

House Calendar

Thursday, March 31, 2016

87th DAY OF THE ADJOURNED SESSION

House Convenes at 1:00 PM

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Action Postponed Until March 31, 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) ~~An~~ 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.

Amendment to be offered by Rep. Davis of Washington to H. 867

First: In Sec. 6, 21 V.S.A. § 692, by striking out the section in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK ORDERS

(a) Failure to insure. If after notice and a hearing ~~under section 688 of this title~~, the ~~Commissioner~~ Attorney General determines that an employer has failed to comply with the provisions of section 687 of this title, the employer shall be ~~assessed an administrative~~ subject to a civil penalty of not more than \$100.00 for every day for the first seven days the employer neglected to secure liability and not more than \$150.00 for every day thereafter.

(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the ~~Commissioner~~ Attorney General, the ~~Commissioner shall~~ Attorney General may issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the ~~Commissioner~~ Attorney General determines that issuing a stop-work order would immediately threaten the safety or health of the public, the ~~Commissioner~~ Attorney General may permit work to continue until the immediate threat to public safety or health is removed. The ~~Commissioner~~ Attorney General shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be ~~assessed an administrative~~ subject to a civil penalty of not more than \$250.00 for every day that the employer fails to secure workers' compensation coverage after the ~~Commissioner~~ Attorney General issues an order to obtain insurance and may also be ~~assessed an administrative~~ subject to a civil penalty of not more than \$250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the ~~Commissioner~~ Attorney General shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with the provisions of section 687 of this title and that work at the work site has been ordered to cease until workers' compensation insurance is secured. If an employer fails to comply with a stop-work order, the Attorney General may seek an order from the Civil Division of the Superior Court to enjoin the employer from employing any individual. The stop-work order shall be rescinded as soon as the ~~Commissioner~~ Attorney General determines that the employer is in compliance with section 687 of this title.

(c) Debarment. An employer ~~against whom a stop-work order has been issued~~ who has not been in compliance with section 687 of this chapter, unless the Attorney General determines that the failure to comply was inadvertent or

excusable, is prohibited from ~~contracting~~ entering into subsequent contracts, directly or indirectly, with the State or any of its subdivisions for a period of up to three years following the date of the issuance of ~~the stop-work order a citation~~, as determined by the ~~Commissioner~~ Attorney General in consultation with ~~Commissioner of Buildings and General Services or the Secretary of Transportation, as appropriate. Either the Secretary or the Commissioner, as appropriate, shall be consulted in any contest of the prohibition of the employer from contracting with the State or its subdivisions~~ the Secretary of Administration. The consultation shall be informal and shall occur within five business days of the notification by the Attorney General. The results of the consultation shall be documented.

~~(e)~~(d) Penalty for violation of stop-work order. In addition to any other penalties, an employer who violates a stop-work order described in subsection (b) of this section is subject to:

(1) a civil penalty of not more than \$5,000.00 for the first violation and a civil penalty of not more than \$10,000.00 for a second or subsequent violation; or

(2) a criminal fine of not more than \$10,000.00 or imprisonment for not more than 180 days, or both.

(e) The Attorney General may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though the failure to comply with the provisions of section 687 of this title were an unfair act in commerce.

Second: In Sec. 9, 21 V.S.A. § 690, by striking out the section in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. 21 V.S.A. § 690 is amended to read:

§ 690. CERTIFICATE, FORM; COPY OF POLICY

* * *

(b)(1) In addition to any other authority provided to the ~~commissioner~~ Commissioner or Attorney General pursuant to this chapter, the ~~commissioner~~ Commissioner or Attorney General may issue a written request to an employer subject to the provisions of this chapter to provide a workers' compensation compliance statement on a form provided by the ~~commissioner~~ Commissioner or Attorney General. The employer shall provide the compliance statement to the Commissioner or Attorney General within 30 days of the request. For the purposes of this subsection, an employer includes subcontractors and

independent contractors. The form shall require all the following information sorted by job site:

* * *

(2)(A) ~~Any~~ If an employer who fails to comply with this subsection or falsifies information on the compliance statement:

(i) ~~the Commissioner may be assessed~~ assess an administrative penalty of not more than \$5,000.00 for each week during which the noncompliance or falsification occurred and any costs and ~~attorney~~ attorney's fees required to enforce this subsection against the employer; or

(ii) the Attorney General may seek a civil penalty of not more than \$5,000.00 for each week during which the noncompliance or falsification occurred and any costs and attorney's fees required to enforce this subsection against the employer.

(B) ~~The commissioner~~ Commissioner or Attorney General may also seek injunctive relief in the Superior Court in Washington superior court County.

(3) A compliance statement shall be a public record, and the ~~commissioner~~ Commissioner or Attorney General shall provide a copy of a compliance statement to any person on request. An insurance company provided with a compliance statement may investigate the information in the statement. Based on evidence that an employer is not in compliance with this chapter, the ~~commissioner~~ Commissioner or Attorney General shall request a compliance statement or an amended compliance statement from the employer, investigate further, and take appropriate enforcement action.

(4) In the event the ~~commissioner~~ Commissioner or Attorney General receives a request for an employer to provide a compliance statement but finds no evidence of noncompliance with this chapter, the ~~commissioner~~ Commissioner or Attorney General shall provide timely notification of the findings to the requesting party.

(c) Upon receiving written authorization from an employer to release information to the Commissioner or Attorney General, the employer's agent or broker or the authorized representative of an insurance or guarantee company shall provide within five business days any contract or policy information, including an insurance application, binder, or reported payroll, that is requested by the Commissioner or Attorney General pursuant to this section.

Third: In Sec. 10, 21 V.S.A. § 625, by striking out the section in its entirety and inserting in lieu thereof a new Sec. 10 to read as follows:

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

§ 625. CONTRACTING OUT FORBIDDEN

(a) ~~An~~ 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)(1) The Attorney General may investigate complaints that an employee has been improperly classified and determine whether a person meets the requirements to be an independent contractor set forth in subdivision 601(31) of this title.

(2) The Attorney General may enforce the provisions of this chapter relating to the proper classification of employees by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though the misclassification of an employee as an independent contractor were an unfair act in commerce. An employer subject to a complaint shall have the rights and remedies specified in 9 V.S.A. §§ 2458–2461. An investigation against an employer shall not be a prerequisite for bringing an action. In addition to any penalties, costs, or other relief permitted pursuant to 9 V.S.A. §§ 2458–2461, the Civil Division of the Superior Court may order restitution of wages or benefits, reinstatement, and other appropriate relief on behalf of an employee.

(c) Unless the improper classification was inadvertent or due to excusable neglect, any person that, for the purpose of avoiding its obligations under this title, improperly classifies an employee as an independent contractor shall be subject to a civil penalty of not more than \$5,000.00.

(d)(1) If, following an investigation, the Attorney General determines that a person has improperly classified an employee as an independent contractor, the Attorney General shall notify the Commissioners of Labor, of Financial Regulation, and of Taxes of the determination.

(2) Upon receiving notification of the determination, the Commissioners of Labor, of Financial Regulation, and of Taxes shall conduct an investigation to determine whether the person has also misclassified the employee pursuant to the applicable provisions of law under his or her jurisdiction.

Fourth: In Sec. 13, 21 V.S.A. § 708, by striking out the section in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

Sec. 13. 21 V.S.A. § 708 is amended to read:

§ 708. PENALTY FOR FALSE REPRESENTATION

~~(a)(1)(A) Action by the Commissioner of Labor. A person who willfully~~ If a person purposefully makes a false statement or representation, ~~for the purpose of obtaining to obtain~~ any benefit or payment under the provisions of this chapter, either for herself or himself or for any other person;

(i) the Commissioner may, after notice and opportunity for hearing, may be assessed assess an administrative penalty of not more than \$20,000.00, ~~and against the person; or~~

(ii) the Attorney General may seek a civil penalty of not more than \$20,000.00 against the person.

(B) In addition to any penalty imposed pursuant to subdivision (1)(A) of this subsection (a), the person shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the Commissioner or Attorney General after a determination by the Commissioner or Attorney General that the person has willfully purposefully made a false statement or representation of a material fact.

(2) In addition, an employer found to have violated this section is prohibited from ~~contracting~~ entering into subsequent contracts, directly or indirectly, with the State or any of its subdivisions for up to three years following the date the employer was found to have made a purposeful false statement or misrepresentation of a material fact, as determined by the Commissioner or Attorney General in consultation with the ~~Commissioner of Buildings and General Services or the Secretary of Transportation, as appropriate. Either the Secretary or the Commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the State or its subdivisions~~ Secretary of Administration. The consultation may be informal and shall occur within five business days of the notification by the Commissioner or Attorney General. The outcome of the consultation shall be documented.

(b) ~~When~~ In addition to any penalties imposed pursuant to subsection (a) of this section, when the Department of Labor or Attorney General has sufficient reason to believe that an employer has purposefully made a false statement or representation for the purpose of obtaining to obtain a lower workers' compensation premium, the Department or the Attorney General shall refer the alleged violation to the Commissioner of Financial Regulation for the Commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).

* * *

Fifth: After Sec. 14, by inserting two new sections to be Secs. 15 and 16 to read as follows:

Sec. 15. TRANSFER OF POSITIONS AND ASSOCIATED

APPROPRIATIONS FROM THE DEPARTMENT OF LABOR TO
THE OFFICE OF ATTORNEY GENERAL

On or before August 1, 2016, five full-time workers' compensation investigator positions and the balance of all appropriated amounts related to those positions and \$115,000.00 from the Workers' Compensation Administration Fund shall be transferred from the Department of Labor to the Office of the Attorney General.

Sec. 16. 2010 Acts and Resolves No. 142, Sec. 7 is amended to read:

Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE

MISCLASSIFICATION REPORTING SYSTEM

The ~~department of labor~~ Department of Labor shall create and maintain an online employee misclassification reporting system. The system shall be designed to allow individuals to report suspected cases of employee misclassification, failure to have appropriate insurance coverage, and claimant fraud to the ~~department~~ Department to ensure that this information is distributed to appropriate departments and agencies, including the Office of the Attorney General. The ~~department~~ Department and any agency or department that the information is distributed to, including the Office of the Attorney General, shall keep the name of the complainant confidential.

and by renumbering the remaining section to be numerically correct

ACTION CALENDAR

Third Reading

H. 879

An act relating to the Health Care Fund contribution assessment and the taxation of e-cigarettes

Favorable

H. 878

An act relating to capital construction and State bonding budget adjustment.

(Rep. Emmons of Springfield will speak for the Committee on Corrections & Institutions.)

Rep. Hooper of Montpelier, for the Committee on Appropriations, recommends the bill ought to pass.

(Committee Vote: 11-0-0)

Amendment to be offered by Rep. Browning of Arlington to H. 878

That the bill be amended as follows:

First: By striking out Sec. 1 in its entirety and inserting in lieu thereof the following:

Sec. 1. 2015 Acts and Resolves No. 26, Sec. 2 is amended to read:

Sec. 2. STATE BUILDINGS

* * *

(c) The following sums are appropriated in FY 2017:

* * *

(5) Statewide, major maintenance: ~~\$8,000,000.00~~ \$7,900,000.00

(6) Statewide, BGS engineering and architectural project costs:
~~\$3,677,448.00~~ \$3,553,061.00

(7) Statewide, physical security enhancements:
~~\$200,000.00~~ \$1,000,000.00

(8) ~~Montpelier, 115 State Street, State House lawn, access improvements and water intrusion:~~ ~~\$300,000.00~~ [Repealed.]

(9) Montpelier, 120 State Street, life safety and infrastructure improvements:
~~\$1,000,000.00~~ \$1,500,000.00

* * *

(13) Statewide, strategic building realignments:
~~\$300,000.00~~ \$250,000.00

(14) Burlington, 108 Cherry Street, parking garage, design and repair:
\$500,000.00

(15) Southern State Correctional Facility, steam line replacement:
\$200,000.00

(16) Statewide, ADA projects: \$74,032.00

(17) Montpelier, 115 State Street and One Baldwin Street, data wiring:
\$40,000.00

(18) Montpelier, 11 and 13 Green Mountain Drive, planning and siting options for Department of Liquor Control and warehouse: \$75,000.00

(19) Waterbury State Office Complex projects, true up:

\$1,900,000.00

* * *

(e) The Commissioner of Buildings and General Services is authorized to use funds from the amount appropriated in subdivision (c)(5) of this section to conduct engineering and design for either a single generator for the State House or a shared generator for the State House and the Capitol Complex, and the related upgrades for the electrical switch gear.

Appropriation – FY 2016		\$41,313,990.00
Appropriation – FY 2017	\$29,450,622.00	<u>\$32,965,267.00</u>
Total Appropriation – Section 2	\$70,764,612.00	<u>\$74,279,257.00</u>

Second: By striking out Sec. 2 in its entirety and inserting in lieu thereof the following:

Sec. 2. 2015 Acts and Resolves No. 26, Sec. 3 is amended to read:

Sec. 3. ADMINISTRATION

(a) ~~The following sums are~~ sum of \$125,000.000 is appropriated in FY 2016 to the Department of Taxes for the Vermont Center for Geographic Information for an ongoing project to update statewide quadrangle maps through digital orthophotographic quadrangle mapping:

~~(1) \$125,000.00 is appropriated in FY 2016.~~

~~(2) \$125,000.00 is appropriated in FY 2017.~~

(b) The following sums are appropriated to the Department of Finance and Management for the ERP expansion project (Phase II):

(1) \$5,000,000.00 is appropriated in FY 2016.

(2) ~~\$9,267,470.00~~ \$8,667,470.00 is appropriated in FY 2017.

(c) The sum of ~~\$5,463,211.00~~ \$5,363,211.00 is appropriated in FY 2017 to the Agency of Human Services for the Health and Human Services Enterprise IT System.

Appropriation – FY 2016		\$5,125,000.00
Appropriation – FY 2017	\$14,855,681.00	<u>\$14,030,681.00</u>
Total Appropriation – Section 3	\$19,980,681.00	<u>\$19,155,681.00</u>

Third: By inserting a Sec. 12a to read as follows:

Sec. 12a. 2015 Acts and Resolves No. 26, Sec. 20 is amended to read:

Sec. 20. GENERAL ASSEMBLY

(a) The sum of \$120,000.00 is appropriated in FY 2016 to the Office of Legislative Council to hire consultant services for upgrades to the International Roll Call (IRC) program, as described in Sec. 47 of this act.

(b) The sum of \$60,000.00 is appropriated in FY 2016 to the Joint Fiscal Office to hire consultant services for a security and safety protocol for the State House, as described in Sec. 46 of this act.

(c) The sum of \$500,000.00 is appropriated in FY 2017 to the Joint Fiscal Office to contract with an independent third party for the sustainability analysis and report on Vermont's Health Exchange technology, and a review of the Vermont Health Connect, including the interconnectivity of each system, pursuant to Sec. E.127.1 of the FY 2017 Appropriations Act.

<u>Appropriation – FY 2016</u>	<u>\$180,000.00</u>
<u>Appropriation – FY 2017</u>	<u>\$500,000.00</u>
<u>Total Appropriation – Section 20</u>	<u>\$180,000.00 \$680,000.00</u>

Fourth: By striking out Sec. 10 in its entirety and inserting in lieu thereof the following:

Sec. 10. 2015 Acts and Resolves No. 26, Sec. 20a is added to read:

Sec. 20a. PUBLIC SERVICE

The sum of \$650,000.00 is appropriated to the Department of Public Service for the Connectivity Initiative, established in 30 V.S.A. § 7515b.

<u>Appropriation – FY 2017</u>	<u>\$650,000.00</u>
<u>Total Appropriation – Section 20a</u>	<u>\$650,000.00</u>

Amendment to be offered by Rep. Emmons of Springfield to H. 878

First: In Sec. 7, 2015 Acts and Resolves No. 26, Sec. 11, by striking out Sec.11 in its entirety and inserting in lieu thereof the following:

Sec. 11. NATURAL RESOURCES

* * *

(d) The following sums are appropriated in FY 2017 to the Agency of Natural Resources for the Department of Environmental Conservation for the projects described in this subsection:

(1) the Water Pollution Control Fund for the Clean Water State/EPA Revolving Loan Fund (CWSRF) match:	\$1,300,000.00
-------------------------------------------------------------------------------------------------------	----------------

* * *

(3) the Drinking Water Supply, Drinking Water State Revolving Fund:
~~\$2,538,000.00~~ \$2,638,000.00

* * *

(7) Municipal Pollution Control Grants, pollution control projects and planning advances for feasibility studies: \$2,276,494.00

(8) Bristol, closure of town landfill: \$145,000.00

* * *

(f) The following sums are appropriated in FY 2017 to the Agency of Natural Resources for the Department of Fish and Wildlife:

(1) General infrastructure projects: \$875,000.00

(2) Lake Champlain Walleye Association, Inc. to upgrade and repair the walleye rearing, restoration, and stocking infrastructure: \$25,000.00

(3) Roxbury, fish hatchery, reconstruction project: \$1,880,571.00

Appropriation – FY 2016 \$13,481,601.00

Appropriation – FY 2017 ~~\$13,243,000.00~~ \$17,645,065.00

Total Appropriation – Section 11 ~~\$26,724,601.00~~ \$31,126,666.00

Second: In Sec. 11, 2015 Acts and Resolves No. 26, Sec. 21, by striking out all after subdivision (b)(6) and inserting in lieu thereof the following:

(7) of the amount appropriated to the Vermont Pollution Control Revolving Fund established in 24 V.S.A. § 4753: \$496,147.71

(8) of the amount appropriated to the Vermont Water Source Protection Fund established in 24 V.S.A. § 4753: \$200,000.00

(c) The following sums are reallocated to the Department of Buildings and General Services to defray expenditures authorized in Sec. 2 of this act:

* * *

(6) of the proceeds from the sale of property authorized in 2009 Acts and Resolves No. 43, Sec. 25 (1193 North Ave., Thayer School): \$60,991.12

(d) The amount appropriated in subdivision (b)(8) of this section shall be directed to the amount appropriated to the Vermont Environmental Protection Agency (EPA) Drinking Water State Revolving Fund in Sec. 11(d)(3) of this act.

Reallocations and Transfers – FY 2016 \$1,648,656.00

Reallocations and Transfers – FY 2017 \$1,704,688.69

Total Reallocations and Transfers – Section 21 ~~\$1,648,656.08~~ \$3,353,344.69

Senate Proposal of Amendment

Rep. Dakin of Colchester, for the Committee on **Commerce & Economic Development**, moves that the House concur in the Senate Proposal of Amendment with further amendment thereto by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Consumer Litigation Funding * * *

Sec. A.1. 8 V.S.A. chapter 74 is added to read:

CHAPTER 74. CONSUMER LITIGATION FUNDING COMPANIES

§ 2251. DEFINITIONS

As used in this chapter:

(1) “Charges” means the amount a consumer owes to a company in addition to the funded amount and includes an administrative fee, origination fee, underwriting fee, processing fee, and any other fee regardless of how the fee is denominated, including amounts denominated as interest or rate.

(2) “Commissioner” means the Commissioner of Financial Regulation.

(3) “Consumer” means a natural person who is seeking or has obtained consumer litigation funding for a pending legal claim, provided:

(A) the claim is in Vermont; or

(B) the person resides or is domiciled in Vermont, or both.

(4) “Consumer litigation funding” or “funding” means a nonrecourse transaction in which a company purchases and a consumer assigns to the company a contingent right to receive an amount of the potential net proceeds of a settlement or judgment obtained from the consumer’s legal claim. If no proceeds or net proceeds are obtained, the consumer is not required to repay the company the funded amount or charges.

(5) “Consumer litigation funding company,” “litigation funding company,” or “company” means a person that provides consumer litigation funding to a consumer. The term does not include an immediate family member of the consumer, as defined in subdivision 2200(10) of this title.

(6) “Funded amount” means the amount of monies provided to, or on behalf of, the consumer pursuant to a litigation funding contract. The term excludes charges.

(7) “Health care facility” has the same meaning as in 18 V.S.A. § 9402(6).

(8) “Health care provider” has the same meaning as in 18 V.S.A. § 9402(7).

(9) “Litigation funding contract” or “contract” means a contract between a company and a consumer for the provision of consumer litigation funding.

(10)(A) “Net proceeds” means the amount recovered by a consumer as a result of a legal claim less costs associated with the legal claim or the underlying events giving rise to the legal claim, including:

(i) attorney’s fees, attorney liens, litigation costs;

(ii) claims or liens for related medical services owned and asserted by the provider of such services;

(iii) claims or liens for reimbursement arising from third parties who have paid related medical expenses, including claims from insurers, employers with self-funded health care plans, and publicly financed health care plans; and

(iv) liens for workers’ compensation benefits paid to the consumer.

(B) This definition of “net proceeds” shall in no way affect the priority of claims or liens other than those for payments to the consumer litigation funding company under a consumer litigation funding contract subject to this chapter.

§ 2252. REGISTRATION; FEE; FINANCIAL STABILITY

(a) A company shall not engage in the business of consumer litigation funding without first filing a registration with the Commissioner on a form prescribed by the Commissioner and submitting a registration fee and proof of financial stability, as required by this section.

(b) A company shall submit a \$600.00 fee at the time of registration and at the time of each renewal. Registrations shall be renewed every three years.

(c) A company shall file with the Commissioner evidence of its financial stability which shall include proof of a surety bond or irrevocable letter of credit issued and confirmed by a financial institution authorized by law to transact business in Vermont that is equal to double the amount of the company’s largest funded amount in Vermont in the prior three calendar years or \$50,000.00, whichever is greater.

§ 2253. CONTRACTS; DISCLOSURES AND REQUIREMENTS

(a) A contract shall be written in a clear and coherent manner using words with common, everyday meanings to enable the average consumer who makes

a reasonable effort under ordinary circumstances to read and understand the terms of the contract without having to obtain the assistance of a professional.

(b) Each contract shall include consumer disclosures on the front page. The consumer disclosures shall be in a form prescribed by the Commissioner and shall include:

(1) a description of possible alternatives to a litigation funding contract, including secured or unsecured personal loans, and life insurance policies;

(2) notification that some or all of the funded amount may be taxable;

(3) a description of the consumer's right of rescission;

(4) the total funded amount provided to the consumer under the contract;

(5) an itemization of charges;

(6) the annual percentage rate of return;

(7) the total amount due from the consumer, including charges, if repayment is made any time after the funding contract is executed;

(8) a statement that there are no fees or charges to be paid by the consumer other than what is disclosed on the disclosure form;

(9) in the event the consumer seeks more than one litigation funding contract, a disclosure providing the cumulative amount due from the consumer for all transactions, including charges under all contracts, if repayment is made any time after the contracts are executed;

(10) a statement that the company has no right to make any decisions regarding the conduct of the legal claim or any settlement or resolution thereof and that the right to make such decisions remains solely with the consumer and his or her attorney;

(11) a statement that, if there is no recovery of any money from the consumer's legal claim, the consumer shall owe nothing to the company and that, if the net proceeds of the claim are insufficient to repay the consumer's indebtedness to the company, then the consumer shall owe the company no money in excess of the net proceeds; and

(12) any other statements or disclosures deemed necessary or appropriate by the Commissioner.

(c) Each contract shall include the following provisions:

(1) Definitions of the terms "consumer," "consumer litigation funding," and "consumer litigation funding company."

(2) A right of rescission, allowing the consumer to cancel the contract without penalty or further obligation if, within five business days following the execution of the contract or the consumer's receipt of any portion of the funded amount, the consumer gives notice of the rescission to the company and returns any funds provided to the consumer by the company.

(3) A provision specifying that, in the event of litigation involving the contract and at the election of the consumer, venue shall lie in the Vermont Superior Court for the county where the consumer resides.

(4) An acknowledgment that the consumer is represented by an attorney in the legal claim and has had an opportunity to discuss the contract with his or her attorney.

§ 2254. PROHIBITED ACTS

(a) A consumer litigation funding company shall not engage in any of the following conduct or practices:

(1) Pay or offer to pay commissions, referral fees, or any other form of consideration to any attorney, law firm, health care provider, health care facility, or an employee of a law firm, health care provider, or health care facility for referring a consumer to the company.

(2) Accept any commissions, referral fees, or any other form of consideration from any attorney, law firm, health care provider, health care facility, or an employee of a law firm, health care provider, or health care facility.

(3) Advertise false or misleading information regarding its products or services.

(4) Receive any right to nor make any decisions with respect to the conduct of the consumer's legal claim or any settlement or resolution. The right to make such decisions shall remain solely with the consumer and his or her attorney.

(5) Knowingly pay or offer to pay for court costs, filing fees, or attorney's fees either during or after the resolution of the legal claim.

(6) Refer a consumer to a specific attorney, law firm, health care provider, or health care facility.

(7) Fail to provide promptly copies of contract documents to the consumer or to the consumer's attorney.

(8) Obtain a waiver of any remedy the consumer might otherwise have against the company.

(9) Provide legal advice to the consumer regarding the funding or the underlying legal claim.

(10) Assign a contract in whole or in part to a third party. Provided, however, if the company retains responsibility for collecting payment, administering, and otherwise enforcing the consumer litigation funding contract, the prohibition in this subdivision (10) shall not apply to an assignment:

(A) to a wholly-owned subsidiary of the company;

(B) to an affiliate of the company that is under common control with the company; or

(C) granting a security interest under Article 9 of the Uniform Commercial Code or as otherwise permitted by law.

(11) Report a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the company.

(12) Require binding arbitration in the event of a dispute between the consumer and the company. A consumer has the right to a trial in the event of a contractual dispute.

(b) An attorney or law firm retained by a consumer shall not have a financial interest in a company offering litigation funding to the consumer and shall not receive a referral fee or other consideration from such company, its employees, or its affiliates.

§ 2255. EFFECT OF COMMUNICATION ON PRIVILEGES

A communication between a consumer's attorney and the company shall not be discoverable or limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

§ 2256. EXAMINATIONS; CHARGES

For the purpose of protecting consumer interests and determining a company's financial stability and compliance with the requirements of this chapter, the Commissioner may conduct an examination of a company engaged in the business of consumer litigation funding. The company shall reimburse the Department of Financial Regulation all reasonable costs and expenses of such examination. In unusual circumstances and in the interests of justice, the Commissioner may waive reimbursement for the costs and expenses of an examination under this section.

§ 2257. NATIONWIDE LICENSING SYSTEM; INFORMATION SHARING; CONFIDENTIALITY

(a) In furtherance of the Commissioner's duties under this chapter, the Commissioner may participate in the Nationwide Mortgage Licensing System and Registry and may take such action regarding participation in the Registry as the Commissioner deems necessary to carry out the purposes of this section, including:

(1) issue rules or orders, or establish procedures, to further participation in the Registry;

(2) facilitate and participate in the establishment and implementation of the Registry;

(3) establish relationships or contracts with the Registry or other entities designated by the Registry;

(4) authorize the Registry to collect and maintain records and to collect and process any fees associated with licensure or registration on behalf of the Commissioner;

(5) require persons engaged in activities that require registration under this chapter to use the Registry for applications, renewals, amendments, surrenders, and such other activities as the Commissioner may require and to pay through the Registry all fees provided for under this chapter;

(6) authorize the Registry to collect fingerprints on behalf of the Commissioner in order to receive or conduct criminal history background checks, and, in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this subsection, the Commissioner may use the Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any other governmental agency; and

(7) in order to reduce the points of contact which the Commissioner may have to maintain for purposes of this chapter, use the Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner.

(b) The Commissioner may require persons engaged in activities that require registration under this chapter to submit fingerprints, and the Commissioner may use the services of the Registry to process the fingerprints and to submit the fingerprints to the Federal Bureau of Investigation, the Vermont State Police, or any equivalent state or federal law enforcement agency for the purpose of conducting a criminal history background check. The company shall pay the cost of such criminal history background check, including any charges imposed by the Registry.

(c) Persons engaged in activities that require registration pursuant to this chapter shall pay all applicable charges to use the Registry, including such processing charges as the administrator of the Registry shall establish, in addition to the fees required under this chapter.

(d) The Registry is not intended to and does not replace or affect the Commissioner's authority to grant, deny, suspend, revoke, or refuse to renew registrations.

(e) In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) The privacy or confidentiality of any information or material provided to the Registry and any privilege arising under federal or state law (including the rules of any federal or state court) with respect to such information or material shall continue to apply to such information or material after the information or material has been disclosed to the Registry. Such information and material may be shared with all state and federal regulatory officials with oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) To carry out the purpose of this section, the Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies.

(3) Information or material that is subject to privilege or confidentiality under subdivision (1) of this subsection shall not be subject to:

(A) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(B) subpoena or discovery or admission into evidence in any private civil action or administrative process unless with respect to any privilege held by the Registry with respect to such information or material the person to whom such information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(4) This subsection shall not apply with respect to information or material relating to employment history and publicly adjudicated disciplinary and enforcement actions that are included in the Registry for access by the public.

(f) In this section, "Nationwide Mortgage Licensing System and Registry" or "the Registry" means a licensing system developed and maintained by the

Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators as defined in 12 U.S.C. § 5102(6), or its successor in interest, or any alternative or replacement licensing system and registry designated by the Commissioner.

§ 2258. RULES

The Commissioner may adopt rules he or she deems necessary for the proper conduct of business and enforcement of this chapter.

§ 2259. PENALTIES; ENFORCEMENT

(a) After notice and opportunity for hearing in accordance with the Administrative Procedures Act, 3 V.S.A. chapter 25, the Commissioner may take action to enforce the provisions of this chapter and may:

(1) revoke or suspend a company's registration;

(2) order a company to cease and desist from further consumer litigation funding;

(3) impose a penalty of not more than \$1,000.00 for each violation or \$10,000.00 for each violation the Commissioner finds to be willful; and

(4) order the company to make restitution to consumers.

(b) The powers vested in the Commissioner by this chapter shall be in addition to any other powers of the Commissioner to enforce any penalties, fines, or forfeitures authorized by law.

(c) A company's failure to comply with the requirements of this chapter shall constitute an unfair or deceptive act in commerce enforceable under 9 V.S.A. chapter 63, the Consumer Protection Act.

(d) The powers vested in the Commissioner by this chapter shall be in addition to any other powers or rights of consumers or the Attorney General or others under any other applicable law or rule, including the Vermont Consumer Protection Act and any applicable rules adopted thereunder, provided the Commissioner's determinations concerning the interpretation and administration of the provisions of this chapter and rules adopted thereunder shall carry a presumption of validity.

§ 2260. ANNUAL REPORTS

(a) Annually, on or before April 1, each company registered under this chapter shall file a report with the Commissioner under oath and in the form and manner prescribed by the Commissioner. The report shall include any information the Commissioner requires concerning the company's business

and operations during the preceding calendar year within Vermont and, in addition, shall include:

- (1) the number of contracts entered into;
- (2) the dollar value of funded amounts to consumers;
- (3) the dollar value of charges under each contract, itemized and including the annual rate of return;
- (4) the dollar amount and number of litigation funding transactions in which the realization to the company was as contracted; and
- (5) the dollar amount and number of litigation funding transactions in which the realization to the company was less than contracted.

(b) To assist the general public with more fully understanding the nature of consumer litigation funding in Vermont, the Commissioner shall summarize and analyze relevant data submitted under this section and publish the summary and analysis on a web page maintained by the Department of Financial Regulation, as well as on a web page maintained by the Office of the Attorney General.

(c) Annually, beginning on or before October 1, 2017, the Commissioner and Attorney General shall report jointly to the General Assembly on the status of consumer litigation funding in Vermont and make any recommendations they deem necessary to improve the regulatory framework of consumer litigation funding, including a recommendation on whether Vermont should limit charges imposed under a consumer litigation funding contract.

* * * Structured Settlement Agreements * * *

Sec. B.1. 9 V.S.A. § 2480ff(b) is amended to read:

(b) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under section 2480dd of this title, the transferee shall file with the Court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with such notice:

* * *

(7) a statement setting forth whether, to the best of the transferee's knowledge after making a reasonable inquiry to the payee, the structured settlement obligor, and the annuity issuer, there have been any previous transfers or applications for transfer of any structured settlement payment rights of the payee and giving details of all such transfers or applications for transfer;

(8) to the best of the transferee's knowledge after making reasonable inquiry to the payee, the structured settlement obligor, and the annuity issuer, a description of the remaining payments owed to the payee under the structured settlement if the court approves the proposed transfer, including the amount and dates or date ranges of the payments owed, provided that:

(A) the description may be filed under seal; and

(B) if the transferee's knowledge concerning the remaining payments changes after the transferee submits a notice of the proposed transfer, the transferee may provide updated information to the court at the hearing;

~~(8)~~(9) if available to the transferee after making a good faith request of the payee, the structured settlement obligor and the annuity issuer, the following documents, which shall be filed under seal:

(A) a copy of the annuity contract;

(B) a copy of any qualified assignment agreement; and

(C) a copy of the underlying structured settlement agreement;

~~(9)~~(10) either a certification from an independent professional advisor establishing that the advisor has given advice to the payee on the financial advisability of the transfer and the other financial options available to the payee or a written request that the Court determine that such advice is unnecessary pursuant to subdivision 2480dd(a)(2) of this title; and

~~(10)~~(11) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than 15 days after service of the transferee's notice, in order to be considered by the court.

* * * Business Registration; Enforcement * * *

Sec. C.1. PURPOSE

(a) The purpose of 11 V.S.A. § 1637, as added in Sec. C. 2 of this act, is to protect consumers by ensuring that they have adequate public notice in the records of the Secretary of State when a person is no longer allowed to conduct business in this State.

(b) The purpose of Secs. C.3–C.14 is to standardize among the statutes governing business organizations authorized to conduct business in this State:

(1) the duty of a person to register with the Secretary of State; and

(2) the enforcement and penalties for failure register.

Sec. C.2. 11 V.S.A. § 1637 is added to read:

§ 1637. AUTHORITY TO TERMINATE AND AMEND REGISTRATION

(a) The Secretary of State shall have the authority to:

(1) terminate the registration of a person who, pursuant to a final court order or an assurance of discontinuance, is not authorized to conduct business in this State; and

(2) amend his or her records to reflect the termination of a registration pursuant to subdivision (1) of this section.

(b)(1) If the Secretary of State terminates the registration of a person pursuant to this section, the person appoints the Secretary as his or her agent for service of process in any proceeding based on a cause of action that arose during the time the person was authorized to transact, or was transacting without authorization, business in this State.

(2) Upon receipt of process, the Secretary of State shall deliver by registered mail a copy of the process to the secretary of the terminated person at its principal office shown in its most recent annual report or in any subsequent communication received from the person stating the current mailing address of its principal office, or, if none is on file, in its application for registration.

(c)(1) If a court or other person with sufficient legal authority reinstates the ability of a terminated person to conduct business in this State, the terminated person may file with the Secretary of State evidence of the reinstated authority and pay to the Secretary a fee of \$25.00 for each year the person is delinquent.

(2) Upon receipt of a filing and payment pursuant to subdivision (1) of this subsection, the Secretary shall cancel the termination and prepare a certificate of reinstatement, file the original of the certificate, and serve a copy on the person.

Sec. C.3. 11 V.S.A. § 1626 is amended to read:

§ 1626. FAILURE TO REGISTER; ENFORCING COMPLIANCE

~~Upon the complaint of the secretary of state, a person, copartnership, association, limited liability company or corporation carrying on business in this state contrary to this chapter may be enjoined therefrom by a superior court and fined not more than \$100.00.~~

(a) A person who is not registered with the Secretary of State as required under this chapter and any successor to the person or assignee of a cause of action arising out of the business of the person may not maintain an action or proceeding or raise a counterclaim, crossclaim, or affirmative defense in this State until the person, successor, or assignee registers with the Secretary.

(b) The failure of a person to register as required under this chapter does not impair the validity of a contract or act of the person or preclude it from defending an action or proceeding in this State.

(c) An individual does not waive a limitation on his or her personal liability afforded by other law solely by transacting business in this State without registering with the Secretary of State as required under this chapter.

(d) If a person transacts business in this State without registering with the Secretary of State as required under this chapter, the Secretary is its agent for service of process with respect to a right of action arising out of the transaction of business in this State.

(e) A person that transacts business in this State without registering with the Secretary of State as required under this chapter shall be liable to the State for:

(1) a civil penalty of \$50.00 for each day, not to exceed a total of \$10,000.00 for each year, it transacts business in this State without a registration;

(2) an amount equal to the fees due under this chapter during the period it transacted business in this State without a registration; and

(3) other penalties imposed by law.

(f) The Attorney General may maintain an action in the Civil Division of the Superior Court to collect the penalties imposed in subsection (e) of this section and to restrain a person from transacting business in this State in violation of this chapter.

Sec. C.4. 11 V.S.A. § 3303 is amended to read:

§ 3303. EFFECT OF FAILURE TO QUALIFY

(a)(1) A foreign limited liability partnership transacting business in this state State may not maintain an action or proceeding or raise a counterclaim, crossclaim, or affirmative defense in this state State unless it has in effect a statement of foreign qualification.

(2) The successor to a foreign limited liability partnership that transacted business in this State without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding or raise a counterclaim, crossclaim, or affirmative defense based on that cause of action in any court in this State until the foreign limited liability partnership or its successor or assignee obtains a certificate of authority.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or

act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this ~~state~~ State.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this ~~state~~ State without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this ~~state~~ State without a statement of foreign qualification, the ~~secretary of state~~ Secretary of State is its agent for service of process with respect to a right of action arising out of the transaction of business in this ~~state~~ State.

(e) A foreign limited liability partnership that transacts business in this State without a statement of foreign qualification shall be liable to the State for:

(1) a civil penalty of \$50.00 for each day, not to exceed a total of \$10,000.00 for each year, it transacts business in this State without a statement of foreign qualification;

(2) an amount equal to the fees due under this chapter during the period it transacted business in this State without a statement of foreign qualification; and

(3) other penalties imposed by law.

Sec. C.5. 11 V.S.A. § 3305 is amended to read:

§ 3305. ACTION BY ATTORNEY GENERAL

The ~~attorney general~~ Attorney General may maintain an action in the Civil Division of the Superior Court to collect the penalties imposed in section 3303 of this title and to restrain a foreign limited liability partnership from transacting business in this ~~state~~ State in violation of this subchapter.

Sec. C.6. 11 V.S.A. § 3487 is amended to read:

§ 3487. TRANSACTION OF BUSINESS WITHOUT REGISTRATION

(a)(1) A foreign limited partnership transacting business in this ~~state~~ State may not maintain an action or proceeding or raise a counterclaim, crossclaim, or affirmative defense in this ~~state~~ State until it has registered in this ~~state~~ State.

(2) The successor to a foreign limited partnership that transacted business in this State without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding or raise a counterclaim, crossclaim, or affirmative defense based on that cause of

action in any court in this State until the foreign limited partnership or its successor or assignee obtains a certificate of authority.

(b) The failure of a foreign limited partnership to register in this ~~state~~ State does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this ~~state~~ State.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this ~~state~~ State without registration.

(d) A foreign limited partnership, by transacting business in this ~~state~~ State without registration, appoints the ~~secretary of state~~ Secretary of State as its agent for service of process with respect to claims for relief and causes of action arising out of the transaction of business in this ~~state~~ State.

(e) A foreign limited partnership that transacts business in this State without a registration shall be liable to the State for:

(1) a civil penalty of \$50.00 for each day, not to exceed a total of \$10,000.00 for each year, it transacts business in this State without a registration;

(2) an amount equal to the fees due under this chapter during the period it transacted business in this State without a registration; and

(3) other penalties imposed by law.

Sec. C.7. 11 V.S.A. § 3488 is amended to read:

§ 3488. ACTION BY ATTORNEY GENERAL

The ~~attorney general~~ Attorney General may bring an action in the Civil Division of the Superior Court to collect the penalties imposed under section 3487 of this title and to restrain a foreign limited partnership from transacting business in this ~~state~~ State in violation of this subchapter.

Sec. C.8. 11 V.S.A. § 4119 is amended to read:

§ 4119. EFFECT OF FAILURE TO OBTAIN CERTIFICATE OF AUTHORITY

(a)(1) A foreign limited liability company transacting business in this State may not maintain a proceeding or raise a counterclaim, cross-claim, or affirmative defense in any court in this State until it obtains a certificate of authority to transact business in this State.

(2) The successor to a foreign limited liability company that transacted business in this State without a certificate of authority and the assignee of a

cause of action arising out of that business may not maintain a proceeding or raise a counterclaim, crossclaim, or affirmative defense based on that cause of action in any court in this State until the foreign limited liability company or its successor or assignee obtains a certificate of authority.

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

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

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

(e) A foreign limited liability company that transacts business in this State without a certificate of authority shall be liable to the State for:

(1) a civil penalty of \$50.00 for each day, not to exceed a total of \$10,000.00 for each year, it transacts business in this State without a certificate of authority;

(2) an amount equal to the fees due under this chapter during the period it transacted business in this State without a certificate of authority; and

(3) other penalties imposed by law.

Sec. C.9. 11 V.S.A. § 4120 is amended to read:

§ 4120. ACTION BY ATTORNEY GENERAL

The Attorney General may maintain an action in the Civil Division of the Superior Court to collect the penalties imposed under section 4119 of this title and to restrain a foreign limited liability company from transacting business in this State in violation of this chapter.

Sec. C.10. 11A V.S.A. § 15.02 is amended to read:

§ 15.02. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY

(a) A foreign corporation transacting business in this ~~state~~ State without a certificate of authority may not maintain a proceeding or raise a counterclaim,

crossclaim, or affirmative defense in any court in this ~~state~~ State until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this ~~state~~ State without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding or raise a counterclaim, crossclaim, or affirmative defense based on that cause of action in any court in this ~~state~~ State until the foreign corporation or its successor or assignee obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation that transacts business in this State without a certificate of authority is liable to the ~~state~~ State for:

(1) a civil penalty of \$50.00 for each day, ~~but~~ not to exceed a total of ~~\$1,000.00~~ \$10,000.00 for each year, it transacts business in this ~~state~~ State without a certificate of authority;

(2) an amount equal to ~~all the fees that would have been imposed due~~ under this ~~chapter~~ title during the ~~years, or parts thereof,~~ period it transacted business in this ~~state~~ State without a certificate of authority; and

(3) ~~such other penalties as are~~ imposed by law. ~~The attorney general may collect all penalties due under this subsection.~~

(e) ~~Upon petition of the attorney general~~ The Attorney General may maintain an action in the Civil Division of the Superior Court to collect the penalties imposed in this section and to restrain a foreign corporation not in compliance with this chapter; ~~and its officers and agents, may be enjoined by the courts of this state~~ from doing business within this ~~state~~ State.

(f) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts, to the extent they are otherwise in compliance with law, or prevent it from defending any proceeding in this ~~state~~ State.

Sec. C.11. 11B V.S.A. § 15.02 is amended to read:

§ 15.02. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY

(a) A foreign corporation transacting business in this ~~state~~ State without a certificate of authority may not maintain a proceeding or raise a counterclaim,

crossclaim, or affirmative defense in any court in this ~~state~~ State until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this ~~state~~ State without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding or raise a counterclaim, crossclaim, or affirmative defense based on that cause of action in any court in this ~~state~~ State until the foreign corporation or its successor or assignee obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

~~(d) A foreign corporation is liable for a civil penalty of \$50.00 for each day, but not to exceed a total of \$1,000.00 for each year, it transacts business in this state without a certificate of authority, an amount equal to all fees that would have been imposed under this chapter during the years, or parts thereof, it transacted business in this state without a certificate of authority, and such other penalties as are imposed by law. The attorney general may collect all penalties due under this subsection. A foreign corporation that transacts business in this State without a certificate of authority is liable to the State for:~~

(1) a civil penalty of \$50.00 for each day, not to exceed a total of \$10,000.00 for each year, it transacts business in this State without a certificate of authority;

(2) an amount equal to the fees due under this title during the period it transacted business in this State without a certificate of authority; and

(3) other penalties imposed by law.

(e) The Attorney General may file an action in the Civil Division of Superior Court to collect the penalties due under this subsection and to restrain a foreign corporation not in compliance with this chapter from doing business within this State.

(f) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this ~~state~~ State.

Sec. C.12. 11C V.S.A. § 1402 is amended to read:

§ 1402. APPLICATION FOR CERTIFICATE OF AUTHORITY

(a) A foreign enterprise may apply for a certificate of authority by delivering an application to the Secretary of State for filing. The application shall state:

(1) the name of the foreign enterprise and, if the name does not comply with section 111 of this title, an alternative name adopted pursuant to section 1405 of this title;

(2) the name of the state or other jurisdiction under whose law the foreign enterprise is organized;

(3) the street address and, if different, mailing address of the principal office and, if the law of the jurisdiction under which the foreign enterprise is organized requires the foreign enterprise to maintain another office in that jurisdiction, the street address and, if different, mailing address of the required office;

(4) the street address and, if different, mailing address of the foreign enterprise's designated office in this State, and the name of the foreign enterprise's agent for service of process at the designated office; and

(5) the name, street address and, if different, mailing address of each of the foreign enterprise's current directors and officers.

(b) A foreign enterprise shall deliver with a completed application under subsection (a) of this section a certificate of good standing or existence or a similar record signed by the Secretary of State or other official having custody of the foreign enterprise's publicly filed records in the state or other jurisdiction under whose law the foreign enterprise is organized.

(c) A foreign enterprise may not transact business in this State without a certificate of authority.

Sec. C.13. 11C V.S.A. § 1407 is amended to read:

§ 1407. CANCELLATION OF CERTIFICATE OF AUTHORITY; EFFECT OF FAILURE TO HAVE CERTIFICATE

(a) To cancel its certificate of authority, a foreign enterprise shall deliver to the Secretary of State for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 203 of this title.

(b)(1) A foreign enterprise transacting business in this State may not maintain an action or proceeding or raise a counterclaim, crossclaim, or affirmative defense in this State unless it has a certificate of authority.

(2) The successor to a foreign enterprise that transacted business in this State without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding or raise a

counterclaim, crossclaim, or affirmative defense based on that cause of action in any court in this State until the foreign enterprise or its successor or assignee obtains a certificate of authority.

(c) The failure of a foreign enterprise to have a certificate of authority does not impair the validity of a contract or act of the foreign enterprise or prevent the foreign enterprise from defending an action or proceeding in this State.

(d) A member of a foreign enterprise is not liable for the obligations of the foreign enterprise solely by reason of the foreign enterprise's having transacted business in this State without a certificate of authority.

(e) If a foreign enterprise transacts business in this State without a certificate of authority or cancels its certificate, it appoints the Secretary of State as its agent for service of process for an action arising out of the transaction of business in this State.

(f) A foreign enterprise that transacts business in this State without a certificate of authority is liable to the State for:

(1) a civil penalty of \$50.00 for each day, not to exceed a total of \$10,000.00 for each year, it transacts business in this State without a certificate of authority;

(2) an amount equal to the fees due under this title during the period it transacted business in this State without a certificate of authority; and

(3) other penalties imposed by law.

Sec. C.14. 11C V.S.A. § 1408 is amended to read:

§ 1408. ACTION BY ATTORNEY GENERAL

The Attorney General may maintain an action in the Civil Division of the Superior Court to collect the penalties imposed in section 1407 of this title and to restrain a foreign enterprise from transacting business in this State in violation of this ~~article~~ chapter.

* * * Anti-Trust Penalties * * *

Sec. D.1. 9 V.S.A. § 2458 is amended to read:

§ 2458. RESTRAINING PROHIBITED ACTS

* * *

(b) In addition to the foregoing, the Attorney General or a State's Attorney may request and the court is authorized to render any other temporary or permanent relief, or both, as may be in the public interest including:

(1) the imposition of a civil penalty of not more than \$10,000.00 for each ~~violation~~ unfair or deceptive act or practice in commerce, and of not more than \$100,000.00 for an individual or \$1,000,000.00 for any other person for each unfair method of competition in commerce;

* * *

* * * Discount Membership Programs * * *

Sec. E.1. 9 V.S.A. chapter 63, subchapter 1D is amended to read:

Subchapter 1D. Third-Party Discount Membership Programs

§ 2470aa. DEFINITIONS

~~As~~ As used in this subchapter:

(1) “Billing information” means any data that enables a seller of a third-party discount membership program to access a consumer’s credit or debit card, bank, or other account, but does not include the consumer’s name, e-mail address, telephone number, or mailing address. For credit card and debit card accounts, billing information includes the full account number, card type, and expiration date, and, if necessary, the security code. For accounts at a financial institution, “billing information” includes the full account number and routing number, and, if necessary, the name of the financial institution holding the account.

(2) A “third-party discount membership program” is a program that entitles consumers to receive discounts, rebates, rewards, or similar incentives on the purchase of goods or services or both, in whole or in part, from any third party.

§ 2470bb. APPLICABILITY

(a) A third-party discount membership program is a good or service within the meaning of subsection 2451a(b) of this chapter.

(b) This subchapter applies only to persons who are regularly and primarily engaged in trade or commerce in this State in connection with offering or selling third-party discount membership programs.

(c) This subchapter shall not apply to an electronic payment system, as defined in section 2480o of this title, or to a financial institution, as defined in 8 V.S.A. § 11101(32).

§ 2470cc. REQUIRED DISCLOSURES; CONSENT

(a) No person shall charge or attempt to charge a consumer for a third-party discount membership program, or to renew a third-party discount membership

program beyond the term expressly agreed to by the consumer or the term permitted under section 2470ff of this title, whichever is shorter, unless:

(1) ~~Before~~ before obtaining the consumer's billing information, the person has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including:

(A) a description of the types of goods and services on which a discount is available;

(B) the name of the third-party discount membership program, ~~and~~ the name and address of the seller of the program, and a telephone number, e-mail address, or other contact information the consumer may use to contact the seller with questions concerning the operation of the program;

(C) the amount, or a good faith estimate, of the typical discount on each category of goods and services;

(D) the cost of the program, including the amount of any periodic charges, how often such charges are imposed, and the method of payment;

(E) the right to cancel and to terminate the program, which shall be no more restrictive than as required by section 2470ee of this subchapter, and a toll-free telephone number and e-mail address that can be used to cancel the membership;

(F) the maximum length of membership, as described in section 2470ff of this subchapter;

(G) in the event that the program is offered on the Internet through a link or referral from another business's website, the fact that the seller is not affiliated with that business; and

(H) the fact that periodic notices of the program billings will be e-mailed or mailed to the consumer, as the case may be, consistent with section 2470dd of this title; and

(2) ~~The~~ the person has received express informed consent for the charge from the consumer whose credit or debit card, bank, or other account will be charged, by:

(A) obtaining from the consumer:

(i) the consumer's billing information; and

(ii) the consumer's name and address and a means to contact the consumer; and

(B) requiring the consumer to perform an additional affirmative action, such as clicking on an online confirmation button, checking an online

box that indicates the consumer's consent to be charged the amount disclosed, or expressly giving consent over the telephone.

(b) A person who sells third-party discount membership programs shall retain evidence of a consumer's express informed consent for at least three years after the consent is given.

(c) A person who sells a third-party discount membership program shall provide to a consumer on the receipt for the underlying good or service:

(1) confirmation that the consumer has signed up for a discount membership program;

(2) the price the consumer will be charged for the program;

(3) the date on which the consumer will first be charged for the program;

(4) the frequency of charges for the program; and

(5) information concerning the consumer's right to cancel the program and a toll-free telephone number, address, and e-mail address a consumer may use to cancel the program.

§ 2470dd. PERIODIC NOTICES

(a) A person who periodically charges a consumer for a third-party discount membership program shall send the consumer a notice of the charge no less frequently than every three months from the date of initial enrollment that clearly and conspicuously discloses:

(1) a description of the program;

(2) the name of the third-party discount membership program and the name and address of the seller of the program;

(3) the cost of the program, including the amount of any periodic charges, how often such charges are imposed, and the method of payment;

(4) the right to cancel and to terminate the program, which shall be no more restrictive than as required by section 2470ee of this subchapter, and a toll-free number and e-mail address that can be used to cancel the membership; and

(5) the maximum length of membership, as described in section 2470ff of this subchapter.

(b) The notice specified in subsection (a) of this section:

(1) ~~Shall~~ shall be sent:

(A) ~~To~~ to the consumer's last known e-mail address, if the consumer enrolled in the third-party discount membership program online or by e-mail, with the subject line, "IMPORTANT INFORMATION ABOUT YOUR DISCOUNT PROGRAM BILLING," or substantially similar words, provided that the sender takes reasonable steps to verify that the e-mail has been opened; or

(B) ~~Otherwise~~ otherwise by first-class mail to the consumer's last known mailing address, with the heading on the enclosure and outside envelope, "IMPORTANT INFORMATION ABOUT YOUR DISCOUNT PROGRAM BILLING," or substantially similar words; and

(2) ~~Shall~~ shall not include any solicitation or advertising.

§ 2470ee. CANCELLATION AND TERMINATION

(a) In addition to any other right to revoke an offer, a consumer may cancel the purchase of a third-party discount membership program until midnight on the 30th day after the date the consumer has given express informed consent to be charged for the program. If the consumer cancels within the 30-day period, the seller of the third-party discount membership program shall, within 10 days of receiving the notice of cancellation, provide a full refund to the consumer.

(b)(1) Notice of cancellation shall be deemed given when deposited in a mailbox properly addressed and postage prepaid or when e-mailed to the e-mail address of the seller of the third-party discount membership program.

(2) A consumer may cancel a third-party discount membership program verbally by contacting the seller at a toll-free telephone number that the seller provides for that purpose.

(c) In addition to the right to cancel described in this subchapter, a consumer may terminate a third-party discount membership program at any time by providing notice to the seller by one of the methods described in this section. In that case, the consumer shall not be obligated to make any further payments under the program and shall not be entitled to any discounts under the program for any period of time after the last month for which payment has been made.

(d) If the seller of a third-party discount membership program cancels the program for any reason other than nonpayment by the consumer, the seller shall make pro rata reimbursement to the consumer of all periodic charges paid by the consumer for periods of time after cancellation. Prior to such cancellation, the seller shall first provide reasonable notice and an explanation of the cancellation in writing to the consumer.

§ 2470ff. MAXIMUM LENGTH OF PLAN

No person shall sell, or offer for sale, a third-party discount membership program lasting longer than 18 months.

§ 2470gg. BILLING INFORMATION

No person who offers or sells third-party discount membership programs shall obtain billing information relating to a consumer except directly from the consumer.

§ 2470hh. VIOLATIONS

(a) A person who violates this subchapter commits an unfair and deceptive act in trade and commerce in violation of section 2453 of this title.

(b) The Attorney General has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as is provided under subchapter 1 of this chapter.

(c) It is an unfair and deceptive act and practice in commerce for any person to provide substantial assistance to the seller of a third-party discount membership program that has engaged or is engaging in an unfair or deceptive act or practice in commerce, when the person or the person's authorized agent:

(1) receives notice from a regulatory, law enforcement, or similar governmental authority that the seller of the third-party discount membership program is in violation of this subchapter;

(2) knows from information received or in its possession that the seller of the third-party discount membership program is in violation of this subchapter; or

(3) consciously avoids knowing that the seller of the third-party discount membership program is in violation of this subchapter.

(d) Subject to section 2452 of this title, a person who provides only incidental assistance, which does not further the sale of a third-party discount membership program, to the seller of the program, or who does not receive a benefit from providing assistance to the seller of a discount membership, shall not be liable under this section unless the person receives notice, knows, or consciously avoids knowing, pursuant to subdivision (c)(1), (2), or (3) of this section, that a third-party discount membership program is in violation of this chapter.

Sec. E.2. 9 V.S.A. chapter 63, subchapter 1E is added to read:

Subchapter 1E: Add-On Discount Membership Programs

§ 2470ii. DEFINITIONS

As used in this subchapter:

(1) An “add-on discount membership program” is a program that entitles consumers to receive discounts, rebates, rewards, or similar incentives on the purchase of goods or services or both, sold to a consumer during the purchase of a different good or service using the same billing information.

(2) “Billing information” means any data that enables a seller of an add-on discount membership program to access a consumer’s credit or debit card, bank, or other account, but does not include the consumer’s name, e-mail address, telephone number, or mailing address. For credit card and debit card accounts, billing information includes the full account number, card type, and expiration date, and, if necessary, the security code. For accounts at a financial institution, “billing information” includes the full account number and routing number, and, if necessary, the name of the financial institution holding the account.

§ 2470jj. APPLICABILITY

(a) An add-on discount membership program is a good or service within the meaning of subsection 2451a(b) of this title.

(b) This subchapter applies only to persons who are regularly engaged in offering or selling add-on discount membership programs.

(c) This subchapter shall not apply to an electronic payment system, as defined in section 2480o of this title, or to a financial institution, as defined in 8 V.S.A. § 11101(32).

§ 2470kk. REQUIRED DISCLOSURES; CONSENT

(a) No person shall charge or attempt to charge a consumer for an add-on discount membership program, or to renew an add-on discount membership program beyond the term expressly agreed to by the consumer, unless:

(1) before obtaining the consumer’s billing information, the person has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including:

(A) a description of the types of goods and services on which a discount is available;

(B) the name of the add-on discount membership program, the name and address of the seller of the program, and a telephone number, e-mail

address, or other contact information the consumer may use to contact the seller with questions concerning the operation of the program;

(C) the cost of the program, including the amount of any periodic charges, how often such charges are imposed, and the method of payment; and

(D) the right to cancel and to terminate the program, which shall be no more restrictive than as required by section 24701l of this title, and a toll-free telephone number and e-mail address that can be used to cancel the membership;

(2) before obtaining the consumer's billing information, the person has received express informed consent for the add-on membership program from the consumer whose credit or debit card, bank, or other account will be charged, by requiring the consumer to perform an additional affirmative action, such as clicking on an online confirmation button, checking an online box that indicates the consumer's consent to be charged the amount disclosed, or expressly giving consent over the telephone; and

(3) after providing the disclosures and obtaining the consent required by subdivisions (1) and (2) of this subsection, obtaining from the consumer:

(A) the consumer's billing information; and

(B) the consumer's name and address, and a means to contact the consumer.

(b) A person who sells an add-on discount membership program shall retain evidence of a consumer's express informed consent for at least three years after the consent is given.

(c) A person who sells an add-on discount membership program shall provide to a consumer on the receipt for the underlying good or service:

(1) confirmation that the consumer has signed up for a discount membership program;

(2) the price the consumer will be charged for the program;

(3) the date on which the consumer will first be charged for the program;

(4) the frequency of charges for the program; and

(5) information concerning the consumer's right to cancel the program and a toll-free telephone number, address, and e-mail address a consumer may use to cancel the program.

§ 24701l. CANCELLATION AND TERMINATION

(a) In addition to any other right to revoke an offer, a consumer may cancel the purchase of an add-on discount membership program until midnight on the 30th day after the date the consumer has given express informed consent to be charged for the program. If the consumer cancels within the 30-day period, the seller of the add-on discount membership program shall, within 10 days of receiving the notice of cancellation, provide a full refund to the consumer less the value of any discount the consumer has received by using the add-on discount membership program.

(b)(1) Notice of cancellation shall be deemed given when deposited in a mailbox properly addressed and postage prepaid or when e-mailed to the e-mail address of the seller of the add-on discount membership program.

(2) A consumer may cancel an add-on discount membership program verbally by contacting the seller at a toll-free telephone number that the seller provides for that purpose.

(c) In addition to the right to cancel described in this subchapter, a consumer may terminate an add-on discount membership program at any time by providing notice to the seller by one of the methods described in this section. In that case, the consumer shall not be obligated to make any further payments under the program and shall not be entitled to any discounts under the program for any period of time after the last month for which payment has been made.

(d) If the seller of an add-on discount membership program cancels the program for any reason other than nonpayment by the consumer, the seller shall make pro rata reimbursement to the consumer of all periodic charges paid by the consumer for periods of time after cancellation. Prior to such cancellation, the seller shall first provide reasonable notice and an explanation of the cancellation in writing to the consumer.

§ 2470mm. BILLING INFORMATION

A person who offers or sells a discount membership program may not obtain billing information relating to a consumer except directly from the consumer.

§ 2470nn. VIOLATIONS

(a) A person who violates this subchapter commits an unfair and deceptive act in trade and commerce in violation of section 2453 of this title.

(b) The Attorney General has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as is provided under subchapter 1 of this chapter.

(c) It is an unfair and deceptive act and practice in commerce for any person to provide substantial assistance to the seller of an add-on discount membership program that has engaged or is engaging in an unfair or deceptive act or practice in commerce, when the person or the person's authorized agent:

(1) receives notice from a regulatory, law enforcement, or similar governmental authority that the seller of the add-on discount membership program is in violation of this subchapter;

(2) knows from information received or in its possession that the seller of the add-on discount membership program is in violation of this subchapter; or

(3) consciously avoids knowing that the seller of the add-on discount membership program is in violation of this subchapter.

(d) Subject to section 2452 of this title, a person who provides only incidental assistance, which does not further the sale of an add-on discount membership program, to the seller of the program, or who does not receive a benefit from providing assistance to the seller of a an add-on discount membership, shall not be liable under this section unless the person receives notice, knows, or consciously avoids knowing, pursuant to subdivision (c)(1), (2), or (3) of this section, that an add-on discount membership program is in violation of this chapter.

* * * Nonresidential Home Improvement Fraud * * *

Sec. F.1. 13 V.S.A. § 2029 is amended to read:

§ 2029. HOME IMPROVEMENT FRAUD

(a) As used in this section, "home improvement" includes the fixing, replacing, remodeling, removing, renovation, alteration, conversion, improvement, demolition, or rehabilitation of or addition to any building or land, or any portion thereof, which is used or designed to be used as a residence or dwelling unit. Home improvement shall include the construction, replacement, installation, paving, or improvement of driveways, roofs, and sidewalks, and the limbing, pruning, and removal of trees or shrubbery and other improvements to structures or upon land that is adjacent to a dwelling house.

(b)(1) A person commits the offense of home improvement fraud when he or she enters into a contract or agreement, written or oral, for \$500.00 or more, with an owner for home improvement, or into several contracts or agreements for \$2,500.00 or more in the aggregate, with more than one owner for home improvement, and he or she knowingly:

(A) fails to perform the contract or agreement, in whole or in part; and

(B) when the owner requests performance or a refund of payment made, the person fails to either:

(i) refund the payment; or

(ii) make and comply with a definite plan for completion of the work that is agreed to by the owner;

(2) misrepresents a material fact relating to the terms of the contract or agreement or to the condition of any portion of the property involved;

(3) uses or employs any unfair or deceptive act or practice in order to induce, encourage, or solicit such person to enter into any contract or agreement or to modify the terms of the original contract or agreement; or

(4) when there is a declared state of emergency, charges for goods or services related to the emergency a price that exceeds two times the average price for the goods or services and the increase is not attributable to the additional costs incurred in connection with providing those goods or services.

(c) Whenever a person is convicted of home improvement fraud or of fraudulent acts related to home improvement:

(1) the person shall notify the Office of Attorney General;

(2) the court shall notify the Office of the Attorney General; and

(3) the Office of Attorney General shall place the person's name on the Home Improvement and Nonresidential Improvement Fraud Registry.

(d)(1) A person who violates subsection (b) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both, if the loss to a single consumer is less than \$1,000.00.

(2) A person who is convicted of a second or subsequent violation of subdivision (1) of this subsection shall be imprisoned not more than three years or fined not more than \$5,000.00, or both.

(3) A person who violates subsection (b) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both, if:

(A) the loss to a single consumer is \$1,000.00 or more; or

(B) the loss to more than one consumer is \$2,500.00 or more in the aggregate.

(4) A person who is convicted of a second or subsequent violation of subdivision (3) of this subsection shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(5) A person who violates subsection (c) or (e) of this section shall be imprisoned for not more than two years or fined not more than \$1,000.00, or both.

(e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of this section, subdivision of 2029a(d)(2), (3), or (4) of this title, or convicted of fraudulent acts related to home improvement, may engage in home improvement activities for compensation only if:

(1) the work is for a company or individual engaged in home improvement activities or nonresidential improvement activities, and the person first notifies the company or individual of the conviction and notifies the Office of Attorney General of the person's current address and telephone number; the name, address, and telephone number of the company or individual for whom the person is going to work; and the date on which the person will start working for the company or individual; or

(2) the person notifies the Office of Attorney General of the intent to engage in home improvement activities or nonresidential improvement activities, and that the person has filed a surety bond or an irrevocable letter of credit with the Office in an amount of not less than \$50,000.00, and pays on a regular basis all fees associated with maintaining such bond or letter of credit.

(f) The Office of Attorney General shall release the letter of credit at such time when:

(1) any claims against the person relating to home improvement fraud or nonresidential improvement fraud have been paid;

(2) there are no pending actions or claims against the person for home improvement fraud or nonresidential improvement fraud; and

(3) the person has not been engaged in home improvement activities or nonresidential improvement activities for at least six years and has signed an affidavit so attesting.

(g) [Reserved.]

(h) [Repealed.]

Sec. F.2. 13 V.S.A. § 2029a is added to read:

§ 2029a. NONRESIDENTIAL IMPROVEMENT FRAUD

(a) As used in this section, “nonresidential improvement” includes the fixing, replacing, remodeling, removing, renovation, alteration, conversion, improvement, demolition, or rehabilitation of or addition to any building or land, or any portion thereof, that is used or designed to be used as a business, office, or by the State, a county, or a municipality. Nonresidential improvement shall include the construction, replacement, installation, paving, or improvement of driveways, parking lots, signs, roofs, and sidewalks, and the limbing, pruning, and removal of trees or shrubbery and other improvements to structures or upon land that is adjacent to a business, office, or State, county, or municipal building.

(b)(1) A person commits the offense of nonresidential improvement fraud when he or she enters into a contract or agreement, written or oral, for \$1,000.00 or more, with an owner for nonresidential improvement, or into several contracts or agreements for \$5,000.00 or more in the aggregate, with more than one owner for nonresidential improvement, and he or she knowingly:

(A) fails to perform the contract or agreement, in whole or in part; and

(B) when the owner requests performance or a refund of payment made, the person fails to either:

(i) refund the payment; or

(ii) make and comply with a definite plan for completion of the work that is agreed to by the owner;

(2) misrepresents a material fact relating to the terms of the contract or agreement or to the condition of any portion of the property involved;

(3) uses or employs any unfair or deceptive act or practice in order to induce, encourage, or solicit such person to enter into any contract or agreement or to modify the terms of the original contract or agreement; or

(4) when there is a declared state of emergency, charges for goods or services related to the emergency a price that exceeds two times the average price for the goods or services and the increase is not attributable to the additional costs incurred in connection with providing those goods or services.

(c) Whenever a person is convicted of nonresidential improvement fraud:

(1) the person shall notify the Office of Attorney General;

(2) the court shall notify the Office of the Attorney General; and

(3) the Office of Attorney General shall place the person’s name on the Home Improvement and Nonresidential Improvement Fraud Registry.

(d)(1) A person who violates subsection (b) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both, if the loss to a single consumer is less than \$1,000.00.

(2) A person who is convicted of a second or subsequent violation of subdivision (1) of this subsection shall be imprisoned not more than three years or fined not more than \$5,000.00, or both.

(3) A person who violates subsection (b) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both, if:

(A) the loss to a single consumer is \$1,000.00 or more; or

(B) the loss to more than one consumer is \$2,500.00 or more in the aggregate.

(4) A person who is convicted of a second or subsequent violation of subdivision (3) of this subsection shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(5) A person who violates subsection (c) or (e) of this section shall be imprisoned for not more than two years or fined not more than \$1,000.00, or both.

(e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of this section, subdivision 2029(d)(2), (3), or (4) of this title, or convicted of fraudulent acts related to nonresidential improvement, may engage in home improvement activities or nonresidential improvement activities for compensation only if:

(1) the work is for a company or individual engaged in home improvement activities or nonresidential improvement activities, and the person first notifies the company or individual of the conviction and notifies the Office of Attorney General of the person's current address and telephone number; the name, address, and telephone number of the company or individual for whom the person is going to work; and the date on which the person will start working for the company or individual; or

(2) the person notifies the Office of Attorney General of the intent to engage in home improvement activities or nonresidential improvement activities, and that the person has filed a surety bond or an irrevocable letter of credit with the Office in an amount of not less than \$50,000.00, and pays on a regular basis all fees associated with maintaining such bond or letter of credit.

(f) The Office of Attorney General shall release the letter of credit at such time when:

(1) any claims against the person relating to home improvement fraud or nonresidential improvement fraud have been paid;

(2) there are no pending actions or claims against the person for home improvement fraud or nonresidential improvement fraud; and

(3) the person has not been engaged in home improvement activities or nonresidential improvement activities for at least six years and has signed an affidavit so attesting.

* * * Financial Institutions; Licensed Lender;
Technical Corrections * * *

G.1. 8 V.S.A. § 10101 is amended to read:

§ 10101. APPLICATION OF CONSUMER PROTECTION CHAPTER

Except as otherwise provided in this chapter, the provisions of this chapter shall apply to all financial institutions, as defined in subdivision 11101(32) of this title, licensed lenders, mortgage brokers, mortgage loan originators, sales finance companies, independent trust companies, money service providers, debt adjusters, loan servicers, credit unions, and any other person doing or soliciting business in this State as described in Part 2, 4, or 5; ~~or 6~~ of this title, in addition to any other applicable consumer protection or remedy section not contained in this chapter, unless such consumer protection or remedy section is expressly made exclusive.

G.2. 8 V.S.A. § 10601 is amended to read:

§ 10601. APPLICATION

This subchapter shall apply to all persons licensed, authorized, or registered, or required to be licensed, authorized, or registered under Parts 2, 4, and 5, ~~and 6~~ of this title.

G.3. 8 V.S.A. 2200(17) is amended to read:

(17) “Mortgage loan originator”:

* * *

(D) Does not include:

(i) an individual engaged solely as a loan processor or underwriter, except as otherwise provided in subsection 2201(~~f~~)(g) of this chapter;

* * *

* * * Internet Dating Services * * *

Sec. H.1. FINDINGS AND PURPOSE

(a) The General Assembly finds:

(1) Currently, an Internet dating service does not have an affirmative duty under any state or federal law to ban a member of the service, but a service may choose to voluntarily ban a member for violating one or more terms of use, or because the service determines the member poses a risk of defrauding another member.

(2) In 2014, Internet dating services banned millions of members, the vast majority of which were banned within 72 hours of creating an account with the service.

(3) Of the members banned in 2014, well less than one percent contacted the Internet dating service concerning the ban.

(4) Due to a growing number of cases in which Vermont members of Internet dating services have lost significant financial amounts to persons using Internet dating services to defraud members or businesses, the Office of the Vermont Attorney General proposes this legislation, working with the input of multiple Internet dating services and other stakeholders.

(5) If an Internet dating service violates the statutory provisions created in this act, the Attorney General has the authority pursuant to 9 V.S.A. §§ 2458 and 2459 to request from a court, or to settle with the service for, restitution for a consumer or class of consumers affected by the violation.

(b) Purpose. The purposes of this act are:

(1) to protect Vermont consumers by requiring an Internet dating service to disclose in a timely manner important information about banned members to Vermont members of the service;

(2) to protect Internet dating services from liability to members for disclosing the information required by this act, while preserving liability to the State of Vermont and its agencies, departments, and subdivisions for violating this act; and

(3) to protect Vermont consumers and other members of Internet dating services by requiring an Internet dating service to notify its Vermont members when there is a significant change to the Vermont member's account information.

H.2. 9 V.S.A. chapter 63, subchapter 8 is added to read:

Subchapter 8. Internet Dating Services

§ 2482a. DEFINITIONS

In this chapter:

(1) “Account change” means a change to a member’s password, username, e-mail address, or other contact information an Internet dating service uses to enable communications between members.

(2) “Banned member” means the member whose account or profile is the subject of a fraud ban.

(3) “Fraud ban” means barring a member’s account or profile from an Internet dating service because, in the judgment of the service, the member poses a significant risk of attempting to obtain money from other members through fraudulent means.

(4) “Internet dating service” means a person, or a division of a person, that is primarily in the business of providing dating services principally on or through the Internet.

(5) “Member” means a person who submits to an Internet dating service information required to access the service and who obtains access to the service.

(6) “Vermont member” means a member who provides a Vermont residential or billing address or zip code when registering with the Internet dating service.

§ 2482b. REQUIREMENTS FOR INTERNET DATING SERVICES

(a) An Internet dating service shall disclose to all of its Vermont members known to have previously received and responded to an on-site message from a banned member:

(1) the user name, identification number, or other profile identifier of the banned member;

(2) the fact that the banned member was banned because, in the judgment of the Internet dating service, the banned member may have been using a false identity or may pose a significant risk of attempting to obtain money from other members through fraudulent means;

(3) that a member should never send money or personal financial information to another member; and

(4) a hyperlink to online information that clearly and conspicuously addresses the subject of how to avoid being defrauded by another member of an Internet dating service.

(b) The notification required by subsection (a) of this section shall be:

(1) clear and conspicuous;

(2) by e-mail, text message, or other appropriate means of communication; and

(3) sent within 24 hours after the fraud ban, or at a later time if the service has determined, based on an analysis of effective messaging, that a different time is more effective, but in no event later than three days after the fraud ban.

(c) An Internet dating service shall disclose in an e-mail, text message, or other appropriate means of communication, in a clear and conspicuous manner, within 24 hours after discovering an account change to a Vermont member's account:

(1) the fact that information on the member's account ~~or personal profile~~ has been changed;

(2) a brief description of the change; and

(3) if applicable, how the member may obtain further information on the change.

(d)(1) A banned member from Vermont who is identified to one or more Vermont members pursuant to subsection (a) of this section shall have the right to challenge the ban by written complaint to the Office of the Vermont Attorney General.

(2) The Office of the Attorney General shall review a challenge brought by a banned member pursuant to this subsection and, if it finds that there was no reasonable basis for banning the member, shall require the Internet dating service to take reasonable corrective action to cure the erroneous ban.

§ 2482c. LIMITED IMMUNITY

(a) An Internet dating service shall not be liable to any person, other than the State of Vermont, or any agency, department, or subdivision of the State, for disclosing to any member that it has banned a member, the user name or identifying information of the banned member, or the reasons for the Internet dating service's decision to ban such member in accordance with section 2482b of this title.

(b) An Internet dating service shall not be liable to any person, other than the State of Vermont, or any agency, department, or subdivision of the State, for the decisions regarding whether to ban a member, or how or when to notify a member pursuant to section 2482b of this title.

(c) This subchapter does not diminish or adversely affect the protections for Internet dating services that are afforded in 47 U.S.C. § 230 (Federal Communications Decency Act).

§ 2482d. VIOLATIONS

(a) A person who violates this subchapter commits an unfair and deceptive act in trade and commerce in violation of section 2453 of this title.

(b) The Attorney General has the same authority to make rules, conduct civil investigations, and enter into assurances of discontinuance as is provided under subchapter 1 of this chapter.

* * * Effective Dates * * *

Sec. I.1. EFFECTIVE DATES

(a) This section and Secs. G.1–G.3 (technical corrections) take effect on passage.

(b) The following sections take effect on July 1, 2016:

(1) Sec. A.1 (consumer litigation funding).

(2) Sec. B.1 (structured settlements agreements).

(3) Secs. C.1–C.12 (business registration; enforcement).

(4) Sec. D.1 (anti-trust penalties).

(5) Secs. E.1–E.2 (discount membership programs).

(6) Secs. F.1–F.2 (nonresidential home improvement fraud).

(7) Sec. H.1 (findings and purpose; internet dating services).

(c) In Sec. H.2 (internet dating services):

(1) 9 V.S.A. §§ 2482a, 2482c, and 2482d shall take effect on passage.

(2) 9 V.S.A. § 2482b shall take effect on January 1, 2017.

and that after passage the title of the bill be amended to read: “An act relating to consumer protection”

(Committee Vote: 11-0-0)

For Text of House Amendments, See House Journal of May 14, 2015

Action Postponed Until April 1, 2016

Third Reading

H. 863

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

Amendment to be offered by Rep. Dame of Essex to H. 863

That the bill be amended after Sec. 9, Vermont Municipal Employees' Retirement System Rates for Fiscal Year 2017, by adding a new Sec. 10 to read as follows:

Sec. 10. VERMONT PENSION INVESTMENT COMMITTEE; TRANSFER TO DEFINED CONTRIBUTION PLAN; REPORT

The Vermont Pension Investment Committee shall develop a plan to permit any current State employee that is a member of the Vermont State Employees' Retirement System to transfer his or her membership in the System and the total amount of the accumulated contributions standing to his or her credit in the Vermont State Retirement Fund to the Defined Contribution Retirement Plan established pursuant to 3 V.S.A. chapter 16A. In addition, the Vermont Pension Investment Committee shall develop a plan to provide each participant in the Defined Contribution Retirement Plan with at least one socially responsible option for investing his or her contributions to the Plan. On or before January 15, 2017, the Vermont Pension Investment Committee shall submit a written report to the General Assembly regarding the plans that it has developed pursuant to this section and a recommendation for any legislative, regulatory, or administrative changes necessary to implement the plans.

and by renumbering the remaining section to be numerically correct

NOTICE CALENDAR

Favorable with Amendment

H. 93

An act relating to increasing the smoking age from 18 to 21 years of age

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

* * * Increasing Smoking Age to 19 Years of Age * * *

Sec. 1. 7 V.S.A. § 1003 is amended to read:

§ 1003. SALE OF TOBACCO PRODUCTS; TOBACCO SUBSTITUTES;
TOBACCO PARAPHERNALIA; REQUIREMENTS;
PROHIBITIONS

(a) A person shall not sell or provide tobacco products, tobacco substitutes, or tobacco paraphernalia to any person younger than ~~18~~ 19 years of age.

(b) Beginning August 28, 1997, vending machines selling tobacco products, tobacco substitutes, or tobacco paraphernalia are prohibited. This subsection shall not apply to a vending machine that is located in a commercial establishment in which by law no person younger than ~~18~~ 19 years of age is permitted to enter at any time. A single vending machine may not be used to sell other commodities in combination with tobacco products, tobacco substitutes, or tobacco paraphernalia. A violation of this subsection shall result in the seizure of the vending machine.

(c) Beginning January 1, 2001, and subject to receiving any necessary exemption from preemption from the U.S. Food and Drug Administration, all vending machines selling tobacco products are prohibited.

(d) No person holding a tobacco license shall display or store tobacco products or tobacco substitutes where those products are accessible to consumers without direct assistance by the sales personnel. This subsection shall not apply to the following:

(1) ~~A~~ a display of tobacco products that is located in a commercial establishment in which by law no person younger than ~~18~~ 19 years of age is permitted to enter at any time;

(2) ~~Cigarettes~~ cigarettes in unopened cartons and smokeless tobacco in unopened multipack containers of 10 or more packages, any of which shall be displayed in plain view and under the control of a responsible employee so that removal of the cartons or multipacks from the display can be readily observed by that employee; or

(3) ~~Cigars~~ cigars and pipe tobacco stored in a humidor on the sales counter in plain view and under the control of a responsible employee so that the removal of these products from the humidor can be readily observed by that employee.

Sec. 2. 7 V.S.A. § 1005 is amended to read:

§ 1005. PERSONS UNDER ~~18~~ 19 YEARS OF AGE; POSSESSION OF TOBACCO PRODUCTS; MISREPRESENTING AGE OR PURCHASING TOBACCO PRODUCTS; PENALTY

(a) A person under ~~18~~ 19 years of age shall not possess, purchase, or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia unless the person is an employee of a holder of a tobacco license and is in possession of tobacco products, tobacco substitutes, or tobacco paraphernalia to effect a sale in the course of employment. A person under ~~18~~ 19 years of age shall not misrepresent his or her age to purchase or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia. A person who possesses tobacco products, tobacco substitutes, or tobacco paraphernalia in violation of this subsection shall be subject to having the tobacco products, tobacco substitutes, or tobacco paraphernalia immediately confiscated and shall be further subject to a civil penalty of \$25.00. ~~In the case of failure to pay a penalty, the Judicial Bureau shall mail a notice to the person at the address in the complaint notifying the person that failure to pay the penalty within 60 days of the notice will result in either the suspension of the person's operator's license for a period of not more than 90 days or the delay of the initial licensing of the person for a period of not more than one year. A copy of the notice shall be sent to the Commissioner of Motor Vehicles, who, after expiration of 60 days from the date of notice and unless notified by the Judicial Bureau that the penalty has been paid shall either suspend the person's operator's license or cause initial licensing of the person to be delayed for the periods set forth in this subsection and the rules. An action under this subsection shall be brought in the same manner as a traffic violation pursuant to 23 V.S.A. chapter 24. The Commissioner of Motor Vehicles shall adopt rules in accordance with the provisions of 3 V.S.A. chapter 25 to implement the provisions of this subsection, which may provide for incremental suspension or delays not exceeding cumulatively the maximum periods established by this subsection.~~

(b) A person under ~~18~~ 19 years of age who misrepresents his or her age by presenting false identification to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia shall be fined not more than \$50.00 or provide up to 10 hours of community service, or both.

Sec. 3. 7 V.S.A. § 1007 is amended to read:

§ 1007. FURNISHING TOBACCO TO PERSONS UNDER ~~18~~ 19 YEARS OF AGE

An individual who sells or furnishes tobacco products, tobacco substitutes, or tobacco paraphernalia to a person under ~~18~~ 19 years of age shall be subject to a civil penalty of not more than \$100.00 for the first offense and not more than \$500.00 for any subsequent offense. An action under this section shall be brought in the same manner as for a traffic violation pursuant to 23 V.S.A. chapter 24 and shall be brought within 24 hours of the occurrence of the alleged violation.

Sec. 4. 4 V.S.A. § 1102(b) is amended to read:

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

* * *

(4) Violations of 7 V.S.A. § 1005(a), relating to possession of tobacco products by a person ~~less than 18~~ under 19 years of age.

(5) Violations of 7 V.S.A. § 1007, relating to furnishing tobacco products to a person under ~~the age of 18~~ 19 years of age.

* * *

Sec. 5. 7 V.S.A. § 667(c) is amended to read:

(c) The provisions of subsection (b) of this section shall not apply to a violation of subsection 1005(a) of this title, relating to purchase of tobacco products by a person less than ~~18~~ 19 years of age.

* * * Increasing Smoking Age to 20 Years of Age * * *

Sec. 6. 7 V.S.A. § 1003 is amended to read:

§ 1003. SALE OF TOBACCO PRODUCTS; TOBACCO SUBSTITUTES;
TOBACCO PARAPHERNALIA; REQUIREMENTS;
PROHIBITIONS

(a) A person shall not sell or provide tobacco products, tobacco substitutes, or tobacco paraphernalia to any person younger than ~~19~~ 20 years of age.

(b) Beginning August 28, 1997, vending machines selling tobacco products, tobacco substitutes, or tobacco paraphernalia are prohibited. This subsection shall not apply to a vending machine that is located in a commercial establishment in which by law no person younger than ~~19~~ 20 years of age is permitted to enter at any time. A single vending machine may not be used to sell other commodities in combination with tobacco products, tobacco substitutes, or tobacco paraphernalia. A violation of this subsection shall result in the seizure of the vending machine.

(c) Beginning January 1, 2001, and subject to receiving any necessary exemption from preemption from the U.S. Food and Drug Administration, all vending machines selling tobacco products are prohibited.

(d) No person holding a tobacco license shall display or store tobacco products or tobacco substitutes where those products are accessible to consumers without direct assistance by the sales personnel. This subsection shall not apply to the following:

(1) a display of tobacco products that is located in a commercial establishment in which by law no person younger than ~~19~~ 20 years of age is permitted to enter at any time;

* * *

Sec. 7. 7 V.S.A. § 1005 is amended to read:

§ 1005. PERSONS UNDER ~~19~~ 20 YEARS OF AGE; POSSESSION OF TOBACCO PRODUCTS; MISREPRESENTING AGE OR PURCHASING TOBACCO PRODUCTS; PENALTY

(a) A person under ~~19~~ 20 years of age shall not possess, purchase, or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia unless the person is an employee of a holder of a tobacco license and is in possession of tobacco products, tobacco substitutes, or tobacco paraphernalia to effect a sale in the course of employment. A person under ~~19~~ 20 years of age shall not misrepresent his or her age to purchase or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia. A person who possesses tobacco products, tobacco substitutes, or tobacco paraphernalia in violation of this subsection shall be subject to having the tobacco products, tobacco substitutes, or tobacco paraphernalia immediately confiscated and shall be further subject to a civil penalty of \$25.00. An action under this subsection shall be brought in the same manner as a traffic violation pursuant to 23 V.S.A. chapter 24.

(b) A person under ~~19~~ 20 years of age who misrepresents his or her age by presenting false identification to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia shall be fined not more than \$50.00 or provide up to 10 hours of community service, or both.

Sec. 8. 7 V.S.A. § 1007 is amended to read:

§ 1007. FURNISHING TOBACCO TO PERSONS UNDER ~~19~~ 20 YEARS OF AGE

An individual who sells or furnishes tobacco products, tobacco substitutes, or tobacco paraphernalia to a person under ~~19~~ 20 years of age shall be subject to a civil penalty of not more than \$100.00 for the first offense and not more

than \$500.00 for any subsequent offense. An action under this section shall be brought in the same manner as for a traffic violation pursuant to 23 V.S.A. chapter 24 and shall be brought within 24 hours of the occurrence of the alleged violation.

Sec. 9. 4 V.S.A. § 1102(b) is amended to read:

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

* * *

(4) Violations of 7 V.S.A. § 1005(a), relating to possession of tobacco products by a person under ~~19~~ 20 years of age.

(5) Violations of 7 V.S.A. § 1007, relating to furnishing tobacco products to a person under ~~19~~ 20 years of age.

* * *

Sec. 10. 7 V.S.A. § 667(c) is amended to read:

(c) The provisions of subsection (b) of this section shall not apply to a violation of subsection 1005(a) of this title, relating to purchase of tobacco products by a person less than ~~19~~ 20 years of age.

* * * Increasing Smoking Age to 21 Years of Age * * *

Sec. 11. 7 V.S.A. § 1003 is amended to read:

§ 1003. SALE OF TOBACCO PRODUCTS; TOBACCO SUBSTITUTES;
TOBACCO PARAPHERNALIA; REQUIREMENTS;
PROHIBITIONS

(a) A person shall not sell or provide tobacco products, tobacco substitutes, or tobacco paraphernalia to any person younger than ~~20~~ 21 years of age.

(b) Beginning August 28, 1997, vending machines selling tobacco products, tobacco substitutes, or tobacco paraphernalia are prohibited. This subsection shall not apply to a vending machine that is located in a commercial establishment in which by law no person younger than ~~20~~ 21 years of age is permitted to enter at any time. A single vending machine may not be used to sell other commodities in combination with tobacco products, tobacco substitutes, or tobacco paraphernalia. A violation of this subsection shall result in the seizure of the vending machine.

(c) Beginning January 1, 2001, and subject to receiving any necessary exemption from preemption from the U.S. Food and Drug Administration, all vending machines selling tobacco products are prohibited.

(d) No person holding a tobacco license shall display or store tobacco products or tobacco substitutes where those products are accessible to consumers without direct assistance by the sales personnel. This subsection shall not apply to the following:

(1) a display of tobacco products that is located in a commercial establishment in which by law no person younger than ~~20~~ 21 years of age is permitted to enter at any time;

* * *

Sec. 12. 7 V.S.A. § 1005 is amended to read:

§ 1005. PERSONS UNDER ~~20~~ 21 YEARS OF AGE; POSSESSION OF TOBACCO PRODUCTS; MISREPRESENTING AGE OR PURCHASING TOBACCO PRODUCTS; PENALTY

(a) A person under ~~20~~ 21 years of age shall not possess, purchase, or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia unless the person is an employee of a holder of a tobacco license and is in possession of tobacco products, tobacco substitutes, or tobacco paraphernalia to effect a sale in the course of employment. A person under ~~20~~ 21 years of age shall not misrepresent his or her age to purchase or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia. A person who possesses tobacco products, tobacco substitutes, or tobacco paraphernalia in violation of this subsection shall be subject to having the tobacco products, tobacco substitutes, or tobacco paraphernalia immediately confiscated and shall be further subject to a civil penalty of \$25.00. An action under this subsection shall be brought in the same manner as a traffic violation pursuant to 23 V.S.A. chapter 24.

(b) A person under ~~20~~ 21 years of age who misrepresents his or her age by presenting false identification to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia shall be fined not more than \$50.00 or provide up to 10 hours of community service, or both.

Sec. 13. 7 V.S.A. § 1007 is amended to read:

§ 1007. FURNISHING TOBACCO TO PERSONS UNDER ~~20~~ 21 YEARS OF AGE

An individual who sells or furnishes tobacco products, tobacco substitutes, or tobacco paraphernalia to a person under ~~20~~ 21 years of age shall be subject to a civil penalty of not more than \$100.00 for the first offense and not more than \$500.00 for any subsequent offense. An action under this section shall be brought in the same manner as for a traffic violation pursuant to 23 V.S.A.

chapter 24 and shall be brought within 24 hours of the occurrence of the alleged violation.

Sec. 14. 4 V.S.A. § 1102(b) is amended to read:

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

* * *

(4) Violations of 7 V.S.A. § 1005(a), relating to possession of tobacco products by a person under ~~20~~ 21 years of age.

(5) Violations of 7 V.S.A. § 1007, relating to furnishing tobacco products to a person under ~~20~~ 21 years of age.

* * *

Sec. 15. 7 V.S.A. § 667(c) is amended to read:

(c) The provisions of subsection (b) of this section shall not apply to a violation of subsection 1005(a) of this title, relating to purchase of tobacco products by a person less than ~~20~~ 21 years of age.

* * * Effective Dates * * *

Sec. 16. EFFECTIVE DATES

(a) Secs. 1–5 (increasing smoking age to 19) and this section shall take effect on January 1, 2017.

(b) Secs. 6–10 (increasing smoking age to 20) shall take effect on January 1, 2018.

(c) Secs. 11–15 (increasing smoking age to 21) shall take effect on January 1, 2019.

(Committee Vote: 7-4-0)

Rep. Till of Jericho, for the Committee on **Ways & Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Human Services** and when further amended as follows:

First: By inserting three new sections to be Secs. 5a–5c to read as follows:

Sec. 5a. 32 V.S.A. § 7771(d) is amended to read:

(d) The tax imposed under this section shall be at the rate of ~~154~~ 160.5 mills per cigarette or little cigar and for each 0.0325 ounces of roll-your-own tobacco. The interest and penalty provisions of section 3202 of this title shall apply to liabilities under this section.

Sec. 5b. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all other tobacco products, snuff, and new smokeless tobacco possessed in the State of Vermont by any person for sale on and after July 1, 1959 which were imported into the State or manufactured in the State after that date, except that no tax shall be imposed on tobacco products sold under such circumstances that this State is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the U.S. Armed Forces operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. The tax is intended to be imposed only once upon the wholesale sale of any other tobacco product and shall be at the rate of 92 percent of the wholesale price for all tobacco products except snuff, which shall be taxed at ~~\$2.57~~ \$2.68 per ounce, or fractional part thereof, new smokeless tobacco, which shall be taxed at the greater of ~~\$2.57~~ \$2.68 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of ~~\$3.08~~ \$3.21 per package, and cigars with a wholesale price greater than \$2.17, which shall be taxed at the rate of \$2.00 per cigar if the wholesale price of the cigar is greater than \$2.17 and less than \$10.00, and at the rate of \$4.00 per cigar if the wholesale price of the cigar is \$10.00 or more. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all other tobacco products, snuff, and new smokeless tobacco within the State are subject to tax until the contrary is established and the burden of proof that any other tobacco products, snuff, and new smokeless tobacco are not taxable hereunder shall be upon the person in possession thereof. Licensed wholesalers of other tobacco products, snuff, and new smokeless tobacco shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. 5c. 32V.S.A. § 7814 is amended to read:

§ 7814. FLOOR STOCK TAX

(a) Snuff. A floor stock tax is hereby imposed upon every retail dealer of snuff in this State in the amount by which the new tax exceeds the amount of the tax already paid on the snuff. The tax shall apply to snuff in the possession or control of the retail dealer at 12:01 a.m. on ~~July 1, 2015~~ January 1, 2017, but shall not apply to retail dealers who hold less than \$500.00 in wholesale value of such snuff. Each retail dealer subject to the tax shall, on or before ~~July 25, 2015~~ January 25, 2017, file a report to the Commissioner in such form as the Commissioner may prescribe showing the snuff on hand at 12:01 a.m. on ~~July 1, 2015~~ January 1, 2017, and the amount of tax due thereon. The tax

imposed by this section shall be due and payable on or before ~~August 25, 2015~~ February 25, 2017, and thereafter shall bear interest at the rate established under section 3108 of this title. In case of timely payment of the tax, the retail dealer may deduct from the tax due two percent of the tax. Any snuff with respect to which a floor stock tax has been imposed and paid under this section shall not again be subject to tax under section 7811 of this title.

(b) Cigarettes, little cigars, or roll-your-own tobacco. Notwithstanding the prohibition against further tax on stamped cigarettes, little cigars, or roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of cigarettes, little cigars, or roll-your-own tobacco in this State who is either a wholesaler, or a retailer who at 12:01 a.m. on ~~July 1, 2015~~ January 1, 2017, has more than 10,000 cigarettes or little cigars or who has \$500.00 or more of wholesale value of roll-your-own tobacco, for retail sale in his or her possession or control. The amount of the tax shall be the amount by which the new tax exceeds the amount of the tax already paid for each cigarette, little cigar, or roll-your-own tobacco in the possession or control of the wholesaler or retail dealer at 12:01 a.m. on ~~July 1, 2015~~ January 1, 2017, and on which cigarette stamps have been affixed before ~~July 1, 2015~~ January 1, 2017. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. on ~~July 1, 2015~~ January 1, 2017, and not yet affixed to a cigarette package, and the tax shall be at the rate of ~~\$0.33~~ \$0.13 per stamp. Each wholesaler and retail dealer subject to the tax shall, on or before ~~July 25, 2015~~ January 25, 2017, file a report to the Commissioner in such form as the Commissioner may prescribe showing the cigarettes, little cigars, or roll-your-own tobacco and stamps on hand at 12:01 a.m. on ~~July 1, 2015~~ January 1, 2017, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before ~~July 25, 2015~~ February 25, 2017, and thereafter shall bear interest at the rate established under section 3108 of this title. In case of timely payment of the tax, the wholesaler or retail dealer may deduct from the tax due two and three-tenths of one percent of the tax. Any cigarettes, little cigars, or roll-your-own tobacco with respect to which a floor stock tax has been imposed under this section shall not again be subject to tax under section 7771 of this title.

Second: By inserting three new sections to be Secs. 10a–10c to read as follows:

Sec. 10a. 32 V.S.A. § 7771(d) is amended to read:

(d) The tax imposed under this section shall be at the rate of ~~160.5~~ 167 mills per cigarette or little cigar and for each 0.0325 ounces of roll-your-own

tobacco. The interest and penalty provisions of section 3202 of this title shall apply to liabilities under this section.

Sec. 10b. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all other tobacco products, snuff, and new smokeless tobacco possessed in the State of Vermont by any person for sale on and after July 1, 1959 which were imported into the State or manufactured in the State after that date, except that no tax shall be imposed on tobacco products sold under such circumstances that this State is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the U.S. Armed Forces operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. The tax is intended to be imposed only once upon the wholesale sale of any other tobacco product and shall be at the rate of 92 percent of the wholesale price for all tobacco products except snuff, which shall be taxed at ~~\$2.68~~ \$2.78 per ounce, or fractional part thereof, new smokeless tobacco, which shall be taxed at the greater of ~~\$2.68~~ \$2.78 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of ~~\$3.24~~ \$3.34 per package, and cigars with a wholesale price greater than \$2.17, which shall be taxed at the rate of \$2.00 per cigar if the wholesale price of the cigar is greater than \$2.17 and less than \$10.00, and at the rate of \$4.00 per cigar if the wholesale price of the cigar is \$10.00 or more. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all other tobacco products, snuff, and new smokeless tobacco within the State are subject to tax until the contrary is established and the burden of proof that any other tobacco products, snuff, and new smokeless tobacco are not taxable hereunder shall be upon the person in possession thereof. Licensed wholesalers of other tobacco products, snuff, and new smokeless tobacco shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. 10c. 32V.S.A. § 7814 is amended to read:

§ 7814. FLOOR STOCK TAX

(a) Snuff. A floor stock tax is hereby imposed upon every retail dealer of snuff in this State in the amount by which the new tax exceeds the amount of the tax already paid on the snuff. The tax shall apply to snuff in the possession or control of the retail dealer at 12:01 a.m. on January 1, ~~2017~~ 2018, but shall not apply to retail dealers who hold less than \$500.00 in wholesale value of

such snuff. Each retail dealer subject to the tax shall, on or before January 25, ~~2017~~ 2018, file a report to the Commissioner in such form as the Commissioner may prescribe showing the snuff on hand at 12:01 a.m. on January 1, ~~2017~~ 2018, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before February 25, ~~2017~~ 2018, and thereafter shall bear interest at the rate established under section 3108 of this title. In case of timely payment of the tax, the retail dealer may deduct from the tax due two percent of the tax. Any snuff with respect to which a floor stock tax has been imposed and paid under this section shall not again be subject to tax under section 7811 of this title.

(b) Cigarettes, little cigars, or roll-your-own tobacco. Notwithstanding the prohibition against further tax on stamped cigarettes, little cigars, or roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of cigarettes, little cigars, or roll-your-own tobacco in this State who is either a wholesaler, or a retailer who at 12:01 a.m. on January 1, ~~2017~~ 2018, has more than 10,000 cigarettes or little cigars or who has \$500.00 or more of wholesale value of roll-your-own tobacco, for retail sale in his or her possession or control. The amount of the tax shall be the amount by which the new tax exceeds the amount of the tax already paid for each cigarette, little cigar, or roll-your-own tobacco in the possession or control of the wholesaler or retail dealer at 12:01 a.m. on January 1, ~~2017~~ 2018, and on which cigarette stamps have been affixed before January 1, ~~2017~~ 2018. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. on January 1, ~~2017~~ 2018, and not yet affixed to a cigarette package, and the tax shall be at the rate of \$0.13 per stamp. Each wholesaler and retail dealer subject to the tax shall, on or before January 25, ~~2017~~ 2018, file a report to the Commissioner in such form as the Commissioner may prescribe showing the cigarettes, little cigars, or roll-your-own tobacco and stamps on hand at 12:01 a.m. on January 1, ~~2017~~ 2018, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before January 25, ~~2017~~ 2018, and thereafter shall bear interest at the rate established under section 3108 of this title. In case of timely payment of the tax, the wholesaler or retail dealer may deduct from the tax due two and three-tenths of one percent of the tax. Any cigarettes, little cigars, or roll-your-own tobacco with respect to which a floor stock tax has been imposed under this section shall not again be subject to tax under section 7771 of this title.

Third: By inserting three new sections to be Secs. 15a–15c to read as follows:

Sec. 15a. 32 V.S.A. § 7771(d) is amended to read:

(d) The tax imposed under this section shall be at the rate of ~~167~~ 173.5 mills per cigarette or little cigar and for each 0.0325 ounces of roll-your-own tobacco. The interest and penalty provisions of section 3202 of this title shall apply to liabilities under this section.

Sec. 15b. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all other tobacco products, snuff, and new smokeless tobacco possessed in the State of Vermont by any person for sale on and after July 1, 1959 which were imported into the State or manufactured in the State after that date, except that no tax shall be imposed on tobacco products sold under such circumstances that this State is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the U.S. Armed Forces operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. The tax is intended to be imposed only once upon the wholesale sale of any other tobacco product and shall be at the rate of 92 percent of the wholesale price for all tobacco products except snuff, which shall be taxed at ~~\$2.78~~ \$2.89 per ounce, or fractional part thereof, new smokeless tobacco, which shall be taxed at the greater of ~~\$2.78~~ \$2.89 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of ~~\$3.34~~ \$3.47 per package, and cigars with a wholesale price greater than \$2.17, which shall be taxed at the rate of \$2.00 per cigar if the wholesale price of the cigar is greater than \$2.17 and less than \$10.00, and at the rate of \$4.00 per cigar if the wholesale price of the cigar is \$10.00 or more. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It shall be presumed that all other tobacco products, snuff, and new smokeless tobacco within the State are subject to tax until the contrary is established and the burden of proof that any other tobacco products, snuff, and new smokeless tobacco are not taxable hereunder shall be upon the person in possession thereof. Licensed wholesalers of other tobacco products, snuff, and new smokeless tobacco shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. 15c. 32V.S.A. § 7814 is amended to read:

§ 7814. FLOOR STOCK TAX

(a) Snuff. A floor stock tax is hereby imposed upon every retail dealer of snuff in this State in the amount by which the new tax exceeds the amount of the tax already paid on the snuff. The tax shall apply to snuff in the possession

or control of the retail dealer at 12:01 a.m. on January 1, ~~2018~~ 2019, but shall not apply to retail dealers who hold less than \$500.00 in wholesale value of such snuff. Each retail dealer subject to the tax shall, on or before January 25, ~~2018~~ 2019, file a report to the Commissioner in such form as the Commissioner may prescribe showing the snuff on hand at 12:01 a.m. on January 1, ~~2018~~ 2019, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before February 25, ~~2018~~ 2019, and thereafter shall bear interest at the rate established under section 3108 of this title. In case of timely payment of the tax, the retail dealer may deduct from the tax due two percent of the tax. Any snuff with respect to which a floor stock tax has been imposed and paid under this section shall not again be subject to tax under section 7811 of this title.

(b) Cigarettes, little cigars, or roll-your-own tobacco. Notwithstanding the prohibition against further tax on stamped cigarettes, little cigars, or roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of cigarettes, little cigars, or roll-your-own tobacco in this State who is either a wholesaler, or a retailer who at 12:01 a.m. on January 1, ~~2018~~ 2019, has more than 10,000 cigarettes or little cigars or who has \$500.00 or more of wholesale value of roll-your-own tobacco, for retail sale in his or her possession or control. The amount of the tax shall be the amount by which the new tax exceeds the amount of the tax already paid for each cigarette, little cigar, or roll-your-own tobacco in the possession or control of the wholesaler or retail dealer at 12:01 a.m. on January 1, ~~2018~~ 2019, and on which cigarette stamps have been affixed before January 1, ~~2018~~ 2019. A floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. on January 1, ~~2018~~ 2019, and not yet affixed to a cigarette package, and the tax shall be at the rate of \$0.13 per stamp. Each wholesaler and retail dealer subject to the tax shall, on or before January 25, ~~2018~~ 2019, file a report to the Commissioner in such form as the Commissioner may prescribe showing the cigarettes, little cigars, or roll-your-own tobacco and stamps on hand at 12:01 a.m. on January 1, ~~2018~~ 2019, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before January 25, ~~2018~~ 2019, and thereafter shall bear interest at the rate established under section 3108 of this title. In case of timely payment of the tax, the wholesaler or retail dealer may deduct from the tax due two and three-tenths of one percent of the tax. Any cigarettes, little cigars, or roll-your-own tobacco with respect to which a floor stock tax has been imposed under this section shall not again be subject to tax under section 7771 of this title.

Fourth: By striking Sec. 16 (effective dates) in its entirety and inserting in lieu thereof the following:

Sec. 16. EFFECTIVE DATES

(a) Secs. 1–5c (increasing smoking age to 19 and increasing tobacco taxes) and this section shall take effect on January 1, 2017.

(b) Secs. 6–10c (increasing smoking age to 20 and increasing tobacco taxes) shall take effect on January 1, 2018.

(c) Secs. 11–15c (increasing smoking age to 21 and increasing tobacco taxes) shall take effect on January 1, 2019.

(Committee Vote: 8-3-0)

Amendment to be offered by Rep. Poirier of Barre City to H. 93

First: By adding a new section to be Sec. 16 to read as follows:

Sec. 16. DEPARTMENT OF LIQUOR CONTROL; COMPLIANCE TESTING; REPORT

On or before January 15, 2017, the Department of Liquor Control shall report to the House Committees on Health Care, on Human Services, and on General, Housing and Military Affairs and the Senate Committees on Health and Welfare and on Economic Development, Housing and General Affairs regarding any necessary modifications it has made or plans to make to its compliance testing program for tobacco licensees in light of the increase to the smoking age set forth in this act.

and by renumbering the existing Sec. 16, effective dates, to be Sec. 17

Second: In the newly renumbered Sec. 17, effective dates, in subsection (a), by striking out “and this section” and by adding a subsection (d) to read as follows:

(d) Sec. 16 (Department of Liquor Control; compliance testing) and this section shall take effect on passage.

Favorable

J.R.S. 45

Joint resolution relating to the transfer of two State-owned parcels of land to the Town of Duxbury

Rep. Macaig of Williston, for the Committee on **Corrections & Institutions**, recommends that the resolution out to be adopted in concurrence.

(Committee Vote: 10-0-1)

(For text see Senate Journal March 15, 2016)

Senate Proposal of Amendment

H. 538

An act relating to captive insurance companies

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

* * * Captive Insurance Company Reports and Statements * * *

Sec. 1. 8 V.S.A. § 6007(c) is amended to read:

(c) Any pure captive insurance company, association captive insurance company, sponsored captive insurance company, or ~~an~~ industrial insured captive insurance company may make written application for filing the required report on a fiscal year-end. If an alternative reporting date is granted:

(1) the annual report is due 75 days after the fiscal year-end; and

(2) in order to provide sufficient detail to support the premium tax return, the pure captive insurance company, association captive insurance company, sponsored captive insurance company, or industrial insured captive insurance company shall file prior to March 15 of each year for each calendar year-end, pages 1, 2, 3, and 5 of the ~~“Captive Annual Statement; Pure or Industrial Insured,”~~ “Vermont Captive Insurance Company Annual Report verified by oath of two of its executive officers.

* * * Dormant Captive Insurance Companies * * *

Sec. 2. 8 V.S.A. § 6024 is amended to read:

§ 6024. DORMANT CAPTIVE INSURANCE COMPANIES

(a) As used in this section, unless the context requires otherwise, “dormant captive insurance company” means a pure captive insurance company ~~which,~~ sponsored captive insurance company, or industrial insured captive insurance company that has:

(1) ~~at no time, insured controlled unaffiliated business;~~

~~(2)~~ ceased transacting the business of insurance, including the issuance of insurance policies; and

~~(3)~~(2) no remaining liabilities associated with insurance business transactions, or insurance policies issued prior to the filing of its application for a certificate of dormancy under this section.

(b) A ~~pure~~ captive insurance company domiciled in Vermont ~~which that~~ meets the criteria of subsection (a) of this section may apply to the Commissioner for a certificate of dormancy. The certificate of dormancy shall

be subject to renewal every five years and shall be forfeited if not renewed within such time.

(c) A dormant captive insurance company ~~which~~ that has been issued a certificate of dormancy shall:

* * *

* * * Protected Cells; Conversion; Sale; Assignment; Transfer * * *

Sec. 3. 8 V.S.A. § 6034b is added to read:

§ 6034b. PROTECTED CELL CONVERSION INTO AN INCORPORATED PROTECTED CELL

(a) Subject to the prior written approval of the Commissioner, on application of the sponsor and with the prior consent of each participant of the affected protected cell or as otherwise permitted pursuant to a participation agreement, a sponsored captive insurance company or a sponsored captive insurance company licensed as a special purpose financial insurance company may convert a protected cell into an incorporated protected cell pursuant to the provisions of section 6034a of this title, without affecting the protected cell's assets, rights, benefits, obligations, and liabilities.

(b) Any such conversion shall be deemed for all purposes to be a continuation of the protected cell's existence together with all of its assets, rights, benefits, obligations, and liabilities, as an incorporated protected cell of the sponsored captive insurance company or sponsored captive insurance company licensed as a special purpose financial insurance company, as applicable. Any such conversion shall be deemed to occur without any transfer or assignment of any such assets, rights, benefits, obligations, or liabilities and without the creation of any reversionary interest in, or impairment of, any such assets, rights, benefits, obligations, and liabilities.

Sec. 4. 8 V.S.A. § 6034c is added to read:

§ 6034c. SALE, TRANSFER, OR ASSIGNMENT OF PROTECTED CELLS

(a) Subject to the prior written approval of the Commissioner, on application of the sponsor and with the prior consent of each participant of the affected protected cell or as otherwise permitted pursuant to a participation agreement, or the consent of the affected incorporated protected cell, a sponsored captive insurance company or a sponsored captive insurance company licensed as a special purpose financial insurance company may sell, transfer, assign, and otherwise convey a protected cell or incorporated protected cell together with all of the protected cell's assets, rights, benefits, obligations, and liabilities to a new or existing sponsored captive insurance

company or sponsored captive insurance company licensed as a special purpose financial insurance company, pursuant to a plan or plans of operation approved by the Commissioner.

(b) Any such sale, transfer, assignment, or conveyance shall be deemed for all purposes to be a continuation of the protected cell's existence together with all of its assets, rights, benefits, obligations, and liabilities, as a protected cell of the transferee.

(c) Any such sale, transfer, assignment, or conveyance shall not be construed to limit any rights or protections applicable to the transferred protected cell or incorporated protected cell and the transferor sponsored captive insurance company or sponsored captive insurance company licensed as a special purpose financial insurance company under this subchapter or under section 6048n of this title, as applicable, that existed immediately prior to any such sale, transfer, assignment, or conveyance.

Sec. 5. 8 V.S.A. § 6034d is added to read:

§ 6034d. PROTECTED CELL CONVERSION

(a)(1) Subject to the prior written approval of the Commissioner, on application of the sponsor and with the prior consent of each participant of the affected protected cells or as otherwise permitted pursuant to a participation agreement and the consent of each affected incorporated protected cell, a sponsored captive insurance company or a sponsored captive insurance company licensed as a special purpose financial insurance company may convert one or more protected cells or incorporated protected cells into a:

(A) single protected cell or incorporated protected cell;

(B) new sponsored captive insurance company;

(C) new sponsored captive insurance company licensed as a special purpose financial insurance company;

(D) new special purpose financial insurance company;

(E) new pure captive insurance company;

(F) new risk retention group;

(G) new industrial insured captive insurance company; or

(H) new association captive insurance company.

(2) Any such conversion shall be subject to section 6031 and subchapters 1 and 4 of this title, as applicable, as well as to a plan or plans of operation approved by the Commissioner, without affecting any protected

cell's or incorporated protected cell's assets, rights, benefits, obligations, and liabilities.

(b) Any such conversion shall be deemed for all purposes to be a continuation of each such protected cell's or incorporated protected cell's existence together with all of its assets, rights, benefits, obligations, and liabilities, as a new protected cell or incorporated protected cell, a licensed sponsored captive insurance company, a sponsored captive insurance company licensed as a special purpose financial insurance company, a special purpose financial insurance company, a pure captive insurance company, a risk retention group, an industrial insured captive insurance company, or an association captive insurance company, as applicable. Any such conversion shall be deemed to occur without any transfer or assignment of any such assets, rights, benefits, obligations, or liabilities and without the creation of any reversionary interest in, or impairment of, any such assets, rights, benefits, obligations, and liabilities.

(c) Any such conversion shall not be construed to limit any rights or protections applicable to any converted protected cell or incorporated protected cell and such sponsored captive insurance company or sponsored captive insurance company licensed as a special purpose financial insurance company under this subchapter or under subchapter 4 of this title, as applicable, that existed immediately prior to the date of any such conversion.

* * * Risk Retention Groups; Governance Standards * * *

Sec. 6. 8 V.S.A. § 6052(g) is amended to read:

(g) This subsection establishes governance standards for a risk retention group.

(1) As used in this subsection:

(A) "Board of directors" or "board" means the governing body of a risk retention group elected by risk retention group members to establish policy, elect or appoint officers and committees, and make other governing decisions.

(B) "Director" means a natural person designated in the articles of the risk retention group or designated, elected, or appointed by any other manner, name, or title to act as a ~~director~~ member of the governing body of the risk retention group.

(C) "Independent director" means a director who does not have a material relationship with the risk retention group. A person that is a direct or indirect owner of or subscriber in the risk retention group - or is an officer, director, or employee of such an owner and insured, unless some other position

of such officer, director, or employee constitutes a “material relationship” - as contemplated under subdivision 3901(a)(4)(E)(ii) of the federal Liability Risk Retention Act, is considered to be “independent.” A director has a material relationship with a risk retention group if he or she, or a member of his or her immediate family:

(i) In any 12-month period, receives from the risk retention group, or from a consultant or service provider to the risk retention group, compensation or other item of value in an amount equal to or greater than five percent of the risk retention group’s gross written premium or two percent of the risk retention group’s surplus, as measured at the end of any fiscal quarter falling in such 12-month period, whichever is greater. This provision also applies to compensation or items of value received by any business with which the director is affiliated. Such material relationship shall continue for one year after the item of value is received or the compensation ceases or falls below the threshold established in this subdivision, as applicable.

(ii) Has a relationship with an auditor as follows: Is affiliated with or employed in a professional capacity by a current or former internal or external auditor of the risk retention group. Such material relationship shall continue for one year after the affiliation or employment ends.

(iii) Has a relationship with a related entity as follows: Is employed as an executive officer of another company whose board of directors includes executive officers of the risk retention group, unless a majority of the membership of such other company’s board of directors is the same as the membership of the board of directors of the risk retention group. Such material relationship shall continue until the employment or service ends.

(D) “Material service provider” includes a captive manager, auditor, accountant, actuary, investment advisor, attorney, managing general underwriter, or other person responsible for underwriting, determination of rates, premium collection, claims adjustment or settlement, or preparation of financial statements, whose aggregate annual contract fees are equal to or greater than five percent of the risk retention group’s annual gross written premium or two percent of its surplus, whichever is greater. It does not mean defense counsel retained by a risk retention group, unless his or her annual fees ~~are~~ have been equal to or greater than five percent of a risk retention group’s annual gross premium or two percent of its surplus, whichever is greater, during three or more of the previous five years.

(2) The board shall have a majority of independent directors. The board of directors shall determine whether a director is independent; review such determinations annually; and maintain a record of the determinations, which shall be provided to the Commissioner promptly, upon request. ~~The board~~

~~shall have a majority of independent directors. If the risk retention group is reciprocal, then the attorney-in-fact is required to adhere to the same standards regarding independence as imposed on the risk retention group's board of directors.~~ If the Commissioner disagrees with the board's determination regarding independence, the board, within six months, shall take such actions as are necessary in order to obtain written confirmation from the Commissioner that the board meets the independence requirements set forth in this subdivision (1)(C) of this subsection.

(3) The term of any material service provider contract entered into with a risk retention group shall not exceed five years. The contract, or its renewal, requires approval of a majority of the risk retention group's independent directors. The board of directors has the right to terminate a contract at any time for cause after providing adequate notice, as defined in the terms of the contract.

(4) A risk retention group shall not enter into a material service provider contract without the prior written approval of the Commissioner.

(5) A risk retention group's ~~plan of operation~~ business plan shall include written policies approved by its board of directors requiring the board to:

(A) provide evidence of ownership interest to each risk retention group member;

(B) develop governance standards applicable to the risk retention group;

(C) oversee the evaluation of the risk retention group's management, including the performance of its captive manager, managing general underwriter, or other person or persons responsible for underwriting, rate determination, premium collection, claims adjustment and settlement, or preparation of financial statements;

(D) review and approve the amount to be paid under a material service provider contract; and

(E) at least annually, review and approve:

(i) the risk retention group's goals and objectives relevant to the compensation of officers and material service providers;

(ii) the performance of officers and material service providers as measured against the risk retention group's goals and objectives;

(iii) the continued engagement of officers and material service providers.

(6) A risk retention group shall have an audit committee composed of at least three independent board members. A nonindependent board member may participate in the committee's activities, if invited to do so by the audit committee, but he or she shall not serve as a committee member. The Commissioner may waive the requirement of an audit committee if the risk retention group demonstrates to the Commissioner's satisfaction that having such committee is impracticable and the board of directors is able to perform sufficiently the committee's responsibilities. The audit committee shall have a written charter defining its responsibilities, which shall include:

(A) assisting board oversight of the integrity of financial statements, compliance with legal and regulatory requirements, and qualifications, independence, and performance of the independent auditor or actuary;

(B) reviewing quarterly financial statements and annual ~~and quarterly~~ audited financial statements with management;

(C) reviewing annual audited financial statements with its independent auditor and, if it deems advisable, the risk retention group's quarterly financial statements as well;

(D) reviewing risk assessment and risk management policies;

(E) meeting with management, either directly or through a designated representative of the committee;

(F) meeting with independent auditors, either directly or through a designated representative of the committee;

(G) reviewing with the independent auditor any audit problems and management's response;

(H) establishing clear hiring policies applicable to the hiring of employees or former employees of the independent auditor by the risk retention group;

(I) requiring the independent auditor to rotate the lead audit partner having primary responsibility for the risk retention group's audit, as well as the audit partner responsible for reviewing that audit, so that neither individual performs audit services for the risk retention group for more than five consecutive fiscal years; and

(J) reporting regularly to the board of directors.

* * *

* * * Effective Date * * *

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

(For text see House Journal January 21, 2016)

Consent Calendar
Concurrent Resolutions

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

H.C.R. 302

House concurrent resolution congratulating the 2016 Burlington High School Seahorses Division I championship boys' basketball team

H.C.R. 303

House concurrent resolution honoring Donald and Allison Hooper on their special agricultural, civic, educational, and entrepreneurial contributions to Vermont

H.C.R. 304

House concurrent resolution honoring the Rutland Middle School's 8th Grade Unity Team for an exceptional effort in developing and implementing its 2016 Mock Vermont Legislature Project

H.C.R. 305

House concurrent resolution congratulating the United Church of Bethel on its bicentennial anniversary

H.C.R. 306

House concurrent resolution congratulating recent Vermont winners of the Girl Scout Gold Award

H.C.R. 307

House concurrent resolution recognizing the 2016 Middlebury Union High School Tigers boys' Nordic skiing team as the fastest Nordic skiers in the State of Vermont

H.C.R. 308

House concurrent resolution congratulating Vinny Pigeon and Kasia Bilodeau as 2015 Special Olympics Vermont honorees

H.C.R. 309

House concurrent resolution congratulating the first Vermont Career and Technical Education Presidential Scholar nominees

H.C.R. 310

House concurrent resolution congratulating the 2016 and three-time Division I Essex Hornets championship girls' ice hockey team

H.C.R. 311

House concurrent resolution designating March 30, 2016 as Alzheimer's Awareness and Advocacy Day in Vermont

H.C.R. 312

House concurrent resolution congratulating the 2015 U-32 High School Raiders Division II championship girls' track and field team

H.C.R. 313

House concurrent resolution congratulating the 2015 U-32 High School Raiders Division II championship boys' track and field team

H.C.R. 314

House concurrent resolution congratulating the 2016 Essex High School gymnastics team on winning its 11th consecutive State championship

H.C.R. 315

House concurrent resolution honoring Maurice Dickey Drysdale for his bold and dynamic leadership at the *Herald of Randolph*

S.C.R. 41

Senate concurrent resolution in memory of Manchester's pioneering developer Ben Hauben

For Informational Purposes

SENATE APPROPRIATIONS COMMITTEE

H.875 (FY 2017 Budget)

ADVOCATES TESTIMONY

On **Tuesday, April 5, 2016** beginning at **1:30 pm**, the Senate Appropriations Committee will be taking testimony from advocates regarding the Fiscal Year 2017 Budget (H.875) in Room 10 of the State House. To schedule time before the Committee contact Becky Buck at the Legislative Joint Fiscal Office located at 1 Baldwin Street; phone: 828-5969 or via email at: rbuck@leg.state.vt.us