a population of the species; and

(iii) is necessary for the conservation or recovery of the species.

(17) “Destroy or adversely impact” means, with respect to critical habitat, a direct or indirect activity that negatively affects the value of critical habitat for the survival, conservation, or recovery of a listed threatened or endangered species.

(18) “Farming” shall have the same meaning as used in subdivision 6001(22) of this title.

(19) “Forestry operations” means activities related to the management of forests, including a timber harvest; pruning; planting; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. “Forestry operation” includes the primary processing of forest products of commercial value on a parcel where the timber harvest occurs.

(20) “Harming,” as used in the definition of “take” or “taking” under subdivision (14) of this subsection, means:

(A) an act that kills or injures a threatened or endangered species; or

(B) the destruction or imperilment of habitat that kills or injures a threatened or endangered species by significantly impairing continued survival or essential behavioral patterns, including reproduction, feeding, and sheltering.

Sec. 2. 10 V.S.A. § 5402 is amended to read:

§ 5402. ENDANGERED AND THREATENED SPECIES LISTS

(a) The Secretary shall adopt by rule a ~~State-endangered~~ State endangered species list and a ~~State-threatened~~ State threatened species list. The listing for any species may apply to the whole State or to any part of the State and shall identify the species by its most recently accepted genus and species names and, if available, the common name.

(b) The Secretary shall determine a species to be endangered if it normally occurs in the State and its continued existence as ~~wildlife or a wild plant in the State~~ a sustainable component of the State's wildlife or wild plants is in jeopardy.

(c) The Secretary shall determine a species to be threatened if:

(1) it is a sustainable component of the State's wildlife or wild plants;

(2) it is reasonable to conclude based on available information that its numbers are significantly declining because of loss of habitat or human disturbance; and

(3) unless protected, it will become an endangered species.

(d) In determining whether a species is ~~endangered or threatened~~ or endangered, the Secretary shall consider:

(1) the present or threatened destruction, degradation, fragmentation, modification, or curtailment of the range or habitat of the species;

(2) any killing, harming, or over-utilization of the species for commercial, sporting, scientific, educational, or other purposes;

(3) disease or predation affecting the species;

(4) the adequacy of existing regulation;

(5) actions relating to the species carried out or about to be carried out by any governmental agency or any other person who may affect the species; ~~and~~

(6) competition with other species, including nonnative invasive species;

(7) the decline in the population;

(8) cumulative impacts; and

(9) other natural or ~~man-made~~ human-made factors affecting the continued existence of the species.

(e) In determining whether a species is ~~endangered or threatened~~ or ~~endangered or whether to delist a species~~, the Secretary shall:

(1) use the best scientific, commercial, and other data available;

(2) notify and consult with ~~interested state or~~ appropriate officials in Canada, appropriate State and federal agencies, other states having a common interest in the species, affected landowners, and any interested persons at least 30 days prior to commencement of rulemaking; and

(3) notify the ~~governor~~ appropriate officials and agencies of Quebec or any state contiguous to Vermont in which the species affected is known to occur.

Sec. 3. 10 V.S.A. § 5402a is added to read:

§ 5402a. CRITICAL HABITAT; LISTING

(a) The Secretary may, after the consultation required under subsection 5408(e) of this section, adopt or amend by rule a critical habitat designation list for threatened or endangered species. Critical habitat may be designated in any part of the State. The Secretary shall not be required to designate critical habitat for every State-listed threatened or endangered species. When the Secretary designates critical habitat, the Secretary shall identify the species for which the designation is made, including its most recently accepted genus and species names, and, if available, its common name.

(b) The Secretary shall designate only critical habitat that meets the definition of “critical habitat” under this chapter. In determining whether and where to designate critical habitat for a State-listed threatened or endangered species, the Secretary shall, after consultation with and consideration of recommendations of the Secretary of Agriculture, Food and Markets, the Secretary of Transportation, and the Commissioner of Forests, Parks and Recreation, consider the following:

(1) the current or historic use of the habitat by the listed species;

(2) the extent to which the habitat is decisive to the survival and recovery of the listed species, at any stage of its life cycle;

(3) the space necessary for individual and population growth of the listed species;

(4) food, water, air, light, minerals, or other nutritional or physiological requirements of the listed species;

(5) cover or shelter for the listed species;

(6) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; migration corridors; and overwintering;

(7) the present or threatened destruction, degradation, fragmentation, modification, or curtailment of the range or habitat of the listed species;

(8) the adequacy of existing regulation;

(9) actions relating to the listed species carried out or about to be carried out by any governmental agency or any other person who may affect the listed species;

(10) cumulative impacts; and

(11) natural or human-made factors affecting the continued existence of the listed species.

(c) In determining whether to designate critical habitat for a State-listed threatened or endangered species, the Secretary shall:

(1) use the best scientific, commercial, and other data available;

(2) notify and consult with appropriate officials in Canada, appropriate State and federal agencies, other states having a common interest in the species, affected landowners, and any interested persons at least 30 days prior to commencement of rulemaking; and

(3) notify the appropriate officials and agencies of Quebec or any state contiguous to Vermont in which the species affected is known to occur.

(d) Prior to initiating rulemaking under this section to designate critical habitat, the Secretary shall notify the owner of record of any land on which critical habitat is proposed for designation.

Sec. 4. 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:

(1) take, possess, or transport wildlife or ~~wild~~ plants that are members of an endangered or a threatened or endangered species; or

(2) destroy or adversely impact critical habitat.

(b) Any person who takes a threatened or endangered species shall report the taking to the Secretary.

(c) The Secretary may, with advice of the Endangered Species Committee and after the consultation required under subsection 5408(e) of this section,

adopt rules for the protection ~~and~~, conservation, or recovery of endangered and threatened species. The rules may establish:

(1) application requirements for an individual permit or general permits issued under this section, including requirements that differ from the requirements of subsection 5408(h) of this title; and

(2) best management practices for general permits.

~~(e)~~(d) The Secretary may bring ~~a civil~~ an environmental enforcement action against any person who violates subsection (a) or (b) of this section or rules adopted under this chapter in accordance with chapters 201 and 211 of this title.

~~(d)~~(e) Instead of bringing ~~a civil~~ an environmental 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 criminal enforcement.

~~(e)~~(f) ~~A In a criminal enforcement action, a person who knowingly violates a requirement of this chapter or a rule of the Secretary adopted under subsection ~~(b)~~(c) of this section related to taking, possessing, transporting, buying, or selling a threatened or endangered species shall be fined not more than \$500.00 in accordance with section 4518 of this title, and the person shall pay restitution under section 4514 of this title.~~

~~(f)~~(g) Any person who violates subsection (a) or (b) of this section by knowingly injuring a member of a threatened or endangered species or knowingly destroying or adversely impacting critical habitat and who is subject to criminal prosecution may be required by the court to pay restitution for:

(1) actual costs and related expenses incurred in treating and caring for the injured 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. 5. 10 V.S.A. § 5404 is amended to read:

#### § 5404. ENDANGERED SPECIES COMMITTEE

(a) ~~A Committee~~ committee on endangered species is created to be known as the “Endangered Species Committee,” and shall consist of nine members, including the Secretary of Agriculture, Food and Markets, the Commissioner of Fish and Wildlife, the Commissioner of Forests, Parks and Recreation, and

six members appointed by the Governor from the public at large. Of the six public members, two shall be actively engaged in agricultural or silvicultural activities, two shall be knowledgeable concerning flora, and two shall be knowledgeable concerning fauna. Members appointed by the Governor shall be entitled to reimbursement for expenses incurred in the attendance of meetings, as approved by the Chair. The Chair of the Committee shall be elected from among and by the members each year. Members who are not employees of the State shall serve terms of three years, except that the Governor may make appointments for a lesser term in order to prevent more than two terms from expiring in any year.

(b) The Endangered Species Committee shall advise the Secretary on all matters relating to endangered and threatened species, including whether to alter the lists of endangered and threatened species ~~and~~, how to protect those species, and whether and where to designate critical habitat.

(c) The Agency of Natural Resources shall provide the Endangered Species Committee with necessary staff services.

Sec. 6. 10 V.S.A. § 5405 is amended to read:

§ 5405. CONSERVATION PROGRAMS

The Secretary, with the advice of the Endangered Species Committee, may establish conservation programs and establish recovery plans for the conservation or recovery of threatened or endangered species of wildlife or plants or for the conservation or recovery of critical habitat. The programs may include the purchase of land or aquatic habitat and the formation of contracts for the purpose of management of wildlife or wild plant refuge areas or for other purposes.

Sec. 7. 10 V.S.A. § 5406 is amended to read:

§ 5406. COOPERATION BY OTHER AGENCIES

All agencies of this State shall review programs administered by them which may relate to this chapter and shall, in consultation with the Secretary, utilize their authorities only in a manner which does not jeopardize the threatened or endangered species, critical habitat, or the outcomes of conservation or recovery programs established by this chapter or by the Secretary under ~~its~~ his or her authority.

Sec. 8. 10 V.S.A. § 5407 is amended to read:

§ 5407. ~~ENFORCEMENT~~ AUTHORITY TO SEIZE THREATENED OR ENDANGERED SPECIES

In addition to other methods of enforcement authorized by law, the Secretary may direct under this section that wildlife or wild plants ~~which~~ that



were seized because of violation of this chapter be rehabilitated, released, replanted, or transferred to a zoological, botanical, educational or scientific institution, and that the costs of the transfer and staff time related to a violation may be charged to the violator. The Secretary, with the advice of the Endangered Species Committee, may adopt rules for the implementation of this section.

Sec. 9. 10 V.S.A. § 5408 is amended to read:

§ 5408. LIMITATIONS AUTHORIZED TAKINGS; INCIDENTAL TAKINGS; DESTRUCTION OF CRITICAL HABITAT

(a) Authorized taking. Notwithstanding any provision of this chapter, after obtaining the advice of the Endangered Species Committee, the Secretary may permit, under such terms and conditions as the Secretary may, ~~prescribe by rule,~~ require as necessary to carry out the purposes of this chapter, the taking of a threatened or endangered species, the destruction or adverse impact of critical habitat, or any act otherwise prohibited by this chapter if done for any of the following purposes:

(1) scientific purposes;

(2) to enhance the propagation or survival of a threatened or endangered species; economic hardship;

(3) zoological exhibition;

(4) educational purposes;

(5) noncommercial cultural or ceremonial purposes; or

(6) special purposes consistent with the purposes of the federal Endangered Species Act.

(b) Incidental taking. After obtaining the advice of the Endangered Species Committee, the Secretary may permit, under such terms and conditions as the Secretary require as necessary to carry out the purposes of this chapter, the incidental taking of a threatened or endangered species or the destruction or adverse impact of critical habitat if:

(1) the taking is necessary to conduct an otherwise lawful activity;

(2) the taking is attendant or secondary to, and not the purposes of, the lawful activity;

(3) the impact of the permitted incidental take is minimized; and

(4) the incidental taking will not impair the conservation or recovery of any endangered species or threatened species.

(c) Transport through State. Nothing in this chapter shall prevent a person who holds a proper permit from the federal government or any other state from transporting a member of ~~an endangered or a threatened~~ or endangered species from a point outside this State ~~to another point within or without this~~ through the State.

~~(e)~~(d) Possession. Nothing in this chapter shall prevent a person from possessing in this State wildlife or wild plants which are not determined to be “endangered” or “threatened” under the federal Endangered Species Act where the possessor is able to produce substantial evidence that the wildlife or wild plant was first taken or obtained in a place without violating the law of that place, provided that an importation permit may be required under section 4714 of this title or the rules of the Department of Fish and Wildlife.

~~(d)~~(e) Interference with agricultural or silvicultural practices. No rule adopted under this chapter shall cause undue interference with ~~normal agricultural or farming, forestry operations, or accepted~~ silvicultural practices. This section shall not be construed to exempt any person from the provisions of the ~~federal Endangered Species Act~~ requirements of this chapter. The Secretary shall not adopt rules that affect farming, forestry operations, or accepted silvicultural practices without first consulting the Secretary of Agriculture, Food and Markets and the Commissioner of Forests, Parks and Recreation.

(f) Consistency with State law. Nothing in this chapter shall be interpreted to limit or amend the definitions and applications of necessary habitat in chapter 151 of this title or in 30 V.S.A. chapter 5.

~~(e)~~(g) Effect on federal law. Nothing in this section permits a person to violate any provision of federal law concerning federally protected threatened or endangered species.

(h) Permit application. An applicant for a permit under this section shall submit an application to the Secretary that includes the following information:

(1) a description of the activities that could lead to a taking of a listed threatened or endangered species or the destruction or adverse impact of critical habitat;

(2) the steps that the applicant has or will take to avoid, minimize, and mitigate the impact to the relevant threatened or endangered species or critical habitat;

(3) a plan for ensuring that funding is available to conduct any required monitoring and mitigation, if applicable;

(4) a summary of the alternative actions to the taking or destruction of critical habitat that the applicant considered and the reasons that these alternatives were not selected, if applicable;

(5) the name or names and obligations and responsibilities of the person or persons that will be involved in the proposed taking or destruction of critical habitat; and

(6) any additional information that the Secretary may require.

~~(f)~~(i) Permit fees.

(1) Fees to be charged to a person applying to take a threatened or endangered species under this section shall be:

(A) ~~To~~ to take for scientific purposes, to enhance the propagation or survival of the species, noncommercial cultural or ceremonial purposes, or for educational purposes or special purposes consistent with the federal Endangered Species Act, \$50.00-;

(B) ~~To~~ to take for a zoological or botanical exhibition ~~or to lessen an economic hardship~~, \$250.00 for each listed ~~animal or plant~~ wildlife or wild plant taken up to a maximum of \$25,000.00 ~~or, if the Secretary determines that it is in the best interest of the species, the parties may agree to mitigation in lieu of a monetary fee; and~~

(C) for an incidental taking, \$250.00 for each listed wildlife or wild plant taken up to a maximum of \$25,000.00.

(2) The Secretary may require the implementation of mitigation strategies, and may collect mitigation funds, in addition to the permit fees, in order to mitigate the impacts of a taking or the destruction or adverse impact on critical habitat. Mitigation may include:

(A) a requirement to rectify the taking or adverse impact or to reduce the adverse impact over time;

(B) a requirement to manage or restore land within the area of the proposed activity or in an area outside the proposed area as habitat for the threatened or endangered species; or

(C) compensation, including payment of a fee into the Threatened and Endangered Species Fund for the uses of that Fund, provided that any payment is commensurate to the taking or adverse impact proposed.

(3) Fees ~~or~~ and mitigation payments collected under this subsection and interest on fees and mitigation payments shall be deposited in the Threatened and Endangered Species Fund within the Fish and Wildlife Fund, which Fund is hereby created and shall be used solely for expenditures of the Department of Fish and Wildlife related to threatened and endangered species.

Expenditures may be made for monitoring, restoration, conservation, recovery, and the acquisition of property interests and other purposes consistent with this chapter. Where practical, the fees collected for takings shall be devoted to the conservation or recovery of the taken species or its habitat. Interest accrued on the Fund shall be credited to the Fund.

~~(g)~~(j) Permit term. A permit issued under this section shall be valid for the period of time specified in the permit, not to exceed five years. A permit issued under this section may be renewed upon application to the Secretary.

(k) Public notice. Prior to issuing a permit for an authorized or incidental taking and prior to the issuance or amendment of a general permit under this section, the Secretary shall provide for: public notice of no fewer than 30 days; opportunity for written comment; and opportunity to request a public informational hearing. The Secretary shall post permit applications, permit decisions, and the initial or amended general permits on the website of the Agency of Natural Resources. The Secretary also shall provide notice to interested persons who request notice of permit applications, permit decisions, and proposed general permits or proposed amendments to general permits.

(l) General permits.

(1) The Secretary may issue general permits for activities that will not affect the continued survival or recovery of a threatened or endangered species.

(2) A general permit issued under this chapter shall contain those terms and conditions necessary to ensure compliance with the provisions of this statute.

(3) These terms and conditions may include the implementation of best management practices and the adoption of specific mitigation measures and required surveying, monitoring, and reporting.

(4) The Secretary may issue a general permit to take a threatened or endangered species or destroy or adversely impact critical habitat only if an activity or class of activities satisfies one or more of the following criteria:

(A) the taking of a threatened or endangered species or the destruction or adverse impact of critical habitat is necessary to address an imminent risk to human health;

(B) a proposed taking of a threatened or endangered species or the destruction or adverse impact of critical habitat would enhance the overall long-term survival of the species; or

(C) the Secretary has adopted best management practices that are designed, when applied, to minimize to the greatest extent possible the taking of a threatened or endangered species or the destruction or adverse impact of critical habitat.

(5) On or before September 1, 2017, the Secretary shall issue a general permit for vegetation management and operational and maintenance activities conducted by a utility. Until the general permit has been issued, no critical habitat designation for wild plants shall be made in utility right of way. As used in this subdivision (5), "utility" means an electric company, telecommunication company, pipeline operator, or railroad company.

(6) Prior to issuing a general permit under this subsection, the Secretary shall:

(A) post a draft of the general permit on the Agency website;

(B) provide public notice of at least 30 days; and

(C) provide for written comments or a public hearing, or both.

(7) For applications for coverage under the terms of an issued general permit, the applicant shall provide notice on a form provided by the Secretary. The Secretary shall post notice of the application on the Agency website and shall provide an opportunity for written comment, regarding whether the application complies with the terms and conditions of the general permit, for ten days following receipt of the application.

(8) The Secretary may require any applicant for coverage under a general permit to submit additional information that the Secretary considers necessary and may refuse to approve coverage under the terms of a general permit until the information is furnished and evaluated.

(9) The Secretary may require any applicant for coverage under a general permit to seek an individual permit under this section if the applicant does not qualify for coverage.

(10) The Secretary may require a person operating under a general permit issued under this section to obtain an individual permit under this section if the person proposes to destroy or adversely impact critical habitat that was designated under section 5402a of this title after issuance of the general permit.

Sec. 10. 10 V.S.A. § 5410 is amended to read:

§ 5410. LOCATION CONFIDENTIAL

~~(a) All information~~ The Secretary shall not disclose information regarding the specific location of threatened or endangered species sites shall be kept confidential in perpetuity except that the Secretary shall disclose this information regarding the location of the threatened or endangered species to:

(1) the owner of land upon which the species has been is located, or to;

(2) a potential buyer of land upon which the species is located who has a bona fide contract to buy the land and applies to the Secretary for disclosure of threatened or endangered species information, and to; or

(3) qualified individuals or organizations, public agencies and nonprofit organizations for scientific research or for preservation and planning purposes when the Secretary determines that the preservation of the species is not further endangered by the disclosure.

(b) When the Secretary issues a permit under this chapter to take a threatened or endangered species or destroy or adversely impact critical habitat and when the Secretary designates critical habitat by rule under section 5402a of this title, the Secretary shall disclose only the municipality and general location where the threatened or endangered species or designated critical habitat is located. When the Secretary designates critical habitat under section 5402a of this title, the Secretary shall notify the municipality in which the critical habitat is located and shall disclose the general location of the designated critical habitat.

#### Sec. 11. STATUTORY REVISION

The Office of Legislative Council, in its statutory revision capacity, is directed to renumber the subdivisions of 10 V.S.A. § 5401 in numerical order and to correct any cross references in statute to 10 V.S.A. § 5410 to reflect the renumbered subdivisions.

#### Sec. 12. FEE RECOMMENDATION; PERMIT TO DESTROY OR ADVERSELY IMPACT CRITICAL HABITAT

The consolidated Executive Branch fee report and request to be submitted on or before the third Tuesday of January 2018 pursuant to 32 V.S.A. § 605 shall include a recommendation from the Agency of Natural Resources of a fee for a permit under 10 V.S.A. § 5408 to destroy or adversely impact critical habitat of a State-listed threatened or endangered species. The recommendation shall include whether the owner of property where critical habitat is designated under 10 V.S.A. § 5402a should be required to pay a fee for a permit to destroy or adversely impact critical habitat on his or her property.

#### Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

**( Committee Vote: 7-2-0)**

**Rep. Masland of Thetford**, for the Committee on **Ways & Means**, recommends the bill ought to pass when amended as recommended by the

Committee on **Fish, Wildlife & Water Resources** and when further amended as follows:

In Sec. 9, 10 V.S.A. § 5408, in subdivision (i)(2)(C), after “including payment” and before “into the Threatened and Endangered Species Fund” by striking out “of a fee”

( **Committee Vote: 10-0-1**)

### **H. 562**

An act relating to professions and occupations regulated by the Office of Professional Regulation and to the review of professional regulation

**Rep. Evans of Essex**, 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:

\* \* \* Professional Regulation Review \* \* \*

Sec. 1. 26 V.S.A. chapter 57 is amended to read:

#### **CHAPTER 57. REVIEW OF LICENSING STATUTES, BOARDS, AND COMMISSIONS REGULATORY LAWS**

##### **§ 3101. POLICY AND PURPOSE**

(a) It is the policy of the ~~state~~ State of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The ~~legislature~~ General Assembly believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the ~~state~~ State to protect the interests of the public by restricting entry into the profession or occupation.

(b) If such a need is identified, the form of regulation adopted by the ~~state~~ State shall be the least restrictive form of regulation necessary to protect the public interest. If regulation is imposed, the profession or occupation may be subject to ~~periodic~~ review by the ~~legislature~~ Office of Professional Regulation and the General Assembly to ~~insure~~ ensure the continuing need for and appropriateness of such regulation.

##### **§ 3101a. DEFINITIONS**

~~The definitions contained in this section shall apply throughout~~ As used in this chapter, unless the context clearly requires otherwise:

(1) “Certification” means a voluntary process by which a statutory regulatory entity grants to ~~an individual~~, a person who has met certain prerequisite qualifications, the right to assume or to use the title of the profession or occupation, or the right to assume or use the term “certified” in

conjunction with the title. Use of the title or the term “certified,” as the case may be, by a person who is not certified is unlawful.

(2) “Licensing” and “licensure” mean a process by which a statutory regulatory entity grants to ~~an individual~~, a person who has met certain prerequisite qualifications, the right to perform prescribed professional ~~and~~ or occupational tasks and to use the title of the profession or occupation. Practice without a license is unlawful.

(3) “License” means an individual, nontransferable authorization to carry on an activity based on qualifications such as:

(A) satisfactory completion of or graduation from an accredited or approved educational or training program; ~~and~~ or

(B) acceptable performance on a qualifying examination or series of examinations.

(4) “Office” means the Office of Professional Regulation.

(5) “Practitioner” means ~~an individual~~ a person who is actively engaged in a specified profession or occupation.

~~(5)~~(6) “Public member” means an individual who has no material financial interest in the profession or occupation being regulated other than as a consumer.

~~(6)~~(7) “Registration” means a process ~~which requires~~ requiring that, prior to rendering services, ~~all practitioners~~ a practitioner formally notify a regulatory entity of ~~their~~ his, her, or its intent to engage in the profession or occupation. Notification may include the name and address of the practitioner, the location of the activity to be performed, and a description of the service to be provided.

(8) “Regulatory entity” means the statutory entity responsible for regulating a profession or occupation, such as a board or an agency of the State.

~~(7)~~(9) “Regulatory law” ~~as used in section 3104 of this title~~, means any law in this State that requires a person engaged in a profession or occupation to be registered, certified, or licensed under this title or 4 V.S.A. chapter 23 or that otherwise regulates the operation of that profession or occupation.

#### § 3102. ~~PERIODIC REVIEW REQUIREMENT~~

~~(a) Each licensing law enumerated below in subsection (b) of this section, each board related thereto, and the activities resulting shall be subject to review, at least once, in the manner provided in section 3104 of this title and on the basis of the criteria in section 3105 of this title.~~



- (b) ~~The following laws are subject to review:~~
- ~~(1) Chapter 15 of this title on electricians;~~
  - ~~(2) Chapter 39 of this title on plumbers and plumbing;~~
  - ~~(3) Chapter 28 of this title on nursing;~~
  - ~~(4) Chapter 10 of this title on chiropractic;~~
  - ~~(5) Chapter 6 of this title on barbers;~~
  - ~~(6) Chapter 6 of this title on cosmeticians and hairdressers;~~
  - ~~(7) Chapter 23 of this title on medicine and surgery;~~
  - ~~(8) Chapter 33 of this title on osteopathic physicians and surgeons;~~
  - ~~(9) Chapter 13 of this title on dentists and dental hygienists;~~
  - ~~(10) 18 V.S.A. chapter 46 on nursing home administrators;~~
  - ~~(11) Chapter 17 of this title on embalmers;~~
  - ~~(12) Chapter 21 of this title on funeral directors;~~
  - ~~(13) Chapter 44 of this title on veterinary science;~~
  - ~~(14) Chapter 1 of this title on accountants;~~
  - ~~(15) Chapter 59 of this title on private detectives;~~
  - ~~(16) Chapter 55 of this title on psychologists;~~
  - ~~(17) Chapter 36 of this title on pharmacy;~~
  - ~~(18) Chapter 51 of this title on radiological technologists;~~
  - ~~(19) Chapter 41 of this title on real estate brokers and salesmen;~~
  - ~~(20) Chapter 20 of this title on engineering;~~
  - ~~(21) Chapter 3 of this title on architects;~~
  - ~~(22) Chapter 45 of this title on land surveyors;~~
  - ~~(23) Chapter 31 of this title on physicians' assistants;~~
  - ~~(24) Chapter 7 of this title on podiatry;~~
  - ~~(25) 4 V.S.A. chapter 23 on attorneys;~~
  - ~~(26) Chapter 47 of this title on opticians;~~
  - ~~(27) Chapter 65 of this title on clinical mental health counselors;~~
  - ~~(28) Chapter 67 of this title on hearing aid dispensers;~~
  - ~~(29) Chapter 79 of this title on tattooists;~~

~~(30) Chapter 81 of this title on naturopathic physicians;~~

~~(31) Chapter 83 of this title on athletic trainers;~~

~~(32) Chapter 87 of this title on audiologists and speech language pathologists.~~

~~(e) Any new law to regulate another profession or occupation shall be based on the relevant criteria and standards in section 3105 of this title. [Repealed.]~~

#### § 3104. PROCESS FOR REVIEW OF REGULATORY LAWS

~~(a) Either house of the general assembly may designate, by resolution, The Office may review a regulatory law or an issue that affects professions and occupations generally to be reviewed by the legislative council staff that is within its jurisdiction, and shall review any regulatory law within or outside its jurisdiction upon the request of the House or Senate Committee on Government Operations. The staff Office shall base its review on the criteria and standards set forth in section 3105 of this title chapter.~~

~~(b) The review may shall also include the following inquiries in the discretion of the Office or in response to a Committee request:~~

~~(1) the extent to which the board's a regulatory entity's actions have been in the public interest and consistent with legislative intent;~~

~~(2) the extent to which the board's rules are complete, concise, and easy to understand profession's historical performance, including the actual history of complaints and disciplinary actions in Vermont, indicates that the costs of regulation are justified by the realized benefits to the public;~~

~~(3) the extent to which the board's standards and procedures are fair and reasonable and accurately measure an applicant's qualifications scope of the existing regulatory scheme for the profession is commensurate to the risk of harm to the public;~~

~~(4) the extent to which the profession's education, training, and examination requirements for a license or certification are consistent with the public interest;~~

~~(5) the way in which the board receives, investigates, and resolves complaints from the public the extent to which a regulatory entity's resolutions of complaints and disciplinary actions have been effective to protect the public;~~

~~(5)(6) the extent to which the board a regulatory entity has sought ideas from the public and from those it regulates, concerning reasonable ways to improve the service of the board entity and the profession or occupation regulated;~~

~~(6)~~(7) the extent to which ~~the board~~ a regulatory entity gives adequate public notice of its hearings and meetings and encourages public participation;

~~(7)~~(8) whether ~~the board~~ a regulatory entity makes efficient and effective use of its funds; and meets its responsibilities; and

~~(8)~~(9) whether ~~the board~~ a regulatory entity has sufficient funding to carry out its mandate.

(c)(1) ~~The legislative council staff~~ Office shall give adequate notice to the public, the ~~board~~ applicable regulatory entity, and the appropriate professional societies that it is reviewing a particular regulatory law and board, as applicable, that regulatory entity. Notice to the ~~board~~ regulatory entity and the professional societies shall be in writing.

(2) ~~All~~ The regulatory entity shall provide to the Office the information required under described in section 3107 of this title chapter and available data reasonably requested the Office requests for purposes of the review ~~shall be provided by the boards.~~

(3) The ~~staff~~ Office shall seek comments and information from the public and from members of the profession or occupation. It also shall give the ~~board~~ regulatory entity a chance to present its position and to respond to any matters raised in the review.

(4) The ~~staff~~ Office, upon its request, shall have assistance from the ~~department of finance and management~~ Department of Finance and Management, the ~~auditor of accounts~~ Auditor of Accounts, the ~~attorney general, the director of the office of professional regulation~~ Attorney General, the ~~joint fiscal committee~~ Joint Fiscal Committee, or any other ~~state~~ State agency.

(d) ~~The legislative council staff~~ Office shall file a separate written report for each review with the ~~speaker of the house and president of the senate and with the chairman of the appropriate house or senate committee as provided in subsection (f) of this section~~ House and Senate Committees on Government Operations and the applicable regulatory entity. The reports shall contain:

- (1) findings, alternative courses of action, and recommendations;
- (2) a copy of the ~~board's~~ regulatory entity's administrative rules; and
- (3) appropriate legislative proposals.

(e) ~~The legislative council staff shall send a copy of the report to the board affected, and shall make copies available for public inspection. [Repealed.]~~

(f) ~~The house and senate committees on government operations shall be responsible for overseeing the preparation of reports by the legislative council staff under this chapter. [Repealed.]~~

~~(g) After considering a report each committee shall send its findings and recommendations, including proposals for legislation, if any, to the house or to the senate, as appropriate. Any proposed licensing law shall be drafted according to a uniform format recommended in the comprehensive plan. [Repealed.]~~

#### § 3105. CRITERIA AND STANDARDS

(a) A profession or occupation shall be regulated by the State only when:

(1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;

(2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(3) the public cannot be effectively protected by other means.

(b) After evaluating the criteria in subsection (a) of this section and considering governmental and societal costs and benefits, if the ~~Legislature~~ General Assembly finds that it is necessary to regulate a profession or occupation, the least restrictive method of regulation shall be imposed, consistent with the public interest and this section:

(1) if existing common law and statutory civil remedies and criminal sanctions are insufficient to reduce or eliminate existing harm, regulation should occur through enactment of stronger civil remedies and criminal sanctions;

(2) if a professional or occupational service involves a threat to the public and the service is performed primarily through business entities or facilities that are not regulated, the business entity or the facility should be regulated rather than its employee practitioners;

(3) if the threat to the public health, safety, or welfare, including economic welfare, is relatively small, regulation should be through a system of registration;

(4) if the consumer may have a substantial interest in relying on the qualifications of the practitioner, regulation should be through a system of certification; or

(5) if it is apparent that the public cannot be adequately protected by any other means, a system of licensure should be imposed.

(c) Any of the issues set forth in subsections (a) and (b) of this section and section 3107 of this ~~title~~ chapter may be considered in terms of their application to professions or occupations generally.

(d) Prior to review under this chapter and consideration by the General Assembly of any bill to regulate a profession or occupation and upon the request of the House or Senate Committee on Government Operations, the ~~Office of Professional Regulation~~ shall make, in writing, a preliminary assessment of whether any particular request for regulation meets the criteria set forth in subsection (a) of this section. The Office shall report its preliminary assessment to the appropriate House or Senate Committee on Government Operations. ~~The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.~~

(e) After the review of a proposal to regulate a profession, the ~~Office of Professional Regulation~~ may decline to conduct an analysis and evaluation of the proposed regulation if it finds that:

(1) the proposed regulatory scheme appears to regulate fewer than 250 individuals; and

(2) the Office previously conducted an analysis and evaluation of the proposed regulation of the same profession or occupation, and no new information has been submitted that would cause the Office to alter or modify the recommendations made in its earlier report on ~~the~~ that proposed regulation ~~of the profession.~~

#### § 3106. DIRECTOR OF THE OFFICE OF PROFESSIONAL REGULATION; ANNUAL REPORT

(a) Annually, prior to the commencement of each legislative session, the Director of the Office ~~of Professional Regulation~~ shall prepare a concise report on the activities of all boards and advisor professions under his or her jurisdiction. ~~Prior to the commencement of each legislative session, the Director shall prepare a report for publication on the Office's website containing~~ The report shall include his or her assessments, conclusions, and recommendations ~~with proposals for legislation, if any, to the Speaker of the House and to the Chairpersons of the House and Senate Committees on Government Operations and the chairpersons of the boards~~ regarding those boards and advisor professions.

(b) ~~The Office~~ Director shall publish the report on the Office's website and shall also provide written copies of the report to the House and Senate Committees on Government Operations.

(c) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this section.

#### § 3107. INFORMATION REQUIRED

Prior to review under this chapter and prior to consideration by the legislature General Assembly of any bill ~~which~~ that proposes to regulate a

profession or occupation, the profession or occupation being reviewed or seeking regulation shall explain each of the following factors, in writing, to the extent requested by the ~~appropriate house or senate committees on government operations~~ House or Senate Committee on Government Operations:

(1) Why regulation is necessary, including:

(A) the nature of the potential harm or threat to the public if the profession or occupation is not regulated;

(B) specific examples of the harm or threat identified in subdivision (1)(A) of this section;

(C) the extent to which consumers will benefit from a method of regulation ~~which~~ that permits identification of competent practitioners, indicating typical employers, if any, of practitioners;

(2) The extent to which practitioners are autonomous, as indicated by:

(A) the degree to which the profession or occupation requires the use of independent judgment, and the skill or experience required in making such judgment;

(B) the degree to which practitioners are supervised;

(3) The efforts that have been made to address the concerns that give rise to the need for regulation, including:

(A) voluntary efforts, if any, by members of the profession or occupation to:

(i) establish a code of ethics;

(ii) help resolve disputes between practitioners and consumers;

(iii) establish requirements for continuing education.

(B) recourse to and the extent of use of existing law;

(4) Why the alternatives to licensure specified in this subdivision would not be adequate to protect the public interest:

(A) stronger civil remedies or criminal sanctions;

(B) regulation of the business entity or facility providing the service rather than the employee practitioners;

(C) regulation of the program or service rather than the individual practitioners;

(D) registration of all practitioners;

(E) certification of practitioners;

(F) other alternatives;

(5) The benefit to the public if regulation is granted, including:

(A) how regulation will result in reduction or elimination of the harms or threats identified under subdivision (1) of this section;

(B) the extent to which the public can be confident that a practitioner is competent:

(i) whether the registration, certification, or licensure will carry an expiration date;

(ii) whether renewal will be based only upon payment of a fee, or whether renewal will involve reexamination, peer review, or other enforcement;

(iii) the standards for registration, certification, or licensure as compared with the standards of other jurisdictions;

(iv) the nature and duration of the educational requirement, if any, including, ~~but not limited to,~~ whether ~~such~~ the educational ~~program~~ requirement includes a substantial amount of supervised field experience; whether educational programs exist in this ~~state~~ State; whether there will be an experience requirement; whether the experience must be acquired under a registered, certified, or licensed practitioner; whether there are alternative routes of entry or methods of satisfying the eligibility requirements and qualifications; whether all applicants will be required to pass an examination; and, if an examination is required, by whom it will be developed and how the costs of development will be met;

(6) The form and powers of the regulatory entity, including:

(A) whether the regulatory entity is or would be a board composed of members of the profession or occupation and public members, or a ~~state~~ State agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure;

(B) the composition of the board, if any, and the number of public members, if any;

(C) the powers and duties of the ~~board or state agency~~ regulatory entity regarding examinations;

(D) the system for receiving complaints and taking disciplinary action against practitioners;

(7) The extent to which regulation might harm the public, including:

(A) whether regulation will restrict entry into the profession or occupation, including:

(i) whether the standards are the least restrictive necessary to ~~insure~~ ensure safe and effective performance; and

(ii) whether persons who are registered, certified, or licensed in a another jurisdiction ~~which~~ that the board or agency regulatory entity believes has requirements that are substantially equivalent to those of this ~~state~~ State will be eligible for endorsement or some form of reciprocity;

(B) whether there are similar professions or occupations ~~which~~ that should be included, or portions of the profession or occupation ~~which~~ that should be excluded from regulation;

(8) How the standards of the profession or occupation will be maintained, including:

(A) whether effective quality assurance standards exist in the profession or occupation, such as legal requirements associated with specific programs that define or enforce standards, or a code of ethics; and

(B) how the proposed form of regulation will assure quality, including:

(i) the extent to which a code of ethics, if any, will be adopted; and

(ii) the grounds for suspension, revocation, or refusal to renew registration, certification, or licensure;

(9) A profile of the practitioners in this ~~state~~ State, including a list of associations, organizations, and other groups representing the practitioners and including an estimate of the number of practitioners in each group.

(10) The effect that registration, certification, or licensure will have on the costs of the services to the public.

\* \* \* Alcohol and Drug Abuse Counselors \* \* \*

Sec. 2. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

An Office of Professional Regulation is created within the Office of the Secretary of State. The Office shall have a Director who shall be appointed by the Secretary of State and shall be an exempt employee. The following boards or professions are attached to the Office of Professional Regulation:

\* \* \*

(45) Alcohol and drug abuse counselors.

Sec. 3. 18 V.S.A. § 4806 is amended to read:  
§ 4806. DIVISION OF ALCOHOL AND DRUG ABUSE PROGRAMS



(a) The Division of Alcohol and Drug Abuse Programs shall plan, operate, and evaluate a consistent, effective program of substance abuse programs. All duties, responsibilities, and authority of the Division shall be carried out and exercised by and within the Department of Health.

(b) The Division shall be responsible for the following services:

- (1) prevention and intervention;
- (2) ~~licensure of alcohol and drug counselors; [Repealed.]~~
- (3) project CRASH schools; and
- (4) alcohol and drug treatment.

\* \* \*

~~(e) Under subdivision (b)(4) of this section, the Commissioner of Health may contract with the Secretary of State for provision of adjudicative services of one or more administrative law officers and other investigative, legal, and administrative services related to licensure and discipline of alcohol and drug counselors. [Repealed.]~~

Sec. 4. 26 V.S.A. chapter 62 is amended to read:

## CHAPTER 62. ALCOHOL AND DRUG ABUSE COUNSELORS

### § 3231. DEFINITIONS

As used in this chapter:

(1) “Alcohol and drug abuse counselor” means a person who engages in the practice of alcohol and drug abuse counseling for compensation.

(2) ~~“Commissioner” means the Commissioner of Health~~ “Director” means the Director of the Office of Professional Regulation.

(3) ~~“Deputy Commissioner” means the Deputy Commissioner of the Division of Alcohol and Drug Abuse Programs~~ “Office” means the Office of Professional Regulation.

(4) ~~“Disciplinary action” means any action taken by the administrative law officer appointed pursuant to 3 V.S.A. § 129(j) against a licensee or applicant based on a finding of unprofessional conduct by the licensee or applicant. “Disciplinary action” includes issuance of warnings and all sanctions, including denial, suspension, revocation, limitation, or restriction of licenses and other similar limitations. [Repealed.]~~

(5) “Practice of alcohol and drug abuse counseling” means the application of methods, including psychotherapy, ~~which~~ that assist an individual or group to develop an understanding of alcohol and drug abuse dependency problems and to define goals and plan actions reflecting the

individual's or group's interests, abilities, and needs as affected by alcohol and drug abuse dependency problems and comorbid conditions.

(6) "Supervision" means the oversight of a person for the purposes of teaching, training, or clinical review by a ~~professional in the same area of specialized practice~~ licensed alcohol and drug abuse counselor or a qualified supervisor as determined by the Director by rule.

#### § 3232. PROHIBITION; PENALTIES

(a) ~~N~~ A person shall not perform either of the following acts:

(1) practice or attempt to practice alcohol and drug abuse counseling without a valid license issued in accordance with this chapter, except as otherwise provided in section 3233 of this ~~title~~ chapter; or

(2) use in connection with the person's name any letters, words, or insignia indicating or implying that the person is an alcohol and drug abuse counselor, unless the person is licensed or certified in accordance with this chapter.

(b) A person who violates any of the provisions of this section shall be subject to the penalties provided in 3 V.S.A. § 127~~(e)~~.

#### § 3233. EXEMPTIONS

The provisions of subdivision 3232(a)(1) of this chapter, relating to the practice of alcohol and drug abuse counseling, shall not apply to:

(1) the activities and services of a rabbi, priest, minister, Christian Science practitioner, or clergy of any religious denomination or sect when engaging in activities that are within the scope of the performance of the person's regular or specialized ministerial duties and for which no separate charge is made, or when these activities are performed, with or without charge, for or under the auspices or sponsorship, individually or in conjunction with others, of an established and legally recognizable church, denomination, or sect and when the person rendering services remains accountable to the established authority of that church, denomination, or sect;

(2) the activities and services of a person licensed, certified, or registered under other laws of this State while acting within the scope of his or her profession or occupation, provided the person does not hold himself or herself out to the public as possessing a license issued pursuant to this chapter;

(3) the activities and services of a student intern or trainee in alcohol and drug abuse counseling who is pursuing a course of study in an accredited institution of higher education or a training course approved by the Director, provided these activities are performed under supervision of and constitute a part of an approved course of study;

(4) the activities and services of ~~approved alcohol and drug abuse counselors~~ an individual certified under this chapter who ~~are~~ is working in a preferred provider program under the supervision of a licensed alcohol and drug abuse counselor; or

(5) a person acting as a member of a voluntary group of individuals who offer peer support to each other in recovering from an addiction.

#### § 3234. COORDINATION OF PRACTICE ACTS

Notwithstanding any provision of law to the contrary, a person may practice psychotherapy when acting within the scope of a license or certification granted under this chapter, provided he or she does not hold himself or herself out as a practitioner of a profession for which he or she is not licensed or certified.

#### § 3235. ~~DEPUTY COMMISSIONER~~ DIRECTOR; DUTIES

(a) ~~The Deputy Commissioner~~ In addition to the authority granted under 3 V.S.A. chapter 5, the Director shall:

(1) provide general information to applicants for licensure ~~as alcohol and drug abuse counselors~~ or certification under this chapter;

(2) administer fees collected under this chapter;

(3) ~~administer examinations~~ refer complaints and disciplinary matters to an administrative law officer established under 3 V.S.A. § 129(j);

(4) explain appeal procedures to licensees, certified individuals, and applicants for licensure or certification under this chapter; and

(5) receive applications for licensure or certification under this chapter; issue and renew licenses or certifications; and revoke, suspend, reinstate, or condition licenses or certifications as ordered by an administrative law officer; ~~and~~

~~(6) contract with the Office of Professional Regulation to adopt and explain complaint procedures to the public, manage case processing, investigate complaints, and refer adjudicatory proceedings to an administrative law officer.~~

(b) ~~The Commissioner of Health, with the advice of the Deputy Commissioner,~~ Director may adopt rules necessary to perform the ~~Deputy Commissioner's~~ Director's duties under this section, including rules:

(1) Specifying acceptable master's degree requirements.

(2) Setting standards for certifying apprentice addiction professionals and alcohol and drug abuse counselors.

(3) Requiring completion and documentation of not more than 40 hours of acceptable continuing education every two years as a condition for license or certification renewal.

(4) Requiring licensed alcohol and drug abuse counselors to disclose to each client the licensee's professional qualifications and experience, those actions that constitute unprofessional conduct, the method for filing a complaint or making a consumer inquiry, and provisions relating to the manner in which the information shall be displayed and signed by both the licensee and the client. The rules may include provisions for applying or modifying these requirements in cases involving clients of preferred providers, institutionalized clients, minors, and adults under the supervision of a guardian.

(5) Regarding ethical standards for individuals licensed or certified under this chapter.

(6) Regarding display of license or certification.

(7) Regarding reinstatement of a license or certification which has lapsed for more than five years.

(8) Regarding supervised practice toward licensure or certification.

#### § 3235a. ADVISOR APPOINTEES

(a) The Secretary of State shall appoint three individuals licensed under this chapter to serve as advisors in matters relating to alcohol and drug abuse counselors. Advisors shall be appointed as set forth in 3 V.S.A. § 129b. Two of the initial appointments may be for less than a full term.

(b) Appointees shall not have less than three years' licensed experience as an alcohol and drug abuse counselor in Vermont.

(c) The Director shall seek the advice of the advisors appointed under this section in carrying out the provisions of this chapter.

#### § 3236. LICENSED ALCOHOL AND DRUG ABUSE COUNSELOR ELIGIBILITY

(a) To be eligible for licensure as an alcohol and drug abuse counselor, an applicant shall:

(1) have received a master's degree or doctorate in a human services field from an accredited educational institution, including a degree in counseling, social work, psychology, or in an allied mental health field, or a master's degree or higher in a health care profession regulated under this title or Title 33, after having successfully completed a course of study with course work, including theories of human development, diagnostic and counseling

techniques, and professional ethics, and ~~which includes~~ a supervised clinical practicum; and

~~(2)(A) have been awarded an approved counselor credential from the Division of Alcohol and Drug Abuse Programs in accordance with rules adopted by the Commissioner hold or be qualified to hold a current alcohol and drug counselor certification from the Office; or~~

~~(B) hold an International Certification and Reciprocity Consortium certification from another U.S. or Canadian jurisdiction or a U.S. or Canadian national certification organization approved by the Director;~~

~~(3) successfully pass the examination approved by the Director; and~~

~~(4) complete 2,000 hours of supervised practice as set forth in rule.~~

~~(b) A person who is engaged in supervised practice toward licensure who is not within the preferred provider network shall be registered on the roster of nonlicensed and noncertified psychotherapists.~~

§ 3236a. CERTIFICATION OF APPRENTICE ADDICTION PROFESSIONALS AND ALCOHOL AND DRUG ABUSE COUNSELORS

~~(a) The Director may certify an individual who has met requirements set by the Director by rule as:~~

~~(1) an apprentice addiction professional; or~~

~~(2) an alcohol and drug abuse counselor.~~

~~(b) The Director may seek cooperation with the International Certification and Reciprocity Consortium or other recognized alcohol and drug abuse provider credentialing organizations as a resource for examinations and rulemaking.~~

§ 3236b. LICENSURE OR CERTIFICATION BY ENDORSEMENT

~~The Director may issue a license or certification to an individual under this chapter if the individual holds a license or certification from a U.S. or Canadian jurisdiction that the Director finds has requirements for licensure or certification that are substantially equivalent to those required under this chapter.~~

§ 3237. APPLICATION

~~An individual may apply for a license under this chapter by filing, with the Deputy Commissioner, an application provided by the Deputy Commissioner. The application shall be accompanied by the required fees and evidence of eligibility. [Repealed.]~~

§ 3238. BIENNIAL RENEWALS

(a) Licenses and certifications shall be renewed every two years on a schedule set by the Office upon:

(1) ~~payment of the required fee, provided the person applying for renewal completes; and~~

(2) ~~documentation that the applicant has completed at least 40 hours of continuing education, approved by the Deputy Commissioner, during the preceding two-year period. The Deputy Commissioner shall establish, by rule, guidelines and criteria for continuing education credit Director.~~

(b) ~~Biennially, the Deputy Commissioner shall forward a renewal form to each license holder. Upon receipt of the completed form and the renewal fee, the Deputy Commissioner shall issue a new license. [Repealed.]~~

(c) Any application for ~~renewal~~ reinstatement of a license ~~which or certification that~~ has expired shall be accompanied by the ~~renewal fee and a reinstatement fee~~ appropriate fees. A person shall not be required to pay renewal fees for years during which the license or certifications was lapsed.

(d) ~~The Commissioner of Health may, after notice and opportunity for hearing, revoke a person's right to renew a license if the license has lapsed for five or more years. [Repealed.]~~

§ 3239. UNPROFESSIONAL CONDUCT

The following conduct and the conduct set forth in 3 V.S.A. § 129a, by a person authorized to provide alcohol and drug abuse services under this chapter or an applicant for licensure or certification, constitutes unprofessional conduct:

(1) violation of any provision of this chapter or rule adopted under this chapter;

(2) failing to use a complete title in professional activity;

(3) conduct which evidences moral unfitness to practice alcohol and drug abuse counseling;

(4) negligent, incompetent, or wrongful conduct in the practice of alcohol and drug abuse counseling; or

(5) harassing, intimidating, or abusing a client; ~~or~~

~~(6) agreeing with any other person or organization or subscribing to any code of ethics or organizational bylaws when the intent or primary effect of that agreement, code, or bylaw is to restrict or limit the flow of information concerning alleged or suspected unprofessional conduct to the Director.~~

§ 3240. REGULATORY FEE FUND

~~(a) An Alcohol and Drug Counselor Regulatory Fee Fund is created. All counselor licensing and examination fees received by the Division shall be deposited into the Fund and used to offset the costs incurred by the Division for these purposes and for the costs of investigations and disciplinary proceedings.~~

~~(b) To ensure that revenues derived by the Division are adequate to offset the cost of regulation, the Commissioner of Health and the Deputy Commissioner shall review fees from time to time and present proposed fee changes to the General Assembly. [Repealed.]~~

§ 3241. FEES

In addition to the fees otherwise authorized by law, the ~~Deputy Commissioner~~ Director may charge the following fees:

~~(1) Late renewal penalty, \$25.00 for a renewal submitted less than 30 days late. Thereafter, the Deputy Commissioner may increase the late renewal penalty by \$5.00 for every additional month or fraction of a month, provided that the total penalty for a late renewal shall not exceed \$100.00.~~

~~(2) Reinstatement of revoked or suspended license, \$20.00.~~

~~(3) Replacement of license, \$20.00.~~

~~(4) Verification of license, \$20.00.~~

~~(5) An examination fee established by the Deputy Commissioner, which shall be no greater than the costs associated with examinations.~~

~~(6) Licenses granted under rules adopted pursuant to 3 V.S.A. § 129(a)(10), \$20.00.~~

~~(7) Application for registration, \$75.00.~~

~~(8) Application for licensure or certification, \$100.00.~~

~~(9) Biennial renewal, \$135.00.~~

~~(10) Limited temporary license or work permit, \$50.00 for professions regulated by the Director as set forth in 3 V.S.A. § 125.~~

\* \* \*

Sec. 5. TRANSITIONAL PROVISION; CURRENT CERTIFICATION

Notwithstanding the provisions of 26 V.S.A. § 3236a(a) set forth in Sec. 4 of this act, an individual currently certified by the Vermont Alcohol and Drug Abuse Certification Board as an apprentice addiction professional or an alcohol and drug abuse counselor may renew his or her certification as if

previously granted to him or her by the Director of the Office of Professional Regulation pursuant to rules adopted by the Director.

Sec. 6. DIRECTOR OF THE OFFICE OF PROFESSIONAL REGULATION; REQUIRED RULEMAKING

The Director of the Office of Professional Regulation may adopt any rules necessary to implement the provisions of Secs. 4 and 5 of this act, prior to the effective date of those sections.

\* \* \* Naturopathic Physicians \* \* \*

Sec. 7. 2012 Acts and Resolves No. 116, Sec. 64(e), as amended by 2015 Acts and Resolves No. 38, Sec. 42, is amended to read:

Sec. 42. 2012 Acts and Resolves No. 116, Sec. 64(e) (transitional provisions) is amended to read:

(e) Formulary sunset; transition to examination.

(1) Subsection (c) of this section (formulary authorization) shall be repealed on July 1, ~~2016~~ 2017.

(2) Any naturopathic physician who is authorized to prescribe, dispense, and administer any prescription medicines under subsection (c) of this section shall have until July 1, ~~2016~~ 2017 to successfully complete the naturopathic pharmacology examination set forth in 26 V.S.A. § 4125(d) in order to be able to continue to prescribe, dispense, and administer any prescription medicines.

\* \* \* Potable Water Supply and Wastewater System Designers and Pollution Abatement Facility Operators \* \* \*

Sec. 8. 10 V.S.A. § 1263 is amended to read:

§ 1263. DISCHARGE PERMITS

\* \* \*

(d) A discharge permit shall:

(1) ~~specify~~ Specify the manner, nature, volume, and frequency of the discharge permitted and contain terms and conditions consistent with subsection (c) of this section~~;~~.

(2) ~~require~~ Require proper operation and maintenance of any pollution abatement facility necessary in the treatment or processing of the waste by qualified personnel in accordance with standards established by the ~~secretary~~ Secretary and the Director of the Office of Professional Regulation. ~~The secretary~~ Secretary may require ~~operators to be certified under a program established by the secretary~~ that a pollution abatement facility be operated by persons licensed under 26 V.S.A. chapter 97 and may prescribe the class of



license required. The ~~secretary~~ Secretary may require a laboratory quality assurance sample program to ~~insure~~ ensure qualifications of laboratory analysts;

(3) ~~contain~~ Contain an operation, management, and emergency response plan when required under section 1278 of this title and additional conditions, requirements, and restrictions as the ~~secretary~~ Secretary deems necessary to preserve and protect the quality of the receiving waters, including ~~but not limited to~~ requirements concerning recording, reporting, monitoring, and inspection of the operation and maintenance of waste treatment facilities and waste collection systems; ~~and.~~

(4) ~~be~~ Be valid for the period of time specified therein, not to exceed five years.

\* \* \*

Sec. 9. 10 V.S.A. § 1975 is amended to read:

#### § 1975. DESIGNER LICENSES

(a) The ~~secretary~~ Director of the Office of Professional Regulation, after due consultation with the Secretary, shall establish and implement a process to license and periodically renew the licenses of designers of potable water supplies or wastewater systems, establish different classes of licensing for different potable water supplies and wastewater systems, and allow individuals to be licensed in various categories.

(b) ~~No~~ A person shall not design a potable water supply or wastewater system that requires a permit under this chapter without first obtaining a designer license from the ~~secretary~~ Director of the Office of Professional Regulation, except a professional engineer who is licensed in Vermont shall be deemed to have a valid designer license under this chapter, provided that:

(1) the engineer is practicing within the scope of his or her engineering specialty; and

(2) the engineer:

(A) to design a soil-based wastewater system, has satisfactorily completed a college-level soils identification course with specific instruction in the areas of soils morphology, genesis, texture, permeability, color, and redoximorphic features; ~~or~~

(B) has passed a soils identification test administered by the ~~secretary~~ Secretary; or

(C) retains one or more licensed designers who have taken the course specified in this subdivision or passed the soils identification test, whenever performing work regulated under this chapter.

~~(c) No person shall review or act on permit applications for a potable water supply or wastewater system that he or she designed or installed. [Repealed.]~~

(d) ~~The secretary~~ Secretary or the Director of the Office of Professional Regulation may review, on a random basis, or in response to a complaint, or on his or her own motion, the testing procedures employed by a licensed designer, the systems designed by a licensed designer, the designs approved or recommended for approval by a licensed designer, and any work associated with the performance of these tasks.

~~(e) After a hearing conducted under chapter 25 of Title 3, the secretary may suspend, revoke, or impose conditions on a designer license, except for one held by a professional engineer. This proceeding may be initiated on the secretary's own motion or upon a written request which contains facts or reasons supporting the request for imposing conditions, for suspension, or for revocation. Cause for imposing conditions, suspension, or revocation shall be conduct specified under 3 V.S.A. § 129a as constituting unprofessional conduct by a licensee. [Repealed.]~~

(f) If a person who signs a design or installation certification submitted under this chapter certifies a design, installation, or related design or installation information and, as a result of the person's failure to exercise reasonable professional judgment, submits design or installation information that is untrue or incorrect, or submits a design or installs a wastewater system or potable water supply that does not comply with the rules adopted under this chapter, the person who signed the certification may be subject to penalties disciplined by the Director of the Office of Professional Regulation and be required to take all actions to remediate the affected project in accordance with the provisions of chapters 201 and 211 of this title.

\* \* \*

Sec. 10. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

An Office of Professional Regulation is created within the Office of the Secretary of State. The Office shall have a Director who shall be appointed by the Secretary of State and shall be an exempt employee. The following boards or professions are attached to the Office of Professional Regulation:

\* \* \*

(45) Potable water supply and wastewater system designers

(46) Pollution abatement facility operators

Sec. 11. 26 V.S.A. chapter 97 is added to read:

CHAPTER 97. POTABLE WATER SUPPLY AND WASTEWATER SYSTEM DESIGNERS

Subchapter 1. General Provisions

§ 5001. PURPOSE AND EFFECT

In order to safeguard the life and health of the people of this State, a person, other than a professional engineer exempted under this chapter, shall not design a potable water supply or wastewater system that requires a permit or designer's certification or license under the laws of this State unless currently licensed under this chapter.

§ 5002. DEFINITIONS

As used in this chapter:

(1) "Director" means the Director of the Office of Professional Regulation.

(2) "License" means a current authorization granted by the Director permitting the practice of potable water supply or wastewater system design.

(3) "Potable water supply or wastewater system designer" or "designer" means a person who is licensed under this chapter to engage in the practice of potable water supply or wastewater system design.

(4) "Practice of potable water supply or wastewater system design" or "design" means planning the physical and operational characteristics of a potable water supply or wastewater system that requires a permit or designer's certification or license under the laws of this State:

§ 5003. PROHIBITIONS; OFFENSES

(a) It shall be a violation of this chapter for any person, including any corporation, association, or individual, to:

(1) sell or fraudulently obtain or furnish any design degree, diploma, certificate of registration, license, or any other related document or record or to aid or abet therein;

(2) practice design under cover of any degree, diploma, registration, license, or related document or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(3) practice design unless duly registered and currently licensed or otherwise authorized to do so under the provisions of this chapter;

(4) represent himself or herself as being licensed or otherwise authorized by this State to practice design or use in connection with a name

any words, letters, signs, or figures that imply that a person is a licensed designer when not licensed or otherwise authorized under this chapter;

(5) practice design during the time a license or authorization issued under this chapter is suspended or revoked;

(6) employ an unlicensed or unauthorized person to practice as a licensed designer; or

(7) practice or employ a licensed designer to practice beyond the scope of his or her practice prescribed by rule.

(b) Any person violating this section shall be subject to the penalties provided in 3 V.S.A. § 127.

#### § 5004. EXCEPTIONS

This chapter does not prohibit:

(1) the furnishing of assistance in the case of an emergency or disaster;

(2) the practice of design by a person employed by the U.S. government or any bureau, division, or agency thereof while in the discharge of his or her official federal duties; or

(3) the practice of any other occupation or profession by a person duly licensed or otherwise authorized under the laws of this State.

#### § 5005. QUALIFIED PROFESSIONAL ENGINEERS EXEMPT

A licensed professional engineer may practice design without a license under this chapter if he or she satisfies the criteria set forth in 10 V.S.A. § 1975(b).

#### Subchapter 2. Administration

#### § 5011. DUTIES OF THE DIRECTOR

(a) The Director shall:

(1) provide general information to applicants for licensure as designers;

(2) receive applications for licensure, administer or approve examinations, and provide licenses to applicants qualified under this chapter;

(3) administer fees as established by law;

(4) refer all disciplinary matters to an administrative law officer;

(5) renew, revoke, and reinstate licenses as ordered by an administrative law officer; and

(6) explain appeal procedures to licensed designers and to applicants, and complaint procedures to the public.

(b) The Director shall adopt rules necessary to perform his or her duties under this section after due consultation with the Secretary of Natural Resources and Commissioner of Environmental Conservation. These rules may establish grades, types, classes, or subcategories of licenses corresponding to prescribed scopes of practice.

#### § 5012. ADVISOR APPOINTEES

(a)(1) The Secretary of State shall appoint three persons to be advisors to the Secretary, two of which shall be designers licensed under this chapter and one of which shall be a representative of the Agency of Natural Resources. Advisors shall be appointed for five-year staggered terms to serve at the Secretary's pleasure as advisors in matters relating to design. Two of the initial appointments may be for a term of fewer than five years.

(2) A designer appointee shall have not fewer than five years' experience as a licensed designer immediately preceding appointment; shall be licensed as a designer in Vermont; and shall be actively engaged in the practice of design in this State during incumbency.

(3) The Agency of Natural Resources appointee shall be involved in the permitting program established under 10 V.S.A. chapter 64.

(b) The Director shall seek the advice of the advisor appointees in carrying out the provisions of this chapter.

#### Subchapter 3. Licenses

#### § 5021. ELIGIBILITY FOR LICENSURE

(a) To be eligible for licensure as a designer, an applicant shall be at least 18 years of age; able to read and write the English language; hold a high school diploma, General Equivalency Diploma (GED), or equivalent; and demonstrate such specific education, training, experience, and examination performance as the Director may by rule require to hold the class of license sought.

(b) The Director may waive examination for an applicant licensed or certified in good standing by a foreign jurisdiction found by the Director to enforce equivalent standards to obtain the class of license sought in this State. The applicant's previous job description and experience in the design field may be considered.

#### § 5022. LICENSE RENEWAL

(a)(1) A license shall be renewed every two years upon application, payment of the required fee, and proof of compliance with such continuing education or periodic reexamination requirements as the Director may by rule prescribe. Failure to comply with the provisions of this section shall result in

suspension of all privileges granted to the licensee, beginning on the expiration date of the license.

(2) A license that has lapsed shall be renewed upon payment of the biennial renewal fee and the late renewal penalty.

(b) The Director may adopt rules necessary for the protection of the public to assure the Director that an applicant whose license has lapsed or who has not worked for more than three years as a licensed designer is professionally qualified for license renewal. Conditions imposed under this subsection shall be in addition to the requirements of subsection (a) of this section.

#### § 5023. APPLICATIONS

Applications for licensure and license renewal shall be on forms provided by the Director. Each application shall contain a statement under oath showing the applicant's education, experience, and other pertinent information and shall be accompanied by the required fee.

#### § 5024. LICENSURE GENERALLY

The Director shall issue a license or renew a license, upon payment of the fees required under this chapter, to an applicant or licensee who has satisfactorily met all the requirements of this chapter.

#### § 5025. FEES

Applicants and persons regulated under this chapter shall pay those fees set forth in 3 V.S.A. § 125(b).

#### § 5026. UNPROFESSIONAL CONDUCT

(a) Unprofessional conduct means the following conduct and the conduct set forth in 3 V.S.A. § 129a committed by a licensee, an applicant, or a person who later becomes an applicant:

(1) has made or caused to be made a false, fraudulent, or forged statement or representation in procuring or attempting to procure registration or renew a license to practice as a licensed designer;

(2) whether or not committed in this State, has been convicted of a crime related to water system design or installation or a felony which evinces an unfitness to practice design;

(3) is unable to practice design competently by reason of any cause;

(4) has willfully or repeatedly violated or caused the violation of any of the provisions of this chapter, the terms of a permit, the Vermont On-Site Wastewater and Potable Water Supply Regulations, or the Vermont Water Quality Standards;

(5) is habitually intemperate or is addicted to the use of habit-forming drugs;

(6) has a mental, emotional, or physical disability, the nature of which interferes with the ability to practice design competently;

(7) engages in conduct of a character likely to deceive, defraud, or harm the public;

(8) has reviewed or acted on permit applications for a potable water supply or wastewater system that he or she designed or installed.

(b) A person shall not be liable in a civil action for damages resulting from the good faith reporting of information to the Director or the Office of Professional Regulation about alleged incompetent, unprofessional, or unlawful conduct of a licensed designer.

## Sec. 12. TRANSITIONAL PROVISIONS

(a) The five years' experience required by 26 V.S.A. § 5012(a)(2) (advisor appointees; qualifications of appointees) set forth in Sec. 11 of this act may include experience while licensed pursuant to subchapter 7 of the Agency of Natural Resources Wastewater System and Potable Water Supply Rules, and an initial advisor appointee may be in the process of applying for licensure from the Office of Professional Regulation if he or she otherwise meets the requirements for licensure as an licensed designer and the other requirements of 26 V.S.A. § 5012(a)(2).

(b) Pending adoption by the Director of administrative rules governing licensed designers, the Director may license designers consistent with subchapter 7 of the Agency of Natural Resources Wastewater System and Potable Water Supply Rules.

(c) A person holding a design license from the Agency of Natural Resources may obtain an equivalent license from the Office of Professional Regulation at no charge, valid through the expiration date assigned by the Agency, and thereafter renewable on a biennial schedule established by the Office.

Sec. 13. 26 V.S.A. chapter 99 is added to read:

## CHAPTER 99. POLLUTION ABATEMENT FACILITY OPERATORS

### Subchapter 1. General Provisions

#### § 5101. PURPOSE AND EFFECT

In order to safeguard the life and health of the people of this State, a person shall not practice or offer to practice pollution abatement facility operation unless currently licensed under this chapter.

## § 5102. DEFINITIONS

As used in this chapter:

(1) “Director” means the Director of the Office of Professional Regulation.

(2) “License” means a current authorization granted by the Director permitting the practice of pollution abatement facility operation.

(3) “Permit,” when used as a noun, means an authorization by the Agency of Natural Resources to operate a facility regulated under 10 V.S.A. § 1263.

(4) “Practice of pollution abatement facility operation” means the operation and maintenance of a facility regulated under 10 V.S.A. § 1263 by a person required by the terms of a permit to hold particular credentials, including those of an “operator,” “assistant chief operator,” or “chief operator.”

(5) “Pollution abatement facility operator” means a person who is licensed under this chapter, or pursuant to rules developed pursuant to this chapter, to engage in the practice of pollution abatement facility operation consistent with a permit.

## § 5103. PROHIBITIONS; OFFENSES

(a) It shall be a violation of this chapter for any person, including any corporation, association, or individual, to:

(1) sell or fraudulently obtain or furnish any pollution abatement facility operation degree, diploma, certificate of registration, license, or any other related document or record or to aid or abet therein;

(2) practice or knowingly permit the practice of pollution abatement facility operation under cover of any degree, diploma, registration, license, or related document or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(3) practice or permit the practice of pollution abatement facility operation other than by a person duly registered and currently licensed or otherwise authorized to do so under the provisions of this chapter;

(4) represent himself or herself as being licensed or otherwise authorized by this State to practice pollution abatement facility operation or use in connection with a name any words, letters, signs, or figures that imply that a person is a pollution abatement facility operator when not licensed or otherwise authorized under this chapter;

(5) practice pollution abatement facility operation during the time a license or authorization issued under this chapter is suspended or revoked; or



(6) employ an unlicensed or unauthorized person to practice as a pollution abatement facility operator.

(b) Any person violating this section shall be subject to the penalties provided in 3 V.S.A. § 127(c).

#### § 5104. EXCEPTIONS

This chapter does not prohibit:

(1) the furnishing of assistance in the case of an emergency or disaster; or

(2) a person not licensed under this chapter from working under the direct or indirect supervision of a pollution abatement facility operator, where such employment is consistent with the terms, conditions, and intent of a facility's permit.

#### Subchapter 2. Administration

#### § 5111. DUTIES OF THE DIRECTOR

(a) The Director shall:

(1) provide general information to applicants for licensure as pollution abatement facility operators;

(2) receive applications for licensure, administer or approve examinations and training programs, and provide licenses to applicants qualified under this chapter;

(3) administer fees as established by law;

(4) refer all disciplinary matters to an administrative law officer;

(5) renew, revoke, and reinstate licenses as ordered by an administrative law officer; and

(6) explain appeal procedures to licensed pollution abatement facility operators and to applicants, and complaint procedures to the public.

(b) The Director shall adopt rules necessary to perform his or her duties under this section after due consultation with the Secretary of Natural Resources. These rules may establish grades, types, classes, or subcategories of licenses corresponding to facilities of distinct types and complexity.

#### § 5112. ADVISOR APPOINTEES

(a)(1) The Secretary of State shall appoint three persons to be advisors to the Secretary, two of which shall be pollution abatement facility operators and one of which shall be a representative of the Agency of Natural Resources. Advisors shall be appointed for five-year staggered terms to serve at the

Secretary's pleasure as advisors in matters relating to operation. Two of the initial appointments may be for a term of fewer than five years.

(2) A pollution abatement facility operator appointee shall have not fewer than five years' experience as a pollution abatement facility operator immediately preceding appointment, shall be licensed as a pollution abatement facility operator in Vermont, and shall be actively engaged in the practice of pollution abatement facility operation in this State during incumbency.

(3) An appointee representing the Agency of Natural Resources shall be involved in the administration of the permitting program established under 10 V.S.A. § 1263.

(b) The Director shall seek the advice of the advisor appointees in carrying out the provisions of this chapter.

### Subchapter 3. Licenses

#### § 5121. ELIGIBILITY FOR LICENSURE

(a) To be eligible for licensure as a pollution abatement facility operator, an applicant shall be at least 18 years of age; be able to read and write the English language; hold a high school diploma, General Equivalency Diploma (GED), or equivalent; and demonstrate such specific education, training, experience, and examination performance as the Director may by rule require to hold the class of license sought.

(b) The Director may waive examination for an applicant licensed or certified in good standing by a foreign jurisdiction found by the Director to enforce equivalent standards to obtain the class of license sought in this State. The applicant's previous job description and experience in the pollution abatement field may be considered.

#### § 5122. LICENSE RENEWAL

(a)(1) A license shall be renewed every two years upon application, payment of the required fee, and proof of compliance with such continuing education or periodic reexamination requirements as the Director may by rule prescribe. Failure to comply with the provisions of this section shall result in suspension of all privileges granted to the licensee, beginning on the expiration date of the license.

(2) A license that has lapsed shall be renewed upon payment of the biennial renewal fee and the late renewal penalty.

(b) The Director may adopt rules necessary for the protection of the public to assure the Director that an applicant whose license has lapsed or who has not worked for more than three years as a pollution abatement facility operator is professionally qualified for license renewal. Conditions imposed under this

subsection shall be in addition to the requirements of subsection (a) of this section.

#### § 5123. APPLICATIONS

Applications for licensure and license renewal shall be on forms provided by the Director. Each application shall contain a statement under oath showing the applicant's education, experience, and other pertinent information and shall be accompanied by the required fee.

#### § 5124. LICENSURE GENERALLY

The Director shall issue a license or renew a license upon payment of the fees required under this chapter to an applicant or licensee who has satisfactorily met all the requirements of this chapter.

#### § 5125. FEES

Applicants and persons regulated under this chapter shall pay those fees set forth in 3 V.S.A. § 125(b).

#### § 5126. UNPROFESSIONAL CONDUCT

(a) Unprofessional conduct means the following conduct and the conduct set forth in 3 V.S.A. § 129a committed by a licensee, an applicant, or a person who later becomes an applicant:

(1) has made or caused to be made a false, fraudulent, or forged statement or representation in procuring or attempting to procure registration or renew a license to practice as a water treatment facility operator;

(2) whether or not committed in this State, has been convicted of a crime related to pollution abatement or environmental compliance or a felony which evinces an unfitness to practice water treatment facility operation;

(3) is unable to practice pollution abatement facility operation competently by reason of any cause;

(4) has willfully or repeatedly violated or caused the violation of any of the provisions of this chapter, the terms of a permit, the Vermont Water Pollution Control Permit Regulations, or the Vermont Water Quality Standards;

(5) is habitually intemperate or is addicted to the use of habit-forming drugs;

(6) has a mental, emotional, or physical disability, the nature of which interferes with the ability to practice pollution abatement facility operation competently;

(7) engages in conduct of a character likely to deceive, defraud, or harm the public;

(8) fails to display prominently his or her pollution abatement facility operator license in the office of a facility at which he or she performs licensed activities; or

(9) unreasonably fails to ensure proper operations of the facility.

(b) A person shall not be liable in a civil action for damages resulting from the good faith reporting of information to the Director or the Office of Professional Regulation about alleged incompetent, unprofessional, or unlawful conduct of a pollution abatement facility operator or facility, corporation, or municipal corporation employing such person.

#### Sec. 14. TRANSITIONAL PROVISIONS

(a) Notwithstanding the provision of 26 V.S.A. § 5112(a)(2) (advisor appointees; qualifications of appointees) that requires an appointee to be licensed as a pollution abatement facility operator in Vermont, an initial advisor appointee may be in the process of applying for licensure if he or she otherwise meets the requirements for licensure as a wastewater treatment facility operator and the other requirements of 26 V.S.A. § 5112(a)(2).

(b) Pending adoption by the Director of administrative rules governing pollution abatement facility operators, the Director may license individuals to operate pollution abatement facilities consistent with the Agency of Natural Resources Wastewater Treatment Facility Operator Certification Rule.

(c) A person holding an active certificate from the Agency of Natural Resources as an operator, assistant chief operator, or chief operator may obtain an equivalent license from the Office of Professional Regulation at no charge, valid through the expiration date assigned by the Agency, and thereafter renewable on a biennial schedule established by the Office.

#### Sec. 15. CREATION OF NEW POSITION WITHIN THE OFFICE OF PROFESSIONAL REGULATION

(a) To support the administration of new professional regulation licenses created in Secs. 11 and 13 of this act, there is created within the Secretary of State's Office of Professional Regulation one (1) Licensing Board Specialist.

(b) Any funding necessary to support the positions created under subsection (a) of this section shall be derived from the Office's Professional Regulatory Fee Fund, with no General Fund dollars.

\* \* \* Board of Dental Examiners \* \* \*

Sec. 16. 26 V.S.A. § 581 is amended to read:

§ 581. CREATION; QUALIFICATIONS

\* \* \*

(c) ~~No~~ A member of the board may ~~Board shall not~~ be an officer or serve on a committee of his or her respective state or local professional dental, dental hygiene, or dental assisting organization, ~~nor shall any member of the board be on the faculty of a school of dentistry, dental hygiene, or dental assisting.~~

\* \* \* Social Workers \* \* \*

Sec. 17. 26 V.S.A. § 3202 is amended to read:

§ 3202. PROHIBITION; OFFENSES

\* \* \*

(c) A State agency or a subdivision or contractor thereof shall not use or permit the use of the title "social worker" other than in relation to an employee holding a bachelor's, master's, or doctoral degree from an accredited school or program of social work.

\* \* \* Effective Dates \* \* \*

Sec. 18. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except Sec. 17 which shall take effect on July 1, 2017.

**( Committee Vote: 10-0-1)**

**Rep. Keenan of St. Albans City**, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committee on **Government Operations**.

**(Committee Vote: 11-0-0)**

**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 **Government Operations**.

**(Committee Vote: 10-0-1)**

**Action Under Rule 52**

**J.R.H. 24**

Joint resolution authorizing the Green Mountain Girls State educational program to use the State House

**(For text see House Journal March 18, 2016)**

**NOTICE CALENDAR**  
**Committee Bill for Second Reading**

**H. 872**

An act relating to Executive Branch fees.

**(Rep. Branagan of Georgia will speak for the Committee on Ways & Means.)**

**H. 873**

An act relating to making miscellaneous tax changes.

**(Rep. Ancel of Calais will speak for the Committee on Ways & Means.)**

**Favorable with Amendment**

**H. 620**

An act relating to health insurance and Medicaid coverage for contraceptives

**Rep. Morris of Bennington**, for the Committee on **Health Care**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 4099c is amended to read:

§ 4099c. REPRODUCTIVE HEALTH EQUITY IN HEALTH INSURANCE COVERAGE

(a) As used in this section, “health insurance plan” means any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this State by a health insurer, as defined by 18 V.S.A. § 9402. The term shall not include benefit plans providing coverage for specific disease or other limited benefit coverage.

(b) A health insurance plan shall provide coverage for outpatient contraceptive services including sterilizations, and shall provide coverage for the purchase of all prescription contraceptives and prescription contraceptive devices approved by the federal Food and Drug Administration, except that a health insurance plan that does not provide coverage of prescription drugs is not required to provide coverage of prescription contraceptives and prescription contraceptive devices. A health insurance plan providing coverage required under this section shall not establish any rate, term or condition that places a greater financial burden on an insured or beneficiary for access to contraceptive services, prescription contraceptives and prescription

contraceptive devices than for access to treatment, prescriptions or devices for any other health condition.

~~(b) As used in this section, “health insurance plan” means any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this state State by a health insurer, as defined by 18 V.S.A. § 9402. The term shall not include benefit plans providing coverage for specific disease or other limited benefit coverage.~~

(c) A health insurance plan shall provide coverage without any deductible, coinsurance, co-payment, or other cost-sharing requirement for at least one drug, device, or other product within each method of contraception for women identified by the U.S. Food and Drug Administration (FDA) and prescribed by an insured’s health care provider.

(1) The coverage provided pursuant to this subsection shall include patient education and counseling by the patient’s health care provider regarding the appropriate use of the contraceptive method prescribed.

(2)(A) If there is a therapeutic equivalent of a drug, device, or other product for an FDA-approved contraceptive method, a health insurance plan may provide coverage for more than one drug, device, or other product and may impose cost-sharing requirements as long as at least one drug, device, or other product for that method is available without cost-sharing.

(B) If an insured’s health care provider recommends a particular service or FDA-approved drug, device, or other product for the insured based on a determination of medical necessity, the health insurance plan shall defer to the provider’s determination and judgment and shall provide coverage without cost-sharing for the drug, device, or product prescribed by the provider for the insured.

(d) A health insurance plan shall provide coverage for voluntary sterilization procedures for men and women without any deductible, coinsurance, co-payment, or other cost-sharing requirement, except to the extent that such coverage would disqualify a high-deductible health plan from eligibility for a health savings account pursuant to 26 U.S.C. § 223.

(e) A health insurance plan shall provide coverage without any deductible, coinsurance, co-payment, or other cost-sharing requirement for clinical services associated with providing the drugs, devices, products, and procedures covered under this section and related follow-up services, including management of side effects, counseling for continued adherence, and device insertion and removal.

(f)(1) A health insurance plan shall provide coverage for a supply of contraceptives intended to last over a 12-month duration, which may be furnished or dispensed all at once or over the course of the 12 months at the discretion of the health care provider. The health insurance plan shall reimburse a health care provider or dispensing entity per unit for furnishing or dispensing a supply of contraceptives intended to last for 12 months.

(2) This subsection shall apply to Medicaid and any other public health care assistance program offered or administered by the State or by any subdivision or instrumentality of the State.

(g) Benefits provided to an insured under this section shall be the same for the insured's covered spouse and other covered dependents.

## Sec. 2. VALUE-BASED PAYMENTS FOR LONG-ACTING REVERSIBLE CONTRACEPTIVES

The Department of Vermont Health Access shall establish and implement value-based payments to health care providers for the insertion and removal of long-acting reversible contraceptives. The payments shall reflect the high efficacy rate of long-acting reversible contraceptives in reducing unintended pregnancies and the correlating decrease in costs to the State as a result of fewer unintended pregnancies. The payments shall create parity between the fees for insertion and removal of long-acting reversible contraceptives and those for oral contraceptives.

## Sec. 3. APPROPRIATION

The sum of \$1.00 is appropriated to the Department of Vermont Health Access from the General Fund in fiscal year for purposes of increasing reimbursement rates for long-acting reversible contraceptives pursuant to Sec. 2 of this act.

## EFFECTIVE DATES

(a) Sec. 3 (appropriation) and this section shall take effect on July 1, 2016.

(b) Sec. 1 shall take effect on October 1, 2016 and shall apply to Medicaid on that date and shall apply to health insurance plans on or after October 1, 2016 on such date as a health insurer issues, offers, or renews the health insurance plan, but in no event later than October 1, 2017.

(c) Sec. 2 (long-acting reversible contraceptives; payments) shall take effect on October 1, 2016.

**( Committee Vote: 9-0-2)**



## H. 620

An act relating to health insurance and Medicaid coverage for contraceptives

**Rep. Toll of Danville**, for the Committee on **Appropriations**, recommends the bill be amended as follows:

by striking out Sec. 3, appropriation, in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

### Sec. 3. APPROPRIATION

The sum of \$34,864.00 in Global Commitment funds is appropriated to the Department of Vermont Health Access in fiscal year 2017 for the purposes of increasing reimbursement rates for long-acting reversible contraceptives pursuant to Sec. 2 of this act.

( Committee Vote: 10-0-1)

## H. 853

An act relating to setting the nonresidential property tax rate, the property dollar equivalent yield, and the income dollar equivalent yield for fiscal year 2017, and other education changes.

(**Rep. Greshin of Warren** will speak for the Committee on **Ways & Means**.)

**Rep. Long of Newfane**, for the Committee on **Education**, recommends the bill be amended as follows::

First: In Sec. 4, in the second sentence before the words “direct cost” by striking out the word “associated” and inserting in lieu thereof the word “related”

Second: In Sec. 5, in subsection (e), in the first sentence before the words “direct cost” by striking out the word “associated” and inserting in lieu thereof the word “related”

Third: In Sec. 6, in subsection (d), in the first sentence before the words “direct cost” by striking out the word “associated” and inserting in lieu thereof the word “related”

Fourth: By inserting a Sec. 6a to read as follows:

Sec. 6a. 32 V.S.A. § 5402b is amended to read:

§ 5402b. STATEWIDE EDUCATION TAX YIELDS;

RECOMMENDATION OF THE COMMISSIONER

(a) Annually, no later than December 1, the Commissioner of Taxes, after consultation with the Secretary of Education, the Secretary of Administration, and the Joint Fiscal Office, shall calculate and recommend a property dollar equivalent yield, an income dollar equivalent yield, and a nonresidential property tax rate for the following fiscal year. In making these calculations, the Commissioner shall reference the Education Fund Outlook, described in subsection (c) of this section, and shall assume:

(1) the homestead base tax rate in subdivision 5402(a)(2) of this title is \$1.00 per \$100.00 of equalized education property value;

(2) the applicable percentage in subdivision 6066(a)(2) of this title is 2.0;

(3) the statutory reserves under 16 V.S.A. § 4026 and this section were maintained at five percent; and

(4) the percentage change in the median education tax bill applied to nonresidential property, the percentage change in the median education tax bill of homestead property, and the percentage change in the median education tax bill for taxpayers who claim an adjustment under subsection 6066(a) of this title are equal.

(b) For each fiscal year, the General Assembly shall set a property dollar equivalent yield and an income dollar equivalent yield, consistent with the definitions in this chapter.

(c) Annually, on or before December 1, the Joint Fiscal Office shall prepare and publish an official, annotated copy of the Education Fund Outlook. The Emergency Board shall review the Outlook at its meetings. As used in this section, "Education Fund Outlook" means the projected revenues and expenses associated with the Education Fund for the following fiscal year, including projections of the unfunded education mandate amount, both as estimated in section 305b of this title, and as appropriated under section 4025 of this title.

Fifth: By striking out Sec. 7 in its entirety and inserting in lieu thereof the following:

Sec. 7. TRANSFER OF DEBT OF MERGED DISTRICTS

(a) Notwithstanding any other provision of law, in the process of forming a union school district under 16 V.S.A. chapter 11, a study committee report under 16 V.S.A. § 706b may provide terms for transferring, either in whole or

part, the liability for any indebtedness held by a merging district, from the merging district to the town or towns within the merging district.

(b) As used in this section, a union school district established under 16 V.S.A. chapter 11 includes a school district voluntarily created pursuant to 2015 Acts and Resolves No. 46, Sec. 6 or 7, or a regional education district, or any other district eligible to receive incentives pursuant to 2010 Acts and Resolves No. 153, as amended by 2012 Acts and Resolves No. 156 and 2013 Acts and Resolves No. 56.

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

Sec. 9a. REPORT ON THE IMPACT OF H.846 OF 2016

(a) On or before November 15, 2016, the Joint Fiscal Office, with the assistance of the Office of Legislative Council and the Department of Taxes, shall issue a report analyzing the impact of H.846 of 2016, an act related to making changes to the calculation of the statewide education property tax. The analysis shall be based on the statutory language presented to the House Committee on Education on March 11, 2016. The report shall be delivered to the Senate Committees on Finance and on Education and the House Committees on Ways and Means and on Education.

(b) The report shall address:

(1) the impact of the proposed changes on education spending growth, both at the district level and the State level;

(2) the impact of the proposed changes on school districts by spending levels, size, location, and operating structure;

(3) the impact on homestead tax rates, income sensitivity percentages, and nonresidential tax rates across the State;

(4) the impact of the proposed changes on the Education Fund balance;

(5) the funding stability of the proposed changes based on variable economic conditions;

(6) any transition issues created by the proposed changes; and

(7) any related issues identified by the Joint Fiscal Office.

Seventh: By adding a Sec. 9b to read as follows:

Sec. 9b. REPORT ON THE IMPACT OF H.656 OF 2016

(a) On or before November 15, 2016, the Joint Fiscal Office, with the assistance of the Office of Legislative Council and the Department of Taxes, shall issue a report analyzing the impact of H.656 of 2016, an act relating to creating an education tax that is adjusted by income for all taxpayers. The

report shall be delivered to the Senate Committees on Finance and on Education and the House Committees on Ways and Means and on Education.

(b) The report shall address:

(1) the impact of the proposed changes on current groups of taxpayers, including taxpayers who pay an education property tax based on property value, those who pay based on income, and renters;

(2) the impact of imposing a cap, of various amounts, on the total amount of taxes paid by a taxpayer under the proposal, but at least including an analysis of a cap of \$25,000.00;

(3) the impact of the proposed changes on towns and the State, including administrative issues resulting from the proposed changes;

(4) how the proposed changes to current definition of housesite impact taxpayers at different levels of income and different levels of property values and how the changes would affect property owners with different configurations of property ownership;

(5) any transition issues created by the proposed changes;

(6) the impact of the proposed changes on taxpayer confidentiality; and

(7) any related issues identified by the Joint Fiscal Office.

Eighth: By striking out Sec. 10 (effective dates) in its entirety and inserting in lieu thereof the following:

Sec. 10. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except for:

(1) Sec. 3 (excess spending) which shall take effect on July 1, 2019 and apply to excess spending calculations for fiscal year 2020 and after; and

(2) Sec. 8 (data collection) which shall take effect on July 1, 2019.

**(Committee Vote 10-0-1)**

**Rep. Fagan of Rutland City**, for the Committee on **Appropriations**, recommends the bill, as amended by the Committee on Education, be further amended as follows::

First: By striking out Sec. 6 in its entirety and inserting in lieu thereof the following:

Sec. 6. 16 V.S.A. § 4028(d) is amended to read:

(d) Notwithstanding 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 direct cost, but does

not provide money or a funding mechanism have a specifically identified appropriation for fulfilling that obligation. Any fiscal note prepared under this subsection shall identify whether or not the estimated costs would be considered part of the “unfunded education mandate amount” under 32 V.S.A. § 305b for the next fiscal year. 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.

Second: In Sec. 9, by adding a new subsection (g) to read as follows:

(g) Nonlegislative members of the Committee shall be entitled to compensation as provided under 32 V.S.A. § 1010.

**(Committee Vote 11-0-0)**

**Amendment to be offered by Rep. Sibia of Dover to H. 853**

First: By adding a Sec. 8a to read as follows:

Sec. 8a. 16 V.S.A. § 212a is added to read:

§ 212a. DATA COLLECTION

(a) In addition to the requirements of subdivision 212(9) of this title, the Secretary shall require schools districts to report annually:

(1) a recommended funding level for any reserve funds held by the district for the upcoming fiscal year;

(2) whether or not cellular service is available in each building in the district and which carriers are available;

(3) internet speeds currently available for connection to each building; and

(4) current internet speed currently connected to each building.

(b) In addition to any other requirements under law, the Secretary shall establish standards and require school districts to collect and report to the Secretary the following data:

(1) per pupil expenditures for educational information technology, including the cost of instruction, hardware, software, licensing, and the number of computers per pupil in the district;

(2) per pupil expenditures for extracurricular athletics;

(3) per pupil transportation costs;

(4) per pupil costs for school data systems, including the costs of licensing and instruction;

(5) per pupil costs for instruction in core classes;

- (6) per pupil expenditures for advanced placement classes; and
- (7) per pupil expenditures for teacher professional development.

(c) As used in this section, “per pupil” means per actual pupil in the school district.

Second: In Sec 10 (effective dates), in subdivision (2), after “Sec. 8 (data collection)” by inserting “and Sec. 8a (additional data)”

**Amendment to be offered by Rep. Browning of Arlington to H. 853**

First: By adding a reader assistance heading and Sec. 9c to read as follows:

\* \* \* Tax Incentives \* \* \*

**Sec. 9c. VALUE OF MERGER INCENTIVES AND GRANTS**

On or before July 1 of each year, the Joint Fiscal Office shall determine the total value of the merger incentives or grants, described in 2015 Acts and Resolves No. 46, Secs. 6 and 7, received by each eligible school district, and that amount shall be added to the amount transferred from the General Fund to the Education Fund in the following fiscal year pursuant to 16 V.S.A. § 4025(a)(2).

Second: In Sec. 10, by adding a subdivision (3) to read as follows:

(3) Notwithstanding 1 V.S.A. § 214, Sec. 9c (value of merger incentives and grants) shall take effect retroactively on January 1, 2016.

**Amendment to be offered by Rep. Browning of Arlington to H. 853**

By adding a new Sec. 10 to read:

Sec. 10. 2015 Acts and Resolves No. 46, Sec. 10 is amended to read:

**Sec. 10. TRANSITION TO SUSTAINABLE GOVERNANCE STRUCTURES; PROPOSAL; FINAL PLAN**

(a) Secretary of Education’s proposal. In order to provide educational opportunities through sustainable governance structures designed to meet the goals set forth in Sec. 2 of this act pursuant to one of the models described in Sec. 5, the Secretary shall:

(1) Review the governance structures of the school districts and supervisory unions of the State as they will exist, or are anticipated to exist, on July 1, 2019. This review shall include consideration of any proposals submitted by districts or groups of districts pursuant to Sec. 9 of this act and conversations with those and other districts.

(2) On or before July 1, 2018, shall develop, publish on the Agency of Education’s website, and present to the State Board of Education a proposed

plan that, to the extent necessary to promote the purpose stated at the beginning of this subsection (a), would move districts into the more sustainable, preferred model of governance set forth in Sec. 5(b) of this act (Education District). If it is not possible or practicable to develop a proposal that realigns some districts, where necessary, into an Education District in a manner that adheres to the protections of Sec. 4 of this act (protection for tuition-paying and operating districts) or that otherwise meets all aspects of Sec. 5(b), then the proposal may also include alternative governance structures as necessary, such as a supervisory union with member districts or a unified union school district with a smaller average daily membership; provided, however, that any proposed alternative governance structure shall be designed to:

- (A) ensure adherence to the protections of Sec. 4 of this act; and
- (B) promote the purpose stated at the beginning of this subsection (a).

(b) State Board's plan. On or before November 30, 2018, the State Board shall review and analyze the Secretary's proposal under the provisions in subsection (a) of this section, may take testimony or ask for additional information from districts and supervisory unions, ~~shall approve~~ may recommend the proposal either in its original form or in an amended form that adheres to the provisions of subsection (a) of this section, and shall publish on the Agency's website its ~~order~~ recommendations for merging and realigning districts and supervisory unions where necessary. The State Board's recommendations shall not be binding on any district.

(c) Applicability. This section shall not apply to:

- (1) an interstate school district;
- (2) a regional career technical center school district formed under 16 V.S.A. chapter 37, subchapter 5A; or
- (3) a district that, between June 30, 2013 and July 2, 2019, began to operate as a unified union school district and:

(A) voluntarily merged into the preferred education governance structure, an Education District, as set forth Sec. 5(b) of this act; or

(B) is a regional education district or any other district eligible to receive incentives pursuant to 2010 Acts and Resolves No. 153, as amended by 2012 Acts and Resolves No. 156.

and by renumbering the remaining section sequentially

## H. 859

An act relating to special education.

**(Rep. Sharpe of Bristol will speak for the Committee on Education.)**

**Rep. O'Brien of Richmond**, for the Committee on **Appropriations**, recommends the bill be amended as follows::

First: In Sec. 2, Study of Funding for Special Education, by striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read:

### Sec. 2. STUDY OF FUNDING FOR SPECIAL EDUCATION

(a) Study. The Agency of Education shall contract for a study of special education funding and practice. The study shall evaluate the feasibility of implementing the census block model of funding, or a variation of this model as the contractor deems appropriate, for special education in Vermont, including the advantages, disadvantages, and policy considerations. The study shall develop a special education funding model recommendation for Vermont, which shall be designed to provide incentives for desirable practices and stimulate innovation in the delivery of services and shall take into account any factors the contractor determines relevant. The contractor shall conduct its evaluation and develop its recommendation in collaboration with the Agency of Education and interested superintendents, special educators, school business and administrative staff, and special education staff from the Vermont State Colleges and other stakeholders. The contractor shall present its findings and recommendations to the General Assembly and the Agency of Education by December 15, 2017.

(b) Funding. The Agency of Education shall allocate out of its fiscal year 2017 budget a sum of \$40,000.00 to provide for the purposes set forth in this section. Any application of funds for the purpose of administrative overhead shall be capped at five percent of the total sum allocated pursuant to this section.

Second: In Sec. 3, Appropriation for Consulting Services on the Delivery of Special Education Services, by striking out Sec. 3 and the reader assistance in their entirety and inserting in lieu thereof a new Sec. 3 to read:

\* \* \* Appropriation for Consulting Services on the Delivery of Special  
Education Services \* \* \*

### Sec. 3. APPROPRIATION FOR CONSULTING SERVICES ON THE DELIVERY OF SPECIAL EDUCATION SERVICES

(a) Consulting services. The Agency of Education shall contract with a consulting firm meeting the criteria set forth in subsection (b) of this section for the provision of special education consulting services to up to



10 supervisory unions, supervisory districts, or unified union school districts. The Agency, in consultation with the consulting firm and interested districts and supervisory unions, shall select, as member districts and supervisory unions for the study, at least three existing supervisory unions or supervisory districts with an average daily membership of 1,500 students or more and at least three unified union school districts formed pursuant to 2015 Acts and Resolves No. 46. In no event shall the Agency include a district or supervisory union that does not provide an equivalent match equal to 50 percent of the value of the consulting firm's services to the district or supervisory union; the other 50 percent being funded by the appropriation provided in this section. This financial contribution by districts or supervisory unions may be in the form of transition grants or other appropriate grant funding and may, at the discretion of the district's or supervisory union's board of directors, be allocated across the district's or supervisory union's 2017 and 2018 fiscal years. The consulting firm shall present a final report with recommendations on the delivery of special education services to the General Assembly and the Agency of Education on or before October 1, 2017. The consulting firm shall provide to the Agency of Education any and all research and data compiled during the course of its work pursuant to this section.

(b) Selection of consulting firm. The Agency of Education shall contract with a consulting firm which:

(1) has experience working directly with Vermont school districts and with school districts across the country to raise achievement and manage cost in special education;

(2) uses national special education staffing benchmarking from at least 1,000 school districts covering at least 10 million students, and web-based schedule sharing technology that captures how individual staff members use their time, including duration, location, and group size;

(3) has conducted and published primary research on cost-effective strategies for raising achievement of struggling students, both with and without special needs; and

(4) is recognized as a national expert and published author on raising special education achievement in a cost-effective manner.

(c) Appropriation. Notwithstanding any provision to the contrary in 16 V.S.A. § 4025, the sum of \$200,000.00 is appropriated from the Education Fund for fiscal year 2017 to the Agency of Education. The Agency shall administer the funds in accordance with this section and any unused funds shall revert to the Education Fund.

Third: In Sec. 4, Creation of Agency of Education Staff Position, by deleting Sec. 4 and its reader assistance in their entirety

Fourth: In Sec. 5, Effective Dates, after “Secs. 2, 3,” by striking out “4” and by renumbering Sec. 5 to be Sec. 4

(Committee Vote 10-0-1)

#### H. 864

An act relating to agricultural exemption from Vermont’s sales and use tax.

(Rep. Lawrence of Lyndon will speak for the Committee on Agriculture & Forest Products.)

Rep. Young of Glover, for the Committee on Ways & Means, recommends the bill be amended as follows::

First: By striking out Sec. 1 in its entirety and inserting in lieu thereof:

Sec. 1. 32 V.S.A. § 9741(25) is amended to read:

(25) Sales of agricultural machinery and equipment for use and consumption ~~directly and exclusively, except for isolated or occasional uses, predominately~~ in the production for sale of tangible personal property on farms (including stock, dairy, poultry, fruit, and truck farms), orchards, nurseries, or in greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities for sale. ~~It shall be rebuttably presumed that uses are not isolated or occasional if they total more than four percent of the time the machinery or equipment is operated.~~ As used in this subdivision, the term “predominately” means 75 percent or more of the time the machinery or equipment is in use.

Second: By striking out Sec. 2 in its entirety and inserting in lieu thereof the following:

Sec. 2. [Deleted.]

(Committee Vote 9-0-2)

#### Favorable

#### H. 519

An act relating to approval of the adoption and codification of the charter of the Town of Brandon

Rep. Lewis of Berlin, for the Committee on Government Operations, recommends the bill ought to pass.

(Committee Vote: 10-0-1)

Rep. Young of Glover, for the Committee on Ways & Means, recommends the bill ought to pass.

(Committee Vote: 7-3-1)

**For Informational Purposes**  
**House Appropriations Committee**  
**Members' Amendments to Fiscal Year 2017**  
**Proposed Omnibus Appropriations Bill (H.875)**

The House Committee on Appropriations requests all members of the House, who intend to introduce amendments to the proposed FY 2017 omnibus appropriations bill (H.875), to meet with the committee in room 42 at **10:00 a.m. on Wednesday, March 23, before 2<sup>nd</sup> reading**, OR at **10:00 a.m. on Thursday, March 24, before 3<sup>rd</sup> reading**. Schedule a time with Theresa Utton-Jerman at [tutton@leg.state.vt.us](mailto:tutton@leg.state.vt.us), 828-5767 or Room: 40 to meet with the Committee.

**In addition, please notify the Chair or Vice-Chair as soon as possible if you intend to offer an amendment.**