House Calendar

Friday, April 29, 2016

116th DAY OF THE ADJOURNED SESSION

House Convenes at 9:30 AM

TABLE OF CONTENTS

Page No.

Senate Proposal of Amendment

Action Under Rule 52

Action Postponed Until May 2, 2016

Favorable with Amendment

NOTICE CALENDAR

Favorable with Amendment

Favorable

Committee Relieved

Senate Proposal of Amendment

Consent Calendar

ORDERS OF THE DAY

Action Postponed Until April 29, 2016

Favorable with Amendment

S. 183

An act relating to permanency for children in the child welfare system

Rep. Conquest of Newbury, for the Committee on **Judiciary,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 14 V.S.A. § 2660 is added to read:

§ 2660. STATEMENT OF LEGISLATIVE INTENT

(a) The creation of a permanent guardianship for minors provides the opportunity for a child, whose circumstances make returning to the care of the parents not reasonably possible, to be placed in a stable and nurturing home for the duration of the child's minority. The creation of a permanent guardianship offers the additional benefit of permitting continued contact between a child and the child's parents.

(b) The Family Division of the Superior Court is not required to address and rule out each of the other potential disposition options once it has concluded that termination of parental rights is in a child's best interests.

Sec. 2. 14 V.S.A. § 2664 is amended to read:

§ 2664. CREATION OF PERMANENT GUARDIANSHIP

(a) The ~~family division of the superior court~~ Family Division of the Superior Court may establish a permanent guardianship at a permanency planning hearing or at any other hearing in which a permanent legal disposition of the child can be made, including a child protection proceeding pursuant to 33 V.S.A. § 5318, or a delinquency proceeding pursuant to 33 V.S.A. § 5232. The court shall also issue an order permitting or denying visitation, contact or information with the parent at the same time the order of permanent guardianship is issued. Before issuing an order for permanent guardianship, the court shall find by clear and convincing evidence all of the following:

(1) Neither parent is ~~capable or willing to provide adequate care to the child, requiring that parental rights and responsibilities be awarded to a permanent guardian~~ able to assume or resume parental duties within a reasonable time.

(2) ~~Neither returning the child to the parents nor adoption of the child is likely within a reasonable period of time.~~

~~(3) The child is at least 12 years old unless the proposed permanent guardian is:~~

~~(A) a relative; or~~

~~(B) the permanent guardian of one of the child's siblings.~~

~~(4)~~ The child has resided with the permanent guardian for ~~at least a year or the permanent guardian is a relative with whom the child has a relationship and with whom the child has resided for~~ at least six months.

~~(5)~~(3) A permanent guardianship is in the best interests of the child.

~~(6)~~(4) The proposed permanent guardian:

(A)(i) is emotionally, mentally, and physically suitable to become the permanent guardian; and

(ii) is financially suitable, with kinship guardianship assistance provided for in 33 V.S.A. § 4903 if applicable, to become the permanent guardian;

(B) has expressly committed to remain the permanent guardian for the duration of the child's minority; and

(C) has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian including an understanding of any resulting loss of ~~state~~ State or federal benefits or other assistance.

(b) The parent voluntarily may ~~voluntarily~~ consent to the permanent guardianship, and shall demonstrate an understanding of the implications and obligations of the consent.

(c) After the ~~family division of the superior court~~ Family Division of the Superior Court issues a final order establishing permanent guardianship, the case shall be transferred to the appropriate ~~probate division of the superior court~~ Probate Division of the Superior Court in the district in which the permanent guardian resides. Jurisdiction shall continue to lie in the ~~probate division~~ Probate Division. Appeal of any decision by the ~~probate division of the superior court~~ Probate Division of the Superior Court shall be de novo to the ~~family division~~ Family Division.

(d) The Family Division of the Superior Court may name a successor permanent guardian in the initial permanent guardianship order. In the event that the permanent guardian dies or the guardianship is terminated by the Probate Division of the Superior Court, if a successor guardian is named in the

initial order, custody of the child transfers to the successor guardian pursuant to subsection 2666(b) of this title.

Sec. 3. 14 V.S.A. § 2665 is amended to read:

§ 2665. REPORTS

The permanent guardian shall file a written report on the status of the child to the ~~probate division of the superior court~~ Probate Division of the Superior Court annually pursuant to subdivision 2629(b)(6) of this title and at any other time the court may order. ~~The report shall include the following:~~

~~(1) The location of the child.~~

~~(2) The child's health and educational status.~~

~~(3) A financial accounting of the income, expenditures and assets of the child if the permanent guardian is receiving any state or federal government benefits for the child.~~

~~(4) Any other information regarding the child that the probate division of the superior court may require.~~

Sec. 4. 14 V.S.A. § 2666(b) is amended to read:

(b) Where the permanent guardianship is terminated by the ~~probate division of the superior court~~ Probate Division of the Superior Court order or the death of the permanent guardian, the custody and guardianship of the child shall not revert to the parent, but to the ~~commissioner for children and families~~ Commissioner for Children and Families as if the child had been abandoned. If a successor permanent guardian has been named in the initial permanent guardianship order, custody shall transfer to the successor guardian, without reverting first to the Commissioner. The Probate Division of the Superior Court shall notify the Department when custody transfers to the Commissioner or the successor guardian.

Sec. 5. 33 V.S.A. § 5124 is amended to read:

§ 5124. POSTADOPTION CONTACT AGREEMENTS

(a) Either or both parents and each intended adoptive parent may enter into a postadoption contact agreement regarding communication or contact between either or both parents and the child after the finalization of an adoption by the intended adoptive parent or parents who are parties to the agreement. Such an agreement may be entered into if:

(1) the child is in the custody of:

(A) the Department for Children and Families; or

(B) a nonparent pursuant to subdivision 5318(a)(2) or (a)(7), or subdivision 5232(b)(2) or (b)(3) of this title;

(2) an order terminating parental rights has not yet been entered; and

(3) either or both parents agree to a voluntary termination of parental rights, including an agreement in a case which began as an involuntary termination of parental rights.

* * *

(c) A postadoption contact agreement must be in writing and signed by each parent and each intended adoptive parent entering into the agreement. There may be separate agreements for each parent. The agreement shall specify:

* * *

(9) an acknowledgment that ~~once the adoption is finalized, the court shall presume that the adoptive parent~~'s judgment ~~concerning the best interests of the child is correct~~ the adoptive parent's judgment regarding the child is in the child's best interests;

* * *

Sec. 6. 33 V.S.A. § 5318 is amended to read:

§ 5318. DISPOSITION ORDER

(a) Custody. At disposition, the Court shall make such orders related to legal custody for a child who has been found to be in need of care and supervision as the Court determines are in the best interest of the child, including:

(1) An order continuing or returning legal custody to the custodial parent, guardian, or custodian. ~~Following disposition, the Court may issue a conditional custody order for a fixed period of time not to exceed two years. The Court shall schedule regular review hearings to determine whether the conditions continue to be necessary~~ The order may be subject to conditions and limitations.

(2) When the goal is reunification with a custodial parent, guardian, or custodian an order transferring temporary custody to a noncustodial parent, a relative, or a person with a significant relationship with the child. The order may provide for parent-child contact. ~~Following disposition, the Court may issue a conditional custody order for a fixed period of time not to exceed two years. The Court shall schedule regular review hearings to evaluate progress toward reunification and determine whether the conditions and continuing jurisdiction of the Family Division of the Superior Court are necessary.~~

(3) An order transferring legal custody to a noncustodial parent and closing the juvenile proceeding. The order may provide for parent-child contact with the other parent. Any orders transferring legal custody to a noncustodial parent issued under this section shall not be confidential and shall be made a part of the record in any existing parentage or divorce proceeding involving the child. On the motion of a party or on the Court's own motion, the Court may order that a sealed copy of the disposition case plan be made part of the record in a divorce or parentage proceeding involving the child.

(4) An order transferring legal custody to the Commissioner.

(5) An order terminating all rights and responsibilities of a parent by transferring legal custody and all residual parental rights to the Commissioner without limitation as to adoption.

(6) An order of permanent guardianship pursuant to 14 V.S.A. § 2664.

(7) An order transferring legal custody to a relative or another person with a significant relationship with the child. The order may be subject to conditions and limitations and may provide for parent-child contact with one or both parents. The order shall be subject to ~~periodic review as determined by the Court~~ review pursuant to subdivision 5320a(b) of this title.

* * *

(f) Conditions. Conditions shall include protective supervision with the Department if such a condition is not in place under the terms of an existing temporary care or conditional custody order. Protective supervision shall remain in effect for the duration of the order to allow the Department to take reasonable steps to monitor compliance with the terms of the conditional custody order.

Sec. 7. 33 V.S.A. § 5320 is amended to read:

§ 5320. POSTDISPOSITION REVIEW HEARING

~~If the permanency goal of the disposition case plan is reunification with a parent, guardian, or custodian, the~~ The Court shall hold a review hearing within 60 days of the date of the disposition order for the purpose of monitoring progress under the disposition case plan and reviewing parent-child contact. Notice of the review shall be provided to all parties. A foster parent, preadoptive parent, ~~or~~ relative caregiver, or any custodian of the child shall be provided with notice of any post disposition review hearings and an opportunity to be heard at the hearings. Nothing in this section shall be construed as affording such person party status in the proceeding. This section shall not apply to cases where full custody has been returned to one or both parents unconditionally at disposition, or cases where the court has created a

permanent guardianship at disposition. The Department shall, and any other party or caregiver may prepare a written report to the Court regarding progress under the plan of services specified in the disposition case plan.

Sec. 8. 33 V.S.A. § 5232 is amended to read:

§ 5232. DISPOSITION ORDER

* * *

(b) In carrying out the purposes outlined in subsection (a) of this section, the Court may:

(1) Place the child on probation subject to the supervision of the Commissioner, upon such conditions as the Court may prescribe. The length of probation shall be as prescribed by the Court or until further order of the Court.

(2) Order custody of the child be given to the custodial parent, guardian, or custodian. For a fixed period of time following disposition, the Court may order that custody be subject to such conditions and limitations as the Court may deem necessary and sufficient to provide for the safety of the child and the community. Conditions may include protective supervision for up to ~~one year~~ six months following the disposition order unless further extended by court order. The Court shall ~~schedule regular~~ hold review hearings pursuant to section 5320 of this title to determine whether the conditions continue to be necessary.

(3) Transfer custody of the child to a noncustodial parent, relative, or person with a significant connection to the child. The Court may order that custody be subject to such conditions and limitations as the Court may deem necessary and sufficient to provide for the safety of the child and community, including protective supervision, for up to six months unless further extended by court order. The Court shall hold review hearings pursuant to section 5320 of this title to determine whether the conditions continue to be necessary.

(4) Transfer custody of the child to the Commissioner.

(5) Terminate parental rights and transfer custody and guardianship to the Department without limitation as to adoption.

(6) Issue an order of permanent guardianship pursuant to 14 V.S.A. § 2664.

(7) Refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not

require the Court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the Court for disposition.

* * *

Sec. 9. 33 V.S.A. § 5258 is amended to read:

§ 5258. POSTDISPOSITION REVIEW AND PERMANENCY REVIEW FOR DELINQUENTS IN CUSTODY

Whenever custody of a delinquent child is transferred to the Commissioner or the Court orders conditional custody of a child, the custody order of the Court shall be subject to a postdisposition review hearing pursuant to section 5320 of this title and permanency reviews pursuant to section 5321 of this title. At the permanency review, the Court shall review the permanency plan and determine whether the plan advances the permanency goal recommended by the Department. The Court may accept or reject the plan, but may not designate a particular placement for a child in the Department's legal custody. Any conditional custody order shall be subject to review pursuant to section 5258a of this title.

Sec. 10. 33 V.S.A. § 5258a is added to read:

§ 5258a. DURATION OF CONDITIONAL CUSTODY ORDERS POSTDISPOSITION

(a) Conditional custody orders to parents. Whenever the court issues a conditional custody order transferring custody to a parent either at or following disposition, the presumptive duration of the order shall be no more than six months from the date of the disposition order or the conditional custody order, whichever occurs later, unless otherwise extended by the court after hearing. At least 14 days prior to the termination of the order, any party may file a request to extend the order pursuant to subsection 5113(b) of this title. Upon such motion, the Court may extend the order for an additional period of time not to exceed six months. Prior to vacating the conditional custody order, the court may schedule a hearing on its own motion to review the case prior to discharging the conditions. If a motion to extend is not filed, the court shall issue an order vacating the conditions and transferring full custody to the parent without conditions.

(b) Custody orders to nonparents.

(1) When the court at disposition issues an order continuing or transferring legal custody with a nonparent pursuant to subdivision 5232(b)(3)

of this title, the court shall set the matter for a hearing six months from the date of disposition or custody order whichever occurs later. At the hearing, the court shall determine whether it is in the best interests of the child to:

(A) transfer either full or conditional custody of the child to a parent;

(B) establish a permanent guardianship pursuant to 14 V.S.A. § 2664 with the nonparent who has had custody of the child as the guardian; or

(C) terminate residual parental rights and release the child for adoption.

(2) If, after hearing, the court determines that reasonable progress has been made toward reunification and that reunification is in the best interests of the child but will require additional time, the court may extend the current order for a period not to exceed six months and set the matter for further hearing.

Sec. 11. 33 V.S.A. § 5320a is added to read:

§ 5320a. DURATION OF CONDITIONAL CUSTODY ORDERS POSTDISPOSITION

(a) Conditional custody orders to parents. Whenever the Court issues a conditional custody order transferring custody to a parent either at or following disposition, the presumptive duration of the order shall be no more than six months from the date of the disposition order or the conditional custody order, whichever occurs later, unless otherwise extended by the court after hearing. At least 14 days prior to the termination of the order, any party may file a request to extend the order pursuant to subsection 5113(b) of this title. Upon such motion, the Court may extend the order for an additional period of time not to exceed six months. Prior to vacating the conditional custody order, the Court may schedule a hearing on its own motion to review the case prior to discharging the conditions. If a motion to extend is not filed, the court shall issue an order vacating the conditions and transferring full custody to the parent without conditions.

(b)(1) Custody orders to nonparents. When the court at disposition issues an order continuing or transferring legal custody with a nonparent pursuant to subdivision 5318(a)(2) or (a)(7) of this title, the court shall set the matter for a hearing six months from the date of disposition or custody order, whichever occurs later. At the hearing, the court shall determine whether it is in the best interests of the child to:

(A) transfer either full or conditional custody of the child to a parent;

(B) establish a permanent guardianship pursuant to 14 V.S.A. § 2664 with the nonparent who has had custody of the child as the guardian; or

(C) terminate residual parental rights and release the child for adoption.

(2) If, after hearing, the court determines that reasonable progress has been made toward reunification and that reunification is in the best interests of the child but will require additional time, the court may extend the current order for a period not to exceed six months and set the matter for further hearing.

Sec. 12. 33 V.S.A. § 5125 is added to read:

§ 5125. REINSTATEMENT OF PARENTAL RIGHTS

(a) Petition for reinstatement.

(1) A petition for reinstatement of parental rights may be filed by the Department for Children and Families on behalf of a child in the custody of the Department under the following conditions:

(A) the child's adoption has been dissolved; or

(B) the child has not been adopted after at least three years from the date of the court order terminating parental rights.

(2) The child, if 14 years of age or older, may also file a petition to reinstate parental rights if the adoption has been dissolved, or if parental rights have been terminated and the child has not been adopted after three years from the date of the court order terminating parental rights. This section shall not apply to children who have been placed under permanent guardianship pursuant to 14 V.S.A. § 2664.

(b) Permanency plan. The Department shall file an updated permanency plan with the petition for reinstatement. The updated plan shall address the material change in circumstances since the termination of parental rights, the Department's efforts to achieve permanency, the reasons for the parent's desire to have rights reinstated, any statements by the child expressing the child's opinions about reinstatement, and the parent's present ability and willingness to resume or assume parental duties.

(c) Hearing.

(1) The court shall hold a hearing to consider whether reinstatement is in the child's best interest. The court shall conditionally grant the petition if it finds by clear and convincing evidence that:

(A) the parent is presently willing and has the ability to provide for the child's present and future safety, care, protection, education, and healthy mental, physical, and social development;

(B) reinstatement is the child's express preference;

(C) if the child is 14 years of age or older and has filed the petition, the child is of sufficient maturity to understand the nature of this decision;

(D) the child has not been adopted, or the adoption has been dissolved;

(E) the child is not likely to be adopted; and

(F) reinstatement of parental rights is in the best interests of the child.

(2) Upon a finding by clear and convincing evidence that all conditions set forth in subdivision (1) of this subsection exist and that reinstatement of parental rights is in the child's best interest, the court shall issue a conditional custody order for up to six months transferring temporary legal custody of the child to the parent, subject to conditions as the court may deem necessary and sufficient to ensure the child's safety and well-being. The court may order the Department to provide transition services to the family as appropriate. If during this time period the child is removed from the parent's temporary conditional custody due to allegations of abuse or neglect, the court shall dismiss the petition for reinstatement of parental rights if the court finds the allegations have been proven by a preponderance of the evidence.

(d) Final order. After the child is placed with the parent for up to six months pursuant to subsection (c) of this section, the court shall hold a hearing to determine if the placement has been successful. The court shall enter a final order of reinstatement of parental rights upon a finding by a preponderance of the evidence that placement continues to be in the child's best interest.

(e) Effect of reinstatement. Reinstatement of parental rights does not vacate or otherwise affect the validity of the original order terminating parental rights. Reinstatement restores a parent's legal rights to his or her child, including all rights, powers, privileges, immunities, duties, and obligations that were terminated by the court in the termination of parental rights order. Such reinstatement shall be a recognition that the parent's and child's situations have changed since the time of the termination of parental rights, and reunification is appropriate. An order reinstating the legal parent and child relationship as to one parent of the child has no effect on the legal rights of any other parent whose rights to the child have been terminated by the court; or the legal sibling relationship between the child and any other children of the parent. A parent whose rights are reinstated pursuant to this section is not liable for child

support owed to the Department during the period from termination of parental rights to reinstatement.

Sec. 13. JUDICIARY COMMISSION ON CHILD ABUSE AND NEGLECT

(a) The General Assembly recognizes that the increasing burden of substance abuse in Vermont has deteriorated families, resulting in a tremendous increase in children in need of supervision (CHINS) and termination of parental rights (TPR) filings in courts throughout the State. The General Assembly also recognizes that the allocation of resources in judicial proceedings devoted to CHINS and TPR cases, including attorney time, Department for Children and Families staff time, judge time, court staff time, and operating expenses are controlled to a great degree by statute and do not always allow flexibility to meet Vermont's constitutional responsibilities to children and families in an efficient and effective manner. The General Assembly also recognizes that technology and other resources provide opportunities to increase efficiency in processing cases, while improving timely access to judicial proceedings for families and children in need. The General Assembly also recognizes that an effort to evaluate reform measures with input from all interested parties involved in the processing of these cases will improve access to justice.

(b) In order to develop specific proposals for consideration by the General Assembly, the General Assembly requests the Supreme Court, subject to the availability of funding to provide dedicated staff and research support, to appoint and convene a Commission on Judicial Operations in CHINS and TPR cases to consist of members representing Judicial, Legislative, and Executive Branches of government and persons representing the citizens of Vermont in a number to be determined by the Court. The Chief Justice shall appoint the Chair of the Commission, who shall be independent of the Vermont Judicial System. The Commission shall expire on June 30, 2017. The Commission shall from time to time make recommendations by report to the Senate and House Committees on Judiciary and on Appropriations, the House Committee on Human Services, and the Senate Committee on Health and Welfare. On or before January 15, 2017, the Commission shall submit an interim report to those committees with specific proposals regarding subdivisions (1)–(6) of this subsection with accompanying draft legislation to implement those proposals and a final report on or before May 1, 2017, which shall address all the following areas:

(1) achieving adequate dedicated court staff, attorney, Department, guardian ad litem, and judge resources;

(2) business reprocessing of child protection and parental rights procedures, laws and rules to minimize extra operational steps involved in processing CHINS and TPR cases;

(3) the use of technology such as video to increase litigant access and reduce unnecessary expense to litigants, including transportation, lost work time, lost school time, and any other measure suitable in the judgment of the Commission, while improving access and maintaining quality adjudication;

(4) alternative hearing space recommendations, including Saturday and weekday evening hearings and mobile courtrooms;

(5) flexibility in the use of resources to respond to the elastic, changeable demands for judicial and legal services in CHINS cases; and

(6) any other ideas for the efficient and effective delivery of judicial services in CHINS cases.

Sec. 14. EFFECTIVE DATES

This act shall take effect on September 1, 2016, except for this section and Sec. 5 (postadoption contact agreements), which shall take effect on July 1, 2016.

(Committee vote: 7-3-1)

(For text see Senate Journal February 11, 15, 16, 2016)

Senate Proposal of Amendment

H. 280

An act relating to amending the State Board of Education rules on school lighting requirements

The Senate proposes to the House to amend the bill as follows:

In Sec. 1, in subsection (b), by striking out "August 1, 2015" and inserting in lieu thereof August 1, 2016.

(For text see House Journal April 22, 2015)

ACTION CALENDAR

Third Reading

S. 10

An act relating to the State DNA database

S. 91

An act relating to procedures of the Judicial Nominating Board and

qualifications of candidates for the positions of Justice, judge, magistrate, and Chair and member of the Public Service Board

S. 154

An act relating to enhanced penalties for assaulting an employee of the Family Services Division of the Department for Children and Families and to criminal threatening

Favorable with Amendment

H. 871

An act relating to approval of amendments to the charter of the City of Montpelier

Rep. Martin of Wolcott, for the Committee on **Government Operations,** recommends the bill be amended as follows:

In Sec. 2, 24 App. V.S.A. chapter 5, by striking out in their entirety the Subchapter 7 (city ordinances) designation and the asterisks immediately following and § 709 (regulation of public water supply and sources) and the asterisks immediately following.

(Committee Vote: 10-0-1)

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

(Committee Vote: 6-5-0)

S. 55

An act relating to creating a flat rate for Vermont's estate tax and creating an estate tax exclusion amount that matches the federal amount

Rep. Young of Glover, for the Committee on **Ways & Means,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Estate Taxes * * *

Sec. 1. 32 V.S.A. § 7402 is amended to read:

§ 7402. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of Taxes appointed under section 3101 of this title.

(2) "Executor" means the executor or administrator of the estate of the decedent, or, if there is no executor or administrator appointed, qualified and acting within Vermont, then any person in actual or constructive possession of any property of the decedent.

(3) "Federal estate tax liability" means for any decedent's estate, the federal estate tax payable by the estate under the laws of the United States after the allowance of all credits against such estate tax provided thereto by the laws of the United States.

(4) ~~"Federal gift tax liability" means for any taxpayer and any calendar year, the federal gift tax payable by the taxpayer for that calendar year under the laws of the United States.~~ [Repealed.]

(5) "Federal gross estate" means the gross estate as determined under the laws of the United States.

(6) "Federal taxable estate" means the taxable estate as determined under the laws of the United States.

(7) "Federal taxable gifts" means taxable gifts as determined under the laws of the United States.

(8) "Laws of the United States" means~~, for any taxable year, the statutes of the United States relating to the federal estate or gift taxes, as the case may be, effective for the calendar year or taxable estate, but with the credit for State death taxes under 26 U.S.C. § 2011, as in effect on January 1, 2001, and without any deduction for State death taxes under 26 U.S.C. § 2058~~ the U.S. Internal Revenue Code of 1986, as amended through December 31, 2015. As used in this chapter, "Internal Revenue Code" shall have the same meaning as "laws of the United States" as defined in this subdivision.

(9) "Nonresident of Vermont" means a person whose domicile is not Vermont.

(10) "Resident of Vermont" means a person whose domicile is Vermont.

(11) "Taxpayer" means the executor of an estate, the estate itself, the donor of a gift, or any person or entity or combination of these who is liable for the payment of any tax, interest, penalty, fee, or other amount under this chapter.

(12) ~~"Vermont gifts" means, for any calendar year, all transfers by gift, excluding transfers by gift of tangible personal property and real property which have a situs outside Vermont, and also excluding all transfers by gift made by nonresidents of Vermont which take place outside Vermont.~~ [Repealed.]

(13) "Vermont gross estate" means for any decedent the value of the federal gross estate as provided under ~~the laws of the United States~~ Section 2031 of the Internal Revenue Code, excluding the value of ~~real or tangible personal~~ property which has ~~an actual~~ its situs outside Vermont ~~at the time of death of the decedent, and also excluding in the case of a nonresident of Vermont the value of intangible personal property owned by the decedent~~.

(14) "Vermont taxable estate" means the ~~value of the Vermont gross estate, reduced by the proportion of the deductions and exemptions from the value of the federal gross estate allowable under the laws of the United States, which the value of the Vermont gross estate bears to the value of the federal gross estate.~~ federal taxable estate as provided under Section 2051 of the Internal Revenue Code, without regard to whether the estate is subject to the federal estate tax:

(A) Increased by the amount of the deduction for state death taxes allowed under Section 2058 of the Internal Revenue Code, to the extent deducted in computing the federal taxable estate.

(B) Increased by the amount of the deduction for foreign death taxes allowed under Section 2053(d) of the Internal Revenue Code, to the extent deducted in computing the federal taxable estate.

(C) Increased by the aggregate amount of taxable gifts as defined in Section 2503 of the Internal Revenue Code, made by the decedent within two years of the date of death. For purposes of this subdivision, the amount of the addition equals the value of the gift under Section 2512 of the Internal Revenue Code and excludes any value of the gift included in the federal gross estate.

(15) "Situs of property" means, with respect to:

(A) real property, the state or country in which it is located;

(B) tangible personal property, the state or country in which it was normally kept or located at the time of the decedent's death or for a gift of tangible personal property within two years of death, the state or country in which it was normally kept or located when the gift was executed;

(C) a qualified work of art, as defined in Section 2503(g)(2) of the Internal Revenue Code, owned by a nonresident decedent and that is normally kept or located in this State because it is on loan to an organization, qualifying as exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that is located in Vermont, the situs of the art is deemed to be outside Vermont; and

(D) intangible personal property, the state or country in which the decedent was domiciled at death or for a gift of intangible personal property within two years of death, the state or country in which the decedent was domiciled when the gift was executed.

Sec. 2. 32 V.S.A. § 7442a is amended to read:

§ 7442a. IMPOSITION OF A VERMONT ESTATE TAX AND RATE OF TAX

(a) A tax is hereby imposed on the transfer of the ~~Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was a resident of this State. The base amount of this tax shall be a sum equal to the amount of the credit for State death taxes allowable to a decedent's estate under 26 U.S.C. § 2011 as in effect on January 1, 2001. This base amount shall be reduced by the lesser of the following:~~ estates of decedents as prescribed by this chapter.

~~(1) The total amount of all constitutionally valid State death taxes actually paid to other states; or~~

~~(2) A sum equal to the proportion of the credit which the value of the property taxed by other states bears to the value of the decedent's total gross estate for federal estate tax purposes.~~

(b) ~~A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was not a resident of this State. The amount of this tax shall be a sum equal to the proportion of the base amount of tax under subsection (a) of this section which the value of Vermont real and tangible personal property taxed in this State bears to the value of the decedent's total gross estate for federal estate tax purposes.~~ The tax shall be computed as follows. The following rates shall be applied to the Vermont taxable estate:

Amount of Vermont Taxable Estate	Rate of Tax
Not over $2,750,000.00	None
$2,750,000.00 or more	16 percent of the excess over $2,750,000.00

The resulting amount shall be multiplied by a fraction not greater than one, where the numerator of which is the value of the Vermont gross estate plus the value of gifts under 32 V.S.A. § 7402(14)(C) with a Vermont situs, and the denominator of which is the federal gross estate plus the value of gifts under subdivision 7402(14)(C) of this title.

Sec. 3. 32 V.S.A. § 7444 is amended to read:

§ 7444. RETURN BY EXECUTOR

(a) An executor shall submit a Vermont estate tax return to the Commissioner, on a form prescribed by the Commissioner, when a decedent has an interest in property with a situs in Vermont and one or both of the following apply:

(1) A federal estate tax return is required to be filed under Section 6018 of the Internal Revenue Code; or

(2) The sum of the federal gross estate and federal adjusted taxable gifts, as defined in Section 2001(b) of the Internal Revenue Code, made within two years of the date of the decedent's death exceeds $2,750,000.00.

(b) ~~In all cases where a tax is imposed upon the estate under section 7442a of this chapter, the executor shall make a return with respect to the estate tax imposed by this chapter.~~ If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he or she shall include in his or her return (to the extent of his or her knowledge or information) a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the Commissioner, such person shall in like manner make a return as to such part of the gross estate. A return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this section shall contain a statement that the return is, to the best of the knowledge and belief of the fiduciary, true and correct.

Sec. 4. 32 V.S.A. § 7475 is amended to read:

§ 7475. ~~ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS~~

~~The laws of the United States relating to federal estate and gift taxes as in effect on December 31, 2012, are hereby adopted for the purpose of computing the tax liability under this chapter, except:~~

~~(1) the credit for State death taxes shall remain as provided for under 26 U.S.C. §§ 2011 and 2604 as in effect on January 1, 2001;~~

~~(2) the applicable credit amount shall under 26 U.S.C. § 2010 shall not apply; and the tax imposed under section 7442a of this chapter shall be calculated as if the applicable exclusion amount under 26 U.S.C. § 2010 were $2,750,000.00; and~~

~~(3) the deduction for State death taxes under 26 U.S.C. § 2058 shall not apply.~~ [Repealed.]

Sec. 5. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the Public Service Board under this section, which the Board may grant if it finds that the facilities will promote the general good of the State consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities. An application under this section shall include a copy of each other State and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.

(b) Definitions. As used in this section:

(1) "Ancillary improvements" means telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

(2) "De minimis modification" means the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements on a telecommunications facility or existing support structure, whether or not the structure was constructed as a telecommunications facility, or the reconstruction of such a facility or support structure, provided:

(A) the height and width of the facility or support structure, excluding equipment, antennas, or ancillary improvements, are not increased;

(B) the total amount of impervious surface, including access roads, surrounding the facility or support structure is not increased by more than 300 square feet;

(C) the addition, modification, or replacement of an antenna or any other equipment on a facility or support structure does not extend vertically more than 10 feet above the facility or support structure and does not extend horizontally more than 10 feet from the facility or support structure; and

(D) the additional equipment, antennas, or ancillary improvements on the support structure, excluding cabling, does not increase the aggregate surface area of the faces of the equipment, antennas, or ancillary improvements on the support structure by more than 75 square feet.

(3) "Good cause" means a showing of evidence that the substantial deference required under subdivision (c)(2) of this section would create a substantial shortcoming detrimental to the public good or State's interests in section 202c of this title.

(4)(A) "Limited size and scope" means:

(i) A new telecommunications facility, including any ancillary improvements, that does not exceed 140 feet in height; or

(ii) An addition, modification, replacement, or removal of telecommunications equipment at a lawfully constructed telecommunications facility or on an existing support structure, and ancillary improvements, that would result in a facility of a total height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet.

(B) For construction described in subdivision (3)(A) of this subsection to be of limited size and scope, it shall not disturb more than 10,000 square feet of earth. ~~For purposes of~~ As used in this subdivision, "disturbed earth" means the exposure of soil to the erosive effects of wind, rain, or runoff.

(5) "Substantial deference" means that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable.

~~(4)~~(6) "Telecommunications facility" means a communications facility that transmits and receives signals to and from a local, State, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or State purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure. An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

~~(5)~~(7) "Wireless service" means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

(c) Findings. Before the Public Service Board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, and the public's use and enjoyment of the I-89 and I-91 scenic corridors or of any highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). However, with respect to telecommunications facilities of limited size and scope, the Board shall waive all criteria of this subdivision other than 10 V.S.A. § 6086(a)(1)(D)(floodways) and (a)(8)(aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat). Such waiver shall be on condition that:

(A) the Board may determine, pursuant to the procedures described in subdivision (j)(2)(A) of this section, that a petition raises a significant issue with respect to any criterion of this subdivision; and

(B) a telecommunications facility of limited size and scope shall comply, at a minimum, with the requirements of the Low Risk Site Handbook for Erosion Prevention and Sediment Control issued by the Department of Environmental Conservation, regardless of any provisions in that handbook that limit its applicability.

(2) Unless there is good cause to find otherwise, substantial deference has been given to ~~the land conservation measures in~~ the plans of the affected municipalities ~~and~~; to the recommendations of the municipal legislative bodies and the municipal ~~and regional~~ planning commissions regarding the municipal ~~and regional~~ plans~~, respectively~~; and to the recommendations of the regional planning commission concerning the regional plan. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations to which substantial deference is required under this subdivision (2) on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan.

(3) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

(A) If a proposed new support structure for a new telecommunications facility that provides wireless service will exceed 50 feet in height in a cleared area or will exceed 20 feet in height above the average treeline measured within a 100-foot radius from the structure in a wooded area, the application shall identify all existing telecommunications facilities within the area to be served by the proposed structure and, for each such existing facility, shall include a projection of the coverage and an estimate of additional capacity that would be provided if the applicant's proposed telecommunications equipment were located on or at the existing facility. The applicant also shall compare each such projection and estimate to the coverage and capacity that would be provided at the site of the proposed structure.

(B) To obtain a finding that a proposed facility cannot reasonably be collocated on or at an existing telecommunications facility, the applicant must demonstrate that:

(i) collocating on or at an existing facility will result in a significant reduction of the area to be served or the capacity to be provided by the proposed facility or substantially impede coverage or capacity objectives for the proposed facility that promote the general good of the State under subsection 202c(b) of this title;

(ii) the proposed antennas and equipment will exceed the structural or spatial capacity of the existing or approved tower or facility, and the existing or approved tower or facility cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility;

(iii) the owner of the existing facility will not provide space for the applicant's proposed telecommunications equipment on or at that facility on commercially reasonable terms; or

(iv) the proposed antennas and equipment will cause radio frequency interference that will materially impact the usefulness of other existing or permitted equipment at the existing or approved tower or facility and such interference cannot be mitigated at a reasonable cost.

* * *

(e) Notice. No less than ~~45~~ 60 days prior to filing an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the Board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the Secretary of Natural Resources; the Secretary of Transportation; the

Division for Historic Preservation; the Commissioner of Public Service and its Director for Public Advocacy; the Natural Resources Board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions.

(1) Upon motion or otherwise, the Public Service Board shall direct that further public or personal notice be provided if the Board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(2) On the request of the municipal legislative body or the planning commission, the applicant shall attend a public meeting with the municipal legislative body or planning commission, or both, within the ~~45-day~~ 60-day notice period before filing an application for a certificate of public good. The Department of Public Service shall attend the public meeting on the request of the municipality. The Department shall consider the comments made and information obtained at the meeting in making recommendations to the Board on the application and in determining whether to retain additional personnel under subsection (o) of this section.

(3) With the notice required under this subsection, the applicant shall include a written assessment of the collocation requirements of subdivision (c)(3) of this section, as they pertain to the applicant's proposed telecommunications facility. On the request of the municipal legislative body or the planning commission, the Department of Public Service, pursuant to its authority under subsection (o) of this section, shall retain an expert to review the applicant's collocation assessment and to conduct further independent analysis, as necessary. Within 45 days of receiving the applicant's notice and collocation assessment, the Department shall report its own preliminary findings and recommendations regarding collocation to the applicant and to all persons required to receive notice of an application for a certificate of public good under this subsection (e).

* * *

(h) Exemptions from other law.

(1) An applicant using the procedures provided in this section shall not be required to obtain a permit or permit amendment or other approval under the provisions of 24 V.S.A. chapter 117 or 10 V.S.A. chapter 151 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. This exemption from obtaining a permit or permit amendment under 24 V.S.A. chapter 117 shall not affect the substantial

deference to be given to a plan or recommendation based on a local land use bylaw under subdivision (c)(2) of this section.

(2) ~~Ordinances~~ An applicant using the procedures provided in this section shall not be required to obtain an approval from the municipality under an ordinance adopted pursuant to 24 V.S.A. § 2291(19) or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section ~~are preempted~~. This exemption from obtaining an approval under such an ordinance shall not affect the substantial deference to be given to a plan or recommendation based on such an ordinance under subdivision (c)(2) of this section.

(3) Disputes over jurisdiction under this section shall be resolved by the Public Service Board, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit or permit amendment under the provisions of Title 24 or 10 V.S.A. chapter 151 for the construction of a telecommunications facility may not apply for approval from the Board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

* * *

Sec. 6. 24 V.S.A. § 4412(8)(C) is amended to read:

(C) The regulation of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal approval under this chapter when and to the extent jurisdiction is assumed by the Public Service Board according to the provisions of that section. This exemption from obtaining approval under this chapter shall not affect the substantial deference to be given to a plan or recommendation based on a local land use bylaw under 30 V.S.A. § 248a(c)(2).

* * * Connectivity Initiative; Public Schools; Cellular Service * * *

Sec. 7. 30 V.S.A. § 7515b is amended to read:

§ 7515b. CONNECTIVITY INITIATIVE

(a) The ~~purpose~~ goals of the Connectivity Initiative ~~is~~ are to:

(1) ~~provide~~ Provide each service location in Vermont access to Internet service that is capable of speeds of at least 10 Mbps download and 1 Mbps upload, or the FCC speed requirements established under Connect America Fund Phase II, whichever is higher, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time. Within this category of service locations, priority shall be given first to unserved and then to underserved locations. As used in this section, "unserved" means a location having access to only

satellite or dial-up Internet service and "underserved" means a location having access to Internet service with speeds that exceed satellite and dial-up speeds but are less than 4 Mbps download and 1 Mbps upload.

(2) Provide universal availability of mobile telecommunications service throughout the State.

(b) Any new services funded in whole or in part by monies from this Initiative shall be capable of being continuously upgraded to reflect the best available, most economically feasible service capabilities.

~~(b)~~(c) The Department of Public Service shall publish annually a list of census blocks eligible for funding based on the Department's most recent broadband mapping data. The Department annually shall solicit proposals from telecommunications service providers, alone or in partnership with one or more municipalities, to deploy broadband to eligible census blocks.

(d) The Department shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations~~; however~~ or that include upgrading Internet service at one or more public schools that do not have access to Internet service capable of the minimum speeds required under subdivision (a)(1) of this section. In addition, the Department shall give priority to proposals that include matching public or private funds and establish an alignment between the proposed broadband or cellular project and community goals.

(e) In addition to the priorities established in subsection (d) of this section, the Department also shall consider:

(1) the proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;

(2) the price to consumers of services;

(3) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;

(4) whether the proposal would use the best available technology that is economically feasible;

(5) the availability of service of comparable quality and speed; ~~and~~

(6) the objectives of the State's Telecommunications Plan;

(7) whether a public school has a percentage of students receiving free or reduced lunches that is above the State average;

(8) whether the community in which a public school is situated does not have high speed Internet connectivity; and

(9) whether the community in which a public school is situated is rural and has a percentage of households categorized as low-income that is higher than the State average.

(10) a telecommunications service provider's performance with respect to the terms of a publicly-financed grant or loan awarded by a federal or State entity for the expansion of broadband or mobile telecommunications service in Vermont.

Sec. 8. 30 V.S.A. § 7523 is amended to read:

§ 7523. RATE OF CHARGE

(a) Beginning on July 1, 2014, the rate of charge shall be two percent of retail telecommunications service.

(b) Beginning on July 1, 2016 and ending on June 30, 2021, the rate of charge established under subsection (a) of this section shall be increased by one-half of one percent of retail telecommunications service, and the monies collected from this increase shall be transferred to the Connectivity Fund established under section 7516 of this title to provide specifically additional support for the Connectivity Initiative established under section 7515b of this title.

(c) Universal Service Charges imposed and collected by the fiscal agent under this subchapter shall not be transferred to any other fund or used to support the cost of any activity other than in the manner authorized by this section and section 7511 of this title.

Sec. 9. 30 V.S.A. § 7516 is amended to read:

§ 7516. CONNECTIVITY FUND

(a) There is created a Connectivity Fund for the purpose of providing support to the High-Cost Program established under section 7515 of this chapter and the Connectivity Initiative established under section 7515b of this chapter. The fiscal agent shall determine annually, on or before September 1, the amount of monies available to the Connectivity Fund. Such funds shall be apportioned as follows: 45 percent to the High-Cost Program and 55 percent to the Connectivity Initiative.

(b) In addition to the monies transferred to the Fund pursuant to subsection (a) of this section, monies collected from one-half of one percent of the Universal Service Charge shall be allocated to the Fund specifically to provide additional support to the Connectivity Initiative, as prescribed in subsection 7523(b) of this title.

* * * VUSF; News Service; Blind and Visually Impaired * * *

Sec. 10. 30 V.S.A. § 7511 is amended to read:

§ 7511. DISTRIBUTION GENERALLY

(a)(1) As directed by the Commissioner of Public Service, funds collected by the fiscal agent, and interest accruing thereon, shall be distributed as follows:

(A) to pay costs payable to the fiscal agent under its contract with the Commissioner;

(B) to support the Vermont telecommunications relay service in the manner provided by section 7512 of this title;

(C) to support the Vermont Lifeline program in the manner provided by section 7513 of this title;

(D) to support Enhanced-911 services in the manner provided by section 7514 of this title; ~~and~~

(E) to support a telecommunications information and news service in the manner provided by section 7512a of this title; and

(F) to support the Connectivity Fund established in section 7516 of this title; and

(2) for fiscal year 2016 only, any personnel or administrative costs associated with the Connectivity Initiative shall come from the Connectivity Fund, as determined by the Commissioner in consultation with the Connectivity Board.

(b) If insufficient funds exist to support all of the purposes contained in subsection (a) of this section, the Commissioner shall allocate the available funds, giving priority in the order listed in subsection (a).

Sec. 11. 30 V.S.A. § 7512a is added to read:

§ 7512a. TELECOMMUNICATIONS NEWS SERVICE

The fiscal agent shall make distributions to the State Treasurer for a telecommunications information and news service that provides access to existing newspapers and other printed materials for individuals who are blind, visually impaired, or otherwise unable to read such printed materials. The amount of the transfer shall be determined by the Commissioner of Public Service as the amount reasonably necessary to pay the costs of a contract administered by the Department of Public Service.

* * * High-Cost Program; Eligibility; Deployment Information * * *

Sec. 12. 30 V.S.A. § 7515 is amended to read:

§ 7515. HIGH-COST PROGRAM

(a) The Universal Service Charge shall be used as a means of keeping basic telecommunications service affordable in all parts of this State, thereby maintaining universal service, and as a means of supporting access to broadband service in all parts of the State.

* * *

(i) The amount of the monthly support under this section shall be the pro rata share of available funds based on the total number of incumbent local exchange carriers in the State and reflecting each carrier's lines in service or service locations in its high-cost area or areas, as determined under subsection (e) of this section. If an incumbent local exchange carrier does not petition the Board for VETC designation, or is found ineligible by the Board or by the Commissioner of Public Service pursuant to his or her authority under subsection (k) of this section, the share of funds it otherwise would have received under this section shall be used to support the Connectivity Initiative established in section 7515b of this chapter.

* * *

(l) Based on the recommendation of the Commissioner of Public Service, the Board may deem a company ineligible to receive monthly support under this section or revoke a company's VETC designation if he or she finds that the company or one of its affiliates has not provided adequate deployment information requested by the Director for Telecommunications and Connectivity under subsection 202e(c) of this title.

Sec. 13. PROPOSAL; SCHOOL CONNECTIVITY GRANT PROGRAM

On or before December 1, 2016, the Secretary of Education and the Director of Telecommunications and Connectivity shall propose to the General Assembly in the form of a draft bill a school connectivity grant program designed to provide competitive grants to public schools for capital costs associated with upgrading the Internet connection to a public school or purchasing hardware for infrastructure for internal Internet connections. The goal of the program is to ensure that the maximum Internet service available to the school is accessible by all personnel and students on school grounds, consistent with and supportive of educational policies and objectives. Proposed criteria shall prioritize rural communities having a percentage of households categorized as low-income that is higher than the State average, and shall seek to maximize the availability of federal matching funds.

* * * Communications Union Districts; Budget; Hearing; Date Changes * * *

Sec. 14. 30 V.S.A. § 3075 is amended to read:

§ 3075. BUDGET

(a) Annually, ~~not later than September 15~~ on or before October 21, the board shall approve and cause to be distributed to the legislative body of each district member for review and comment an annual report of its activities, together with a financial statement, a proposed district budget for the next fiscal year, and a forecast presenting anticipated year-end results. The proposed budget shall include reasonably detailed estimates of:

(1) deficits and surpluses from prior fiscal years;

(2) anticipated expenditures for the administration of the district;

(3) anticipated expenditures for the operation and maintenance of any district communications plant;

(4) payments due on obligations, long-term contracts, leases, and financing agreements;

(5) payments due to any sinking funds for the retirement of district obligations;

(6) payments due to any capital or financing reserve funds;

(7) anticipated revenues from all sources; and

(8) such other estimates as the board deems necessary to accomplish its purpose.

(b) Coincident with a regular meeting thereof, the board shall hold a public hearing ~~not later than November 1~~ on or before November 15 of each year to receive comments from the legislative bodies of district members and hear all other interested persons regarding the proposed budget. Notice of such hearing shall be given to the legislative bodies of district members at least ~~30 days~~ 15 days prior to such hearing. The board shall give consideration to all comments received and make such changes to the proposed budget as it deems advisable.

(c) Annually, ~~not later than December 1~~ on or before December 15, the board shall adopt the budget and appropriate the sums it deems necessary to meet its obligations and operate and carry out the district's functions for the next ensuing fiscal year.

(d) Actions or resolutions of the board for the annual appropriations of any year shall not cease to be operative at the end of the fiscal year for which they were adopted. Appropriations made by the board for the various estimates of

the budget shall be expended only for such estimates, but by majority vote of the board the budget may be amended from time to time to transfer funds between or among such estimates. Any balance left or unencumbered in any such budget estimate, or the amount of any deficit at the end of the fiscal year, shall be included in and paid out of the operating budget and appropriations in the next fiscal year. All such budget amendments shall be reported by the district treasurer to the legislative bodies of each district member within 14 days of the end of the fiscal year.

(e) Financial statements and audit results shall be delivered to the legislative bodies of each district member within 10 days of delivery to the board.

* * * E-911; Call-taking Services; Study * * *

Sec. 15. E-911; CALL-TAKING SERVICES; STUDY

(a) A working group shall be formed to study and make recommendations regarding the most efficient, reliable, and cost effective means for providing statewide call-taking operations for Vermont's 911 system. Among other things, the group shall make findings related to the financing, operations, and geographical location of 911 call-taking services. In addition, the group's findings shall include a description of the number and nature of calls received, and an evaluation of current and potential State and local partnerships with respect to the provision of such services. The group shall take into consideration the "Enhanced 9-1-1 Board Operational and Organizational Report," dated September 4, 2015. The group's recommendations shall strive to achieve the best possible outcome in terms of ensuring the health and safety of Vermonters and Vermont communities.

(b) Members of the working group shall include a representative from each of the following entities: the Enhanced 911 Board; the Department of Public Safety; the Vermont State Employees Association; the Vermont League of Cities and Towns; the Vermont State Firefighters' Association; the Vermont Ambulance Association; the Vermont Association of Chiefs of Police; and the Vermont Sheriffs' Association.

(c) The representative from the E-911 Board shall convene the first meeting of the working group, at which the group shall elect a Chair and Vice Chair from among its members. The group shall meet as needed, and shall receive administrative and staffing support from the Department of Public Safety, and may request relevant financial information from the Joint Fiscal Office.

(d) On or before January 15, 2017, the group shall report its findings and recommendations to the House Committees on Commerce and Economic Development, on Government Operations, on Appropriations, and on Ways

and Means and to the Senate Committees on Finance, on Government Operations, on Appropriations, and on Economic Development, Housing, and General Affairs, and to the Governor.

(e) The Department of Public Safety shall continue to provide 911 call-taking services unless otherwise directed by legislative enactment.

* * * Miscellaneous Provisions; Telecommunications Grant Programs * * *

Sec. 16. RECOVERY AND REPURPOSING OF TELECOMMUNICATIONS GRANT FUNDS

To the extent State funds are recovered by the Department of Public Service, as the successor in interest to the Vermont Telecommunications Authority (VTA), as the result of a grant recipient's failure to comply with the terms of a grant agreement entered into with the VTA, such public monies shall be deposited in the Connectivity Initiative.

Sec. 17. HIGH-COST PROGRAM; PUBLIC SERVICE BOARD; DEADLINE

The Public Service Board shall issue a procedures order for implementation of the High-Cost Program established under 30 V.S.A. § 7515 not later than September 1, 2016. If the Board fails to do so, the Board shall provide a report to the General Assembly and the Governor detailing reasons for failing to comply with this mandate.

* * * Effective Dates * * *

Sec. 18. EFFECTIVE DATES

(a) Notwithstanding 1 V.S.A. § 214, Secs. 1–4 shall take effect on January 1, 2016 and apply to decedents dying after December 31, 2015.

(b) This section and Secs. 5–17 shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to Vermont's estate tax and to telecommunications"

(Committee vote: 9-2-0)

(For text see Senate Journal April 1, 2016)

Amendment to be offered by Rep. Marcotte of Coventry to S. 55

That the House proposal of amendment of the Committee on Ways and Means be further amended in Sec. 15 and its accompanying reader assistance in its entirety and by inserting in lieu thereof a new Sec. 15 and a Sec. 15a and reader assistance to read as follows:

* * * E-911; Dispatch; Call-taking Services * * *

Sec. 15. E-911; DISPATCH; CALL-TAKING; WORKING GROUP

(a) Creation and duties of working group.

(1) A working group shall be formed to study and make recommendations regarding:

(A) the most efficient, reliable, and cost-effective means for providing statewide call-taking operations for Vermont's 911 system; and

(B) the manner in which dispatch services are currently provided and funded, including funding disparity, and whether there should be any changes to this structure.

(2) Among other things, the group shall make findings related to the financing, operations, and geographical location of 911 call-taking services. In addition, the group's findings shall include a description of the number and nature of calls received, and an evaluation of current and potential State and local partnerships with respect to the provision of such services.

(3) The group shall take into consideration the "Enhanced 9-1-1 Board Operational and Organizational Report," dated September 4, 2015.

(4) The group's recommendations shall strive to achieve the best possible outcome in terms of ensuring the health and safety of Vermonters and Vermont communities.

(b) Membership. Members of the working group shall include a representative from each of the following entities: the Enhanced 911 Board; the Department of Public Safety; the Vermont State Employees' Association; the Vermont League of Cities and Towns; the Vermont State Firefighters' Association; the Vermont Ambulance Association; the Vermont Association of Chiefs of Police; the Vermont Police Association; the Vermont Sheriffs' Association; and the Vermont Office of EMS and Injury Prevention, Department of Health.

(c) Meetings. The representative from the E-911 Board shall convene the first meeting of the working group, at which the group shall elect a chair and vice chair from among its members. The group shall meet as needed, and shall receive administrative and staffing support from the Department of Public

Safety, and may request relevant financial information from the Joint Fiscal Office.

(d) Report. On or before January 15, 2017, the group shall report its findings and recommendations to the House Committees on Commerce and Economic Development, on Government Operations, on Appropriations, and on Ways and Means and to the Senate Committees on Finance, on Government Operations, on Appropriations, and on Economic Development, Housing and General Affairs, and to the Governor.

(e) Reimbursement. Members of the working group who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for no more than five meetings.

Sec. 15a. DEPARTMENT OF PUBLIC SAFETY; 911 CALL-TAKING

The Department of Public Safety shall continue to provide 911 call-taking services unless otherwise directed by legislative enactment.

S. 123

An act relating to standardized procedures for permits and approvals issued by the Department of Environmental Conservation

Rep. Ryerson of Randolph, for the Committee on **Natural Resources & Energy,** recommends that the House propose to the Senate that the bill be amended as follows:

First: By striking out Secs. 1 through 5 in their entirety and inserting in lieu thereof Secs. 1 through 5c to read:

* * * Environmental Conservation; Standard Procedures * * *

Sec. 1. 10 V.S.A. chapter 170 is added to read:

CHAPTER 170. DEPARTMENT OF ENVIRONMENTAL CONSERVATION; STANDARD PROCEDURES;

Subchapter 1. General Provisions

§ 7701. PURPOSE

The purpose of this chapter is to establish standard procedures for public notice, public meetings, and decisions relating to applications for permits issued by the Department of Environmental Conservation.

§ 7702. DEFINITIONS

As used in this chapter:

(1) "Adjoining property owner" means a person who owns land in fee simple, if that land:

(A) shares a property boundary with a tract of land where proposed or actual activity regulated by the Department is located; or

(B) is adjacent to a tract of land where such activity is located and the two properties are separated only by a river, stream, or public highway.

(2) "Administrative amendment" means an amendment to an individual permit, general permit, or notice of intent under a general permit that corrects typographical errors, changes the name or mailing address of a permittee, or makes other similar changes to a permit that do not require technical review of the permitted activity or the imposition of new conditions or requirements.

(3) "Administrative record" means the application and any supporting data furnished by the applicant; all information submitted by the applicant during the course of reviewing the application; the draft permit or notice of intent to deny the application; the fact sheet and all documents cited in the fact sheet, if applicable; all comments received during the public comment period; the recording or transcript of any public meeting or meetings held; any written material submitted at a public meeting; the response to comments; the final permit; any document used as a basis for the final decision; and any other documents contained in the permit file.

(4) "Administratively complete application" means an application for a permit for which all initially required documentation has been submitted, and any required permit fee, and the information submitted initially addresses all application requirements but has not yet been subjected to a complete technical review.

(5) "Agency" means the Agency of Natural Resources.

(6) "Clean Air Act" means the federal statutes on air pollution prevention and control, 42 U.S.C. § 7401 et seq.

(7) "Clean Water Act" means the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

(8) "Commissioner" means the Commissioner of Environmental Conservation or the Commissioner's designee.

(9) "Department" means the Department of Environmental Conservation.

(10) "Document" means any written or recorded information, regardless of physical form or characteristics, which the Department produces or acquires in the course of reviewing an application for a permit.

(11) "Environmental notice bulletin" or "bulletin" means the website and e-mail notification system required by 3 V.S.A. § 2826.

(12) "Fact sheet" means a document that briefly sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing a draft decision.

(13) "General permit" means a permit that applies to a class or category of discharges, emissions, disposal, facilities, or activities within a common geographic area, including the entire State or a region of the State.

(14) "Individual permit" means a permit that authorizes a specific discharge, emission, disposal, facility, or activity that contains terms and conditions that are specific to the discharge, emission, disposal, facility, or activity.

(15) "Major amendment" means an amendment to an individual permit or notice of intent under a general permit that necessitates technical review.

(16) "Minor amendment" means an amendment to an individual permit or notice of intent under a general permit that requires a change in a condition or requirement, does not necessitate technical review, and is not an administrative amendment.

(17) "Notice of intent under a general permit" means an authorization issued by the Secretary to undertake an action authorized by a general permit.

(18) "Permit" includes any permit, certification, license, registration, determination, or similar form of permission required from the Department by law. However, the term excludes a professional license issued pursuant to chapter 48, subchapter 3 (licensing of well drillers) of this title and sections 1674 (water supply operators), 1936 (UST inspector licenses), 6607 (hazardous waste transporters), and 6607a (waste transportation) of this title.

(19) "Person" shall have the same meaning as under section 8502 of this title.

(20) "Person to whom notice is federally required" means a person to whom notice of an application or draft decision must be given under federal regulations adopted pursuant to the Clean Air Act or Clean Water Act.

(21) "Public meeting" means a meeting that is open to the public and recorded or transcribed, at which the Department shall provide basic information about the draft permit decision, an opportunity for questions to the applicant and the Department, and an opportunity for members of the public to submit oral and written comments.

(22) "Secretary" means the Secretary of Natural Resources or designee.

(23) "Technical review" means the application of scientific, engineering, or other professional expertise to the facts to determine whether activity for which a permit is requested meets the standards for issuing the permit under statute and rule.

§ 7703. RULES; ADDITIONAL NOTICE OR PROCEDURES

(a) Rules.

(1) Implementing rules. The Secretary may adopt rules to implement this chapter.

(2) Complex projects; preapplication process. The Secretary shall adopt rules to determine when a project requiring a permit is large and complex. These rules shall provide that an applicant proposing such a project, prior to filing an application for a permit, shall initiate a project scoping process pursuant to 3 V.S.A. § 2828 or shall hold an informational meeting that is open to the public. The rules shall ensure that:

(A) Written notice of an informational meeting under this section is sent to the owner of the land where the project is located if the applicant is not the owner; the municipality in which the project is located; the municipal and regional planning commissions for any municipality in which the project is located; if the project site is located on a boundary, any Vermont municipality adjacent to that boundary and the municipal and regional planning commissions for that municipality; and each adjoining property owner. At the time this written notice is sent, the Secretary also shall post the notice to the environmental notice bulletin.

(B) The notice to adjoining property owners informs them of how they can continue to receive notices and information through the environmental notice bulletin concerning the project as it is reviewed by the Secretary.

(C) The applicant furnishes by affidavit to the Secretary the names of those furnished notice and certifies compliance with the notice requirements of this subsection.

(D) The applicant and the Secretary or designee shall attend the meeting. The applicant shall respond to questions from other attendees.

(b) Additional notice.

(1) The Secretary may require, by rule or in an individual case, measures in addition to those directed by this chapter using any method reasonably calculated to give direct notice to persons potentially affected by a decision on the application.

(2) In an individual case, the Secretary may determine to apply the procedures of section 7713 (Type 2) of this chapter to the issuance of a permit otherwise subject to the procedures of section 7715 (Type 4) or section 7716 (Type 5) of this chapter.

(c) Extension of deadlines. A person may request that the Secretary extend any deadline for comment or requesting a public informational meeting established by this chapter. The person shall submit the request before the deadline and include a brief explanation of why the extension is justified. If the request is granted, the Secretary shall provide notice of the new deadline through the environmental notice bulletin.

§ 7704. ADMINISTRATIVE RECORD

(a) The Secretary shall create an administrative record for each application for a permit and shall make the administrative record available to the public.

(b) The Secretary shall base a draft or final decision on each application for a permit on the administrative record.

(c) With respect to permits issued under the Clean Air Act and Clean Water Act, the Secretary shall comply with any requirements under those acts concerning the maintenance and availability of the administrative record.

§ 7705. TIME; HOW COMPUTED

In this chapter:

(1) When time is to be reckoned from a day, date, or an act done, the day, date, or day when the act is done shall not be included in the computation.

(2) Computation of a time period shall use calendar days.

Subchapter 2. Standard Procedures

§ 7711. PERMIT PROCEDURES; STANDARD PROVISIONS

(a) Notice through the environmental notice bulletin. When this chapter requires notice through the environmental notice bulletin:

(1) The bulletin shall generate and send an e-mail to notify:

(A) each person requiring notice under section 7712 of this chapter;

(B) the applicant;

(C) each person on an interested persons list;

(D) each municipality in which the activity to be permitted is located, except for notice of a draft or final general permit; and

(E) each other person to whom this chapter directs that a particular notice be provided through the bulletin.

(2) At a minimum, each notice generated by the bulletin shall contain:

(A) the name and contact information for the person at the Agency processing the permit;

(B) the name and address of the permit applicant, if applicable;

(C) the name and address of the facility or activity to be permitted, if applicable;

(D) a brief description of the activity for which the permit would be issued;

(E) the length of the period for submitting written comments and the process for submitting those comments, if applicable, and notice of the requirements regarding submission of comments during that period or at a public meeting in order to appeal under chapter 220 of this title;

(F) the process for requesting a public meeting, if applicable;

(G) when a public meeting has been scheduled, the time, date, and location of the meeting and a brief description of the nature and purpose of the meeting;

(H) when issued, the draft permit or notice of intent to deny a permit, and the period and process for submitting written comments on that draft permit or notice;

(I) when issued, the final decision issuing or denying a permit, and the process for appealing the decision; and

(J) any other information that this chapter directs be included in a particular notice to be generated by the bulletin.

(3) The environmental notice bulletin shall provide notice by mail as required by 3 V.S.A. § 2826.

(b) Notice to adjoining property owners. When this chapter requires notice of an application to adjoining property owners, the applicant shall provide notice of the application by U.S. mail to all adjoining property owners, on a form developed by the Secretary, at the time the application is submitted to the Secretary. The form shall state how the property owners can continue to receive notices and information concerning the project as it is reviewed by the Secretary. The applicant shall provide a signed certification to the Secretary that all adjoining property owners have been notified of the application. However, if the applicant has provided written notice to adjoining property

owners as part of the preapplication engagement process for complex projects under rules adopted in accordance with subsection 7703(a) of this title, then instead of the written notice required of the applicant by this subsection, the Department shall provide notice of the application through the environmental notice bulletin to those adjoining property owners who have requested notice.

(c) Comment period length. When this chapter requires the Secretary to provide a public comment period, the length of the period shall be at least 30 days, unless this chapter applies a different period for submitting comments on the particular type of permit.

(d) Period to request a public meeting. When this chapter allows a person to request a public meeting on a draft decision, the person shall submit the request within 14 days of the date on which notice of the draft decision is posted to the environmental notice bulletin, unless this chapter specifies a different period for requesting a hearing on the particular type of permit.

(e) Public meeting; notice; additional comment period. When the Secretary holds a public meeting under this chapter:

(1) The Secretary shall:

(A) provide at least 14 days' prior notice of the public meeting through the environmental notice bulletin, unless this chapter specifies a different notice period for a public meeting on the particular type of permit;

(B) include in the notice, in addition to the information required by subsection (a) of this section, the date the Secretary gave notice of an administrative complete application, if applicable; and

(C) hold the period for written comments open for at least seven days after the meeting.

(2) The applicant or applicant's representative and the Secretary or designee shall attend the meeting. The applicant shall cause to be present those professionals retained in the preparation of the application. At the meeting, the applicant and the Secretary each shall answer questions relevant to the application or draft decision to the best of their ability.

(f) Draft decisions. When this chapter requires the Secretary to post a draft decision or draft general permit to the environmental notice bulletin, the Secretary shall post to the bulletin the draft decision or draft general permit and all documents on which the Secretary relied in issuing the draft. This post shall include instructions on how to inspect and how to request a copy of each other document that is part of the administrative record of the draft decision or permit.

(g) Response to comments. When this chapter requires the Secretary to provide a response to comments, the Secretary shall provide a response to each comment received during the comment period and the basis for the response. The Secretary also shall specify each provision of the draft decision that has been changed in the final decision and the reasons for each change. The Secretary shall post the response to comments to the environmental notice bulletin and send it to all commenters.

(h) Final decisions; content; notice.

(1) The Secretary's final decision on an application for a permit or on the issuance of a general permit shall include a concise statement of the facts and analysis supporting the decision that is sufficient to apprise the reader of the decision's factual and legal basis. The final decision also shall provide notice that it may be appealed and state the period for filing an appeal and how and where to file an appeal.

(2) When this chapter requires that the Secretary to post a final decision to the environmental notice bulletin, the Secretary also shall send a copy of the final decision to all commenters.

§ 7712. TYPE 1 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when adopting general permits and considering applications for individual permits under the Clean Air Act and Clean Water Act.

(2) This section governs each application for a permit to be issued by the Secretary pursuant to the requirements of the Clean Air Act and Clean Water Act and to each general permit to be issued under one of those acts. However, the subsection does not apply to a notice of intent under a general permit. The procedures under this section shall be known as Type 1 Procedures.

(b) Notice of application.

(1) The applicant shall provide notice to adjoining property owners.

(2) At least 15 days prior to posting a draft decision, the Secretary shall provide notice of an administratively complete application through the environmental notice bulletin. The environmental notice bulletin shall send notice of such an application to each person to whom notice is federally required.

(3) This subsection (b) shall not apply to a general permit issued under this section.

(c) Notice of draft decision or draft general permit. The Secretary shall provide notice of a draft decision or draft general permit through the environmental notice bulletin and shall post the draft decision or permit to the bulletin. In addition to the requirements of section 7711 of this chapter:

(1) The Secretary shall post a fact sheet to the bulletin.

(2) The environmental notice bulletin shall send notice of the draft to each person to whom notice is federally required.

(3) The Secretary shall provide newspaper notice of the draft decision as required by this subdivision (3).

(A) If the draft decision pertains to an application for an individual permit, the Secretary shall provide notice in a daily or weekly newspaper in the area of the proposed project if the project is classified as major pursuant to the Clean Water Act or chapter 47 of this title or if required by federal statute or regulation.

(B) If the draft decision is a draft general permit, the Secretary shall provide notice in daily or weekly newspapers in each region of the State to which the draft general permit will apply.

(C) In addition to the requirements of this chapter and 3 V.S.A. § 2826, the notice from the environmental notice bulletin and the newspaper notice shall include all information required pursuant to applicable federal statute and regulation.

(d) Comment period. The Secretary shall provide a public comment period.

(e) Public meeting. On or before the end of the comment period, any person may request a public meeting on the draft decision or draft general permit issued under this section. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion. The Secretary shall provide at least 30 days' notice of the public meeting through the environmental notice bulletin. If the notice of the public meeting is not issued at the same time as the draft decision or draft general permit, the Secretary also shall provide notice of the public meeting in the same manner as required for the draft decision or permit under subsection (c) of this section.

(f) Notice of final decision or final general permit. The Secretary shall provide notice of the final decision or final general permit through the environmental notice bulletin and shall post the final decision or permit to the bulletin. When the Secretary issues the final decision or final general permit, the Secretary shall provide a response to comments.

(g) Compliance with Clean Air and Water Acts. With respect to a issuance of a permit under the Clean Air Act or Clean Water Act, if a requirement under those acts directs the Secretary to provide the public with greater notice, opportunity to participate, or access to information than the corresponding requirement of this chapter, the Secretary shall comply with the federal requirement.

§ 7713. TYPE 2 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when considering applications for individual permits, except for individual permits specifically listed in other sections of this subchapter, and when considering other permits listed in this section.

(2) The procedures under this section shall be known as Type 2 Procedures. This section governs an application for each of the following:

(A) an individual permit issued pursuant to the Secretary's authority under this title and 29 V.S.A. chapter 11, except for permits governed by sections 7712 and 7714–7716 of this chapter;

(B) a wetland determination under section 914 of this title;

(C) an individual shoreland permit under chapter 49A of this title;

(D) a public water system source permit under section 1675 of this title;

(E) a provisional certification issued under section 6605d of this title; and

(F) a corrective action plan under section 6648 of this title.

(b) Notice of application.

(1) The applicant shall provide notice of the application to adjoining property owners.

(A) For public water system source protection areas, the applicant also shall provide notice to all property owners located in:

(i) zones 1 and 2 of the source protection area for a public community water system source; and

(ii) the source protection area for a public nontransient noncommunity water system source.

(B) For an individual shoreland permit under chapter 49A:

(i) The notice to adjoining property owners shall be to the adjoining property owners on the terrestrial boundary of the shoreland.

(ii) This chapter does not require notice to owners of property across the lake as defined in that chapter.

(2) The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of a draft decision through the environmental notice bulletin and shall post the draft decision to the bulletin. The Secretary shall provide a public comment period.

(d) Public meeting. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion.

(e) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the final decision to the bulletin. When the Secretary issues the final decision, the Secretary shall provide a response to comments.

§ 7714. TYPE 3 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when adopting general permits, except for general permits governed by section 7712 of this chapter, and when considering other permits listed in this section.

(2) The procedures under this section shall be known as Type 3 Procedures. This section governs each of the following:

(A) Each general permit issued pursuant to the Secretary's authority under this title other than a general permit subject to section 7712 of this chapter. However, this section does not apply to a notice of intent under a general permit.

(B) Issuance of a dam safety order under chapter 43 of this title, except for an unsafe dam order under section 1095 of this title.

(C) An application or request for approval of:

(i) an individual shoreland permit under chapter 49A of this title;

(ii) an aquatic nuisance control permit under chapter 50 of this title;

(iii) a change in treatment for a public water supply under chapter 56 of this title;

(iv) a collection plan for mercury-containing lamps under section 7156 of this title;

(v) an individual plan for the collection and recycling of electronic waste under section 7554 of this title; and

(vi) a primary battery stewardship plan under section 7586 of this title.

(b) Notice of application. The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of the draft decision through the environmental notice bulletin and shall post the draft decision to the bulletin. The Secretary shall provide a public comment period.

(d) Public meeting. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion.

(e) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the final decision to the bulletin. The Secretary shall provide a response to comments.

§ 7715. TYPE 4 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when considering applications for notice of intent under a general permit and other permits listed in this section.

(2) The procedures under this section shall be known as Type 4 Procedures. This section applies to each of the following:

(A) a notice of intent under a general permit issued pursuant to the Secretary's authority under this title; and

(B) an application for each of following permits:

(i) construction or operation of an air contaminant source or class of sources not identified in the State's implementation plan approved under the Clean Air Act;

(ii) construction or expansion of a public water supply under chapter 56 of this title, except that a change in treatment for a public water supply shall proceed in accordance with section 7714 of this chapter;

(iii) a category 1 underground storage tank under chapter 59 of this title;

(iv) a categorical solid waste certification under chapter 159 of this title; and

(v) a medium scale composting certification under chapter 159 of this title.

(b) Notice of application. The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of the draft decision through the environmental notice bulletin and shall post the draft decision to the bulletin. The Secretary shall provide a public comment period of at least 14 days on the draft decision.

(d) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the decision to the bulletin. The Secretary shall provide a response to comments.

§ 7716. TYPE 5 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when issuing emergency permits and other permits listed in this section.

(2) The procedures under this section shall be known as Type 5 Procedures. This section shall govern each of the following:

(A) issuance of temporary emergency permits under section 912 of this title;

(B) applications for public water system operational permits under chapter 56 of this title;

(C) issuance of authorizations, under a stream alteration general permit issued under chapter 41 of this title, for reporting without an application, for an emergency, and for activities to prevent risks to life or of severe damage to improved property posed by the next annual flood;

(D) issuance of emergency permits issued under section 1268 of this title;

(E) issuance of emergency sludge and septage disposal approvals under section 6605 of this title; and

(F) shoreland registrations authorized under chapter 49A of this title.

(b) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the decision to the bulletin.

§ 7717. AMENDMENTS; RENEWALS

(a) A major amendment shall be subject to the same procedures applicable to the original permit decision under this chapter.

(b) A minor amendment shall be subject to the Type 4 Procedures, except that the Secretary need not provide notice of the administratively complete application.

(c) An administrative amendment shall not be subject to the procedural requirements of this chapter.

(d) A person may renew a permit under the same procedures applicable to the original permit decision under this chapter.

(e) With respect to amending a permit issued under the Clean Air Act or Clean Water Act, if a requirement under those acts directs the Secretary to provide the public with greater notice, opportunity to participate, or access to information than the corresponding requirement of this chapter, the Secretary shall comply with the federal requirement.

§ 7718. EXEMPTIONS

This subchapter shall not govern an application or petition for:

(1) an unsafe dam order under section 1095 of this title;

(2) a potable water supply and wastewater permit under subsection 1973(j) of this title;

(3) a hazardous waste facility certification under section 6606 of this title; and

(4) a certificate of need under section 6606a of this title.

Sec. 2. RULES; EFFECT ON PROCEDURAL REQUIREMENTS

Sec. 1 of this act shall take precedence over any inconsistent requirements for notice and processing of applications contained in rules adopted by the Department of Environmental Conservation other than rules pertaining to applications that are exempt under Sec. 1, 10 V.S.A. § 7718. On or before

July 1, 2019, the Secretary of Natural Resources shall commence and complete amendments to conform these rules to Sec. 1.

* * * Environmental Notice Bulletin * * *

Sec. 3. 3 V.S.A. § 2826 is amended to read:

§ 2826. ENVIRONMENTAL NOTICE BULLETIN; PERMIT HANDBOOK

(a) The Secretary shall establish ~~procedures for the publication of~~ an environmental notice bulletin, in order to provide for the timely public notification of permit applications, notices, comment periods, hearings, and permitting decisions. ~~The Secretary shall begin publication of the bulletin by no later than July 1, 1995 on the Agency's website. At a minimum, the bulletin shall contain the following information:~~ The bulletin shall consist of a website and an e-mail notification system. The Secretary shall ensure that the website for the bulletin is readily accessible from the Agency's main web page.

(1) ~~notice of administratively complete permit applications submitted to the Department of Environmental Conservation;~~ When 10 V.S.A. chapter 170 requires the posting of information to the bulletin, the Secretary shall post the information to the bulletin's website.

(2) ~~notice of the comment period on the application and draft permit, if any, for those applications which were noticed;~~ When 10 V.S.A. chapter 170 requires notice to persons through the environmental notice bulletin, the bulletin shall generate an e-mail notification to those persons containing the information required by that chapter.

(3) ~~notice of the issuance of a draft permit, if required by law, for those applications that were noticed;~~ The Secretary shall provide members of the public the ability to register, through the bulletin, for a list of interested persons to receive e-mail notification of permit activity based on permit type, municipality, proximity to a specified address, or a combination of these characteristics.

(4) ~~information on how to request a public hearing or meeting;~~ If an individual does not have an e-mail address, the individual may request to receive notifications through U.S. mail. On receipt of such a request, the Secretary shall mail to the individual the same information that the individual would have otherwise received through an e-mail generated by the bulletin.

~~(5) notice of the name of the staff person to contact for information regarding public hearings or meetings with respect to a particular application.~~

~~(6) notice of the issuance or denial of a permit for those applications that were noticed.~~

(b) ~~By January 1, 1995, the~~ The Secretary shall publish a permit handbook which lists all of the permits required for the programs administered by the Department of Environmental Conservation. The handbook shall include examples of activities that require certain permits, an explanation in lay terms of each of the permitting programs involved, and the names, addresses, and telephone numbers of the person or persons to contact for further information for each of the permitting programs. The Secretary shall update the handbook ~~shall be updated,~~ periodically.

Sec. 4. REPORTS; RULEMAKING; BULLETIN; REVISION

(a) On or before September 15, 2016, the Secretary shall commence all rulemaking required by Sec. 1 of this act.

(b) On or before February 15, 2017, the Secretary shall report in writing to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources on the Secretary's progress in adopting the rules required by Sec. 1 of this act and revising and reestablishing the environmental notice bulletin in accordance with Secs. 1 and 3 of this act.

(c) On or before July 1, 2017, the Secretary shall revise and reestablish the environmental notice bulletin to conform to the requirements of Secs. 1 and 3 of this act.

(d) On or before February 15, 2020, the Secretary of Natural Resources shall submit a written report to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources that:

(1) summarizes the Secretary's implementation of Secs. 1 through 3 of this act and details the steps taken to implement those sections;

(2) provides the Secretary's assessment of the effect of 10 V.S.A. chapter 170 on the amount of time taken by the Department of Environmental Conservation (DEC), during the preceding two calendar years, to review and issue decisions on applications and permits subject to that chapter and the data supporting that assessment;

(3) provides the Secretary's assessment of the effect of 10 V.S.A. chapter 170 on public participation, during the preceding two calendar years, in the review of applications and permits subject to that chapter and the data supporting that assessment;

(4) provides:

(A) the total and annual number of appeals, during 2018 and 2019, of DEC decisions subject to 10 V.S.A. chapter 170 and how each appeal was resolved;

(B) the total and annual number of times that a party moved to dismiss an issue or an appeal based on the requirements of 10 V.S.A § 8504(d)(2) and the Environmental Division's ruling on those motions; and

(C) a comparison with the total and annual number of appeals, during calendar years 2015 through 2017, from DEC programs that become subject to the procedures of 10 V.S.A. chapter 170 on January 1, 2018, and how each of those appeals was resolved;

(5) provides the Secretary's overall evaluation of the success of Secs. 1 and 3 of this act in standardizing DEC permit procedures, increasing public participation in DEC's permit process, and resolving issues related to the issuance of DEC permits without appeal;

(6) based on the track record of 10 V.S.A. chapter 170 to date of the report, states the Secretary's recommendation on whether there is justification to amend the process for appealing those acts and decisions of the Secretary subject to that chapter; and

(7) if the recommendation under subdivision (6) of this subsection is affirmative, provides the Secretary's recommended amendments to the process for appealing those acts and decisions of the Secretary subject to 10 V.S.A. chapter 170.

* * * Appeals from Agency of Natural Resources to the Environmental Division * * *

Sec. 5. 10 V.S.A. § 8504 is amended to read:

§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

* * *

(d) Requirement ~~that aggrieved Act 250 parties~~ to participate before the District Commission or the Secretary.

(1) ~~No~~ Participation before District Commission. An aggrieved person ~~may~~ shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before the District Commission, and retained party status at the end of the District Commission proceedings. In addition, the person may

only appeal those issues under the criteria with respect to which the person was granted party status.

~~(2) Notwithstanding subdivision (d)(1) of this section,~~ However, notwithstanding these limitations, an aggrieved person may appeal an act or decision of the District Commission if the Environmental judge determines that:

(A) there was a procedural defect ~~which~~ that prevented the person from obtaining party status or participating in the proceeding;

(B) the decision being appealed is the grant or denial of party status; or

(C) some other condition exists which would result in manifest injustice if the person's right to appeal was disallowed.

(2) Participation before the Secretary.

(A) An aggrieved person shall not appeal an act or decision of the Secretary unless the person submitted to the Secretary a written comment during the comment period or an oral comment at the public meeting conducted by the Secretary. In addition, the person may only appeal issues related to the person's comment to the Secretary.

(i) To be sufficient for the purpose of appeal, a comment to the Secretary shall identify each reasonably ascertainable issue with enough particularity so that a meaningful response can be provided.

(ii) The appellant shall identify each comment that the appellant submitted to the Secretary that identifies or relates to an issue raised in his or her appeal.

(iii) A person moving to dismiss an appeal or an issue raised by an appeal pursuant to this subdivision (A) shall have the burden to prove that the requirements of this subdivision (A) are not satisfied.

(B) Notwithstanding the limitations of subdivision (2)(A) of this subsection, an aggrieved person may appeal an act or decision of the Secretary if the Environmental judge determines that:

(i) there was a procedural defect that prevented the person from commenting during the comment period or at the public meeting or otherwise participating in the proceeding;

(ii) the Secretary did not conduct a comment period and did not hold a public meeting;

(iii) the person demonstrates that an issue was not reasonably ascertainable during the review of an application or other request that led to the Secretary's act or decision; or

(iv) some other condition exists which would result in manifest injustice if the person's right to appeal was disallowed.

* * *

(p) Administrative record. The Secretary shall certify the administrative record as defined in chapter 170 of this title and shall transfer a certified copy of that record to the Environmental Division when:

(1) there is an appeal of an act or decision of the Secretary that is based on that record; or

(2) there is an appeal of a decision of a District Commission and the applicant used a decision of the Secretary based on that record to create a presumption under a criterion of subsection 6086(a) of this title that is at issue in the appeal.

Sec. 5a. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS

* * *

(c) The provisions of subdivisions 8504(c)(2) (notice of appeal), (d)(2) (participation before the Secretary), and (f)(1)(A) (automatic stays of certain permits), and subsections 8504(j) (appeals under a general permit) ~~and~~, (n) (intervention), and (p) (administrative record) of this title shall apply to appeals under this section except that, with respect to subsection (p), the Secretary shall transfer a certified copy of the administrative record to the Board.

* * *

Sec. 5b. PURPOSE

The purposes of the amendments contained in Secs. 5 (appeals to the Environmental Division) and 5a (renewable energy plant; telecommunications facility; appeals) of this act are to:

(1) require participation in the permitting process of the Department of Environmental Conservation (DEC) and identification of concerns about an application early in that process so that DEC and the applicant have an opportunity to address those concerns where possible before a permit becomes final and subject to appeal; and

(2) require that an issue raised on appeal be identified or related to an issue identified in a comment to the Secretary while guarding against creating an overly technical approach to the preservation of issues for the purpose of appeal when interpreting whether an appeal satisfies requirements of 10 V.S.A. § 8504(d)(2)(A).

Sec. 5c. FEDERALLY DELEGATED PROGRAMS

If the U.S. Environmental Protection Agency notifies the Secretary of Natural Resources that a provision of this act is inconsistent with the Clean Air Act or Clean Water Act as defined in 10 V.S.A. chapter 170 or federal regulations adopted under one of those acts, the Secretary shall report the receipt of this notification to the House and Senate Committees on Natural and Energy and the House Committee on Fish, Wildlife and Water Resources. This report shall attach the notification and may include proposed statutory revisions to address the inconsistency.

Second: After Sec. 37, by adding two new sections to be Secs. 37a and 37b to read:

Sec. 37a. 10 V.S.A. § 6604c(d) is amended to read:

(d) On or before July 1, ~~2016~~ 2017, the Secretary shall adopt rules that allow for the management of excavated soils requiring disposal that contain PAHs, arsenic, or lead in a manner that ensures protection of human health and the environment and promotes Vermont's traditional settlement patterns in compact village or city centers. At a minimum, the rules shall:

* * *

Sec. 37b. MANAGEMENT OF EXCAVATED DEVELOPMENT SOILS; EXTENSION OF REPEAL DATE

2015 Acts and Resolves No. 52, Sec. 7 is amended to read:

Sec. 7. REPEAL

On July 1, ~~2016~~ 2017, 10 V.S.A. § 6604c(a), (b), and (c) are repealed.

Third: In Sec. 38 (effective dates), by adding subdivisions (3) and (4) to read:

(3) Secs. 33 through 37 (Act 250 jurisdictional opinions; appeals) shall take effect on passage and shall apply to appeals of jurisdictional opinions issued on or after the effective date of those sections. Notwithstanding the repeal of its authority to consider jurisdictional opinions, the Natural Resources Board shall have authority to complete its consideration of any jurisdictional

opinion pending before it as of that effective date, and appeal of the Board's decision shall be governed by the law as it existed immediately prior to that date.

(4) Secs. 37a (rules; management of excavated soils) and 37b (extension of repeal date) shall take effect on passage.

(Committee vote: 11-0-0)

(For text see Senate Journal March 9, 2016)

S. 212

An act relating to court-approved absences from home detention and home confinement furlough

Rep. Myers of Essex, for the Committee on **Corrections and Institutions,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 7554 is amended to read:

§ 7554. RELEASE PRIOR TO TRIAL

(a) Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance before a judicial officer be ordered released pending trial in accordance with this section.

(1) The defendant shall be ordered released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release will not reasonably ensure the appearance of the person as required. In determining whether the defendant presents a risk of nonappearance, the judicial officer shall consider, in addition to any other factors, the seriousness of the offense charged and the number of offenses with which the person is charged. If the officer determines that such a release will not reasonably ensure the appearance of the defendant as required, the officer shall, either in lieu of or in addition to the ~~above~~ methods of release in this section, impose the least restrictive of the following conditions or the least restrictive combination of the following conditions that will reasonably ensure the appearance of the defendant as required:

(A) Place the defendant in the custody of a designated person or organization agreeing to supervise him or her if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

(B) Place restrictions on the travel, association, or place of abode of the defendant during the period of release.

(C) Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources.

(D) Require the execution of a secured appearance bond in a specified amount and the deposit with the clerk of the Court, in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the appearance of the defendant as required.

(E) Require the execution of a surety bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(F) Impose any other condition found reasonably necessary to ensure appearance as required, including a condition requiring that the defendant return to custody after specified hours.

(G) Place the defendant in a program of community-based electronic monitoring in accordance with section 7554d of this title.

(2) If the judicial officer determines that conditions of release imposed to ensure appearance will not reasonably protect the public, the judicial officer may impose in addition the least restrictive of the following conditions or the least restrictive combination of the following conditions that will reasonably ensure protection of the public:

(A) Place the defendant in the custody of a designated person or organization agreeing to supervise him or her if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

(B) Place restrictions on the travel, association, or place of abode of the defendant during the period of release.

(C) Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources.

(D) Impose any other condition found reasonably necessary to protect the public, except that a physically restrictive condition may only be imposed in extraordinary circumstances.

(E) If the defendant is a State, county, or municipal officer charged with violating section 2537 of this title, the Court may suspend the officer's duties in whole or in part, if the Court finds that it is necessary to protect the public.

(F) Place the defendant in a program of community-based electronic monitoring in accordance with section 7554d of this title.

* * *

Sec. 2. 13 V.S.A. § 7554d is amended to read:

§ 7554d. ~~WINDHAM COUNTY~~ ELECTRONIC MONITORING PILOT PROGRAM

(a)(1) The Windham County Sheriff's Office (WCSO) shall establish and manage a two-year electronic monitoring pilot program in Windham County for the purpose of supervising persons ordered to be under electronic monitoring as a condition of release or in addition to the imposition of bail pursuant to section 7554 of this title~~, to home detention pursuant to section 7554b of this title, and home confinement furlough pursuant to 28 V.S.A. § 808b~~. The program shall be a part of an integrated community incarceration program and shall provide 24-hours-a-day, seven-days-a-week electronic monitoring with supervision and immediate response.

(2) For purposes of this program~~;~~,

~~(A)~~ if electronic monitoring is ordered by the Court pursuant to section 7554 of this title, the Court shall use the following criteria ~~in section 7554b~~ for determining whether ~~home detention~~ electronic monitoring is appropriate~~;~~

~~(B) the seven-day waiting period under 7554b of this title shall not apply; and~~

~~(C) for persons who are under the custody of the Department of Corrections pursuant to section 7554b of this title and 28 V.S.A. § 808b, the WCSO shall notify the Department of any violations.~~:

(A) the nature of the offense with which the defendant is charged;

(B) the defendant's prior convictions, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

(C) any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from the placement.

(3) The WCSO shall establish written policies and procedures for the electronic monitoring program, shall provide progress reports on the development of the policies and procedures to the Justice Oversight Committee, and shall submit the final policies and procedures to the Committee for approval on or before June 30, 2016.

(b) The goal of the pilot program is to assist policymakers in determining whether electronically monitored home detention and home confinement can be utilized for pretrial detention and as a post-adjudication option to reduce recidivism, to improve public safety, and to save valuable bed space for detainees and inmates who ~~should~~, without an electronic monitoring program, would otherwise be lodged in a correctional facility. Additional benefits may include reducing transportation costs, increasing detainee access to services, reducing case resolution time, and determining if the program can be replicated statewide.

(c) The WCSO shall work with the Crime Research Group (CRG) for design and evaluation assistance. The program shall be evaluated by CRG to determine if the stated goals have been attained, the cost and savings of the program, identifying what goals or objective were not met and if not, what could be changed to meet the goals and objectives to ensure program success. The Joint Fiscal Office shall contract with the CRG to provide design and evaluation services.

(d)(1) The WCSO is authorized to enter into written agreements with the sheriffs of other counties permitting those counties to participate in the pilot program subject to the policies and procedures established by the WCSO under this section. At least one of the agreements shall be between the WCSO and a county with a significant population.

(2) The purpose of expanding the electronic monitoring program to other counties under this subsection is to increase the number of participants to a level sufficient to permit evaluation of whether the program is meeting the bed savings and other goals identified in subsection (b) of this section.

(e) The Department of Corrections shall enter into a memorandum of understanding with the Department of State's Attorneys and Sheriffs for oversight and funding of the electronic monitoring program established by this section. The memorandum shall establish processes for:

(1) transmitting funding for the electronic monitoring program from the Department of Corrections to the Department of State's Attorneys and Sheriffs for purposes of allocation to the sheriff's departments participating in the program; and

(2) maintaining oversight of the electronic monitoring program to ensure that it complies with the requirements of this section and the policies and procedures established by the WCSO pursuant to subdivision (a)(3) of this section.

~~(d)~~(f) The pilot program shall be in effect from July 1, 2014 through ~~June 30, 2016~~ June 30, 2018.

Sec. 3. 28 V.S.A. § 808b is amended to read:

§ 808b. HOME CONFINEMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on home confinement furlough that restricts the defendant to a preapproved place of residence continuously, except for authorized absences. Home confinement furlough shall be enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the ~~Court~~ court or the Department, or both.

(b) The Department, in its own discretion, may place on home confinement furlough an offender who has not yet served the minimum term of the sentence for an eligible misdemeanor as defined in section 808d of this title if the Department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.

(c) ~~A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:~~

~~(1) to remain at a preapproved residence at all times except for scheduled and preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the Court may order; or~~

~~(2) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.~~

~~(d)~~ In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, all of the following shall be considered:

(1) The nature of the offense with which the defendant was charged and the nature of the offense of which the defendant was convicted.

(2) The defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight.

(3) Any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

(d)(1) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(A) to remain at a preapproved residence at all times except for preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court may order; or

(B) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(2) In cases involving offenders convicted of a listed crime, the defendant shall remain at a preapproved residence at all times except for preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court or Department may authorize. The day the absences are approved, the court or the Department shall provide a record to the prosecutor's office documenting the date, time, location, and purpose of the authorized absences. The authorized absences may commence no earlier than 24 hours following notification to the prosecutor's office. The Department may reschedule authorized absences only after providing 72 hours' advance notice to the prosecutor's office. In the case of a medical emergency, the notice required by this subdivision shall be provided as soon as practicable after the emergency.

(e) [Repealed.]

Sec. 4. APPLICABILITY

A defendant participating in an electronic monitoring program established under 13 V.S.A. § 7554d prior to July 1, 2016 shall not have his or her participation in the program withdrawn or affected as a result of this act.

Sec. 5. REPORT

On or before December 15, 2016, the Windham County Sheriff's Office shall report to the House Committee on Corrections and Institutions, the Senate Committee on Institutions, and the House and Senate Committees on Judiciary on the electronic monitoring program established under 13 V.S.A. § 7554d. The report shall include the number of program participants, the offense with which each participant is charged, the number of participants who violate conditions of the program, the costs of the program, and the manner in which the program creates budgetary savings, including whether and how the program makes correctional facility bed space available that would otherwise be occupied by detainees and inmates in the program.

Sec. 6. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE; 2016 LEGISLATIVE INTERIM; GENDER-BASED DISPARITIES IN DETENTION AND SENTENCING

During the 2016 legislative interim, the Joint Legislative Justice Oversight Committee shall evaluate any disparities in sentencing and detainment by gender, including the average duration of detention for men and women, and the percentage of sentences or detainments imposed for listed crimes and nonlisted crimes for men and women. The Committee also shall investigate whether the primary drivers for detention, such as lack of housing, substance abuse, and risk assessment results, differ for men and women.

Sec. 7. EFFECTIVE DATES

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

(b) Secs. 1 and 3–7 shall take effect on July 1, 2016.

(Committee vote: 10-0-1)

(For text see Senate Journal February 23, 2016)

S. 243

An act relating to combating opioid abuse in Vermont

Rep. Pugh of South Burlington, for the Committee on **Human Services,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Vermont Prescription Monitoring System * * *

Sec. 1. 18 V.S.A. § 4284 is amended to read:

§ 4284. PROTECTION AND DISCLOSURE OF INFORMATION

* * *

(g) Following consultation with the ~~Unified Pain Management System~~ Controlled Substances and Pain Management Advisory Council and an opportunity for input from stakeholders, the Department shall develop a policy that will enable it to use information from VPMS to determine if individual prescribers and dispensers are using VPMS appropriately.

(h) Following consultation with the ~~Unified Pain Management System~~ Controlled Substances and Pain Management Advisory Council and an opportunity for input from stakeholders, the Department shall develop a policy that will enable it to evaluate the prescription of regulated drugs by prescribers.

* * *

Sec. 2. 18 V.S.A. § 4289 is amended to read:

§ 4289. STANDARDS AND GUIDELINES FOR HEALTH CARE PROVIDERS AND DISPENSERS

(a) Each professional licensing authority for health care providers shall develop evidence-based standards to guide health care providers in the appropriate prescription of Schedules II, III, and IV controlled substances for treatment of acute pain, chronic pain, and for other medical conditions to be determined by the licensing authority. The standards developed by the licensing authorities shall be consistent with rules adopted by the Department of Health. The licensing authorities shall submit their standards to the Commissioner of Health, who shall review for consistency across health care providers and notify the applicable licensing authority of any inconsistencies identified.

(b)(1) Each health care provider who prescribes any Schedule II, III, or IV controlled substances shall register with the VPMS by November 15, 2013.

(2) If the VPMS shows that a patient has filled a prescription for a controlled substance written by a health care provider who is not a registered user of VPMS, the Commissioner of Health shall notify the applicable licensing authority and the provider by mail of the provider's registration requirement pursuant to subdivision (1) of this subsection.

(3) The Commissioner of Health shall develop additional procedures to ensure that all health care providers who prescribe controlled substances are registered in compliance with subdivision (1) of this subsection.

(c) ~~Each dispenser who dispenses any Schedule II, III, or IV controlled substances shall register with the VPMS.~~

~~(d) Health~~ Except in the event of electronic or technological failure, health care providers shall query the VPMS with respect to an individual patient in the following circumstances:

(1) at least annually for patients who are receiving ongoing treatment with an opioid Schedule II, III, or IV controlled substance;

(2) when starting a patient on a Schedule II, III, or IV controlled substance for nonpalliative long-term pain therapy of 90 days or more;

(3) the first time the provider prescribes an opioid Schedule II, III, or IV controlled substance written to treat chronic pain; and

(4) prior to writing a replacement prescription for a Schedule II, III, or IV controlled substance pursuant to section 4290 of this title.

(d)(1) Each dispenser who dispenses any Schedule II, III, or IV controlled substances shall register with the VPMS.

(2) Except in the event of electronic or technological failure, dispensers shall query the VPMS in accordance with rules adopted by the Commissioner of Health.

(3) Pharmacies and other dispensers shall report each dispensed prescription for a Schedule II, III, or IV controlled substance to the VPMS within 24 hours or one business day after dispensing.

(e) The Commissioner of Health shall, after consultation with the ~~Unified Pain Management System~~ Controlled Substances and Pain Management Advisory Council, adopt rules necessary to effect the purposes of this section. The Commissioner and the Council shall consider additional circumstances under which health care providers should be required to query the VPMS, including whether health care providers should be required to query the VPMS prior to writing a prescription for any opioid Schedule II, III, or IV controlled substance or when a patient requests renewal of a prescription for an opioid Schedule II, III, or IV controlled substance written to treat acute pain, and the Commissioner may adopt rules accordingly.

(f) ~~Each professional licensing authority for dispensers shall adopt standards, consistent with rules adopted by the Department of Health under this section, regarding the frequency and circumstances under which its respective licensees shall:~~

~~(1) query the VPMS; and~~

~~(2) report to the VPMS, which shall be no less than once every seven days.~~

~~(g)~~ Each professional licensing authority for health care providers and dispensers shall consider the statutory requirements, rules, and standards adopted pursuant to this section in disciplinary proceedings when determining whether a licensee has complied with the applicable standard of care.

* * * Rulemaking * * *

Sec. 2a. PRESCRIBING OPIOIDS FOR ACUTE AND CHRONIC PAIN; RULEMAKING

(a) The Commissioner of Health, after consultation with the Controlled Substances and Pain Management Advisory Council, shall adopt rules governing the prescription of opioids. The rules may include numeric and temporal limitations on the number of pills prescribed, including a maximum number of pills to be prescribed following minor medical procedures,

consistent with evidence-informed best practices for effective pain management. The rules may require the contemporaneous prescription of naloxone in certain circumstances, and shall require informed consent for patients that explains the risks associated with taking opioids, including addiction, physical dependence, side effects, tolerance, overdose, and death. The rules shall also require prescribers prescribing opioids to patients to provide information concerning the safe storage and disposal of controlled substances.

(b) The Commissioner of Health, after consultation with the Board of Pharmacy, retail pharmacists, and the Controlled Substances and Pain Management Advisory Council, shall adopt rules regarding the circumstances in which dispensers shall query the Vermont Prescription Monitoring System, which shall include:

(1) prior to dispensing a prescription for a Schedule II, III, or IV opioid controlled substance to a patient who is new to the pharmacy;

(2) when an individual pays cash for a prescription for a Schedule II, III, or IV opioid controlled substance when the individual has prescription drug coverage on file;

(3) when a patient requests a refill of a prescription for a Schedule II, III, or IV opioid controlled substance substantially in advance of when a refill would ordinarily be due;

(4) when the dispenser is aware that the patient is being prescribed Schedule II, III, or IV opioid controlled substances by more than one prescriber; and

(5) an exception for a hospital-based dispenser dispensing a quantity of a Schedule II, III, or IV opioid controlled substance that is sufficient to treat a patient for 48 hours or fewer.

* * * Expanding Access to Substance Abuse Treatment

with Buprenorphine * * *

Sec. 3. 18 V.S.A. chapter 93 is amended to read:

CHAPTER 93. TREATMENT OF OPIOID ADDICTION

§ 4751. PURPOSE

It is the purpose of this chapter to authorize the ~~department of health~~ Departments of Health and of Vermont Health Access to establish a regional system of opioid addiction treatment.

§ 4752. OPIOID ADDICTION TREATMENT SYSTEM

(a) The ~~department of health~~ Departments of Health and of Vermont Health Access shall establish by rule a regional system of opioid addiction treatment.

* * *

(c) ~~No later than January 15 of each year from 2013 through 2016, inclusive, the commissioner shall report to the house committees on human services and on health care and the senate committee on health and welfare regarding the regional system of opioid addiction treatment, including the system's effectiveness.~~ [Repealed.]

* * *

§ 4753. CARE COORDINATION

Prescribing physicians and collaborating health care and addictions professionals may coordinate care for patients receiving medication-assisted treatment for substance use disorder, which may include monitoring adherence to treatment, coordinating access to recovery supports, and providing counseling, contingency management, and case management services.

Sec. 4. 8 V.S.A. § 4100k is amended to read:

§ 4100k. COVERAGE OF TELEMEDICINE SERVICES

* * *

(g) In order to facilitate the use of telemedicine in treating substance use disorder, health insurers and the Department of Vermont Health Access shall ensure that both the treating clinician and the hosting facility are reimbursed for the services rendered, unless the health care providers at both the host and service sites are employed by the same entity.

(h) As used in this subchapter:

* * *

* * * Expanding Role of Pharmacies and Pharmacists * * *

Sec. 5. 26 V.S.A. § 2022 is amended to read:

§ 2022. DEFINITIONS

As used in this chapter:

* * *

(14)(A) "Practice of pharmacy" means:

(i) the interpretation and evaluation of prescription orders;

(ii) the compounding, dispensing, and labeling of drugs and legend devices (except labeling by a manufacturer, packer, or distributor of

nonprescription drugs and commercially packaged legend drugs and legend devices);

(iii) the participation in drug selection and drug utilization reviews;

(iv) the proper and safe storage of drugs and legend devices and the maintenance of proper records therefor;

(v) the responsibility for advising, where necessary or where regulated, of therapeutic values, content, hazards, and use of drugs and legend devices; ~~and~~

(vi) the providing of patient care services within the pharmacist's authorized scope of practice;

(vii) the optimizing of drug therapy through the practice of clinical pharmacy; and

(viii) the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

(B) "Practice of clinical pharmacy" means:

(i) the health science discipline in which, in conjunction with the patient's other practitioners, a pharmacist provides patient care to optimize medication therapy and to promote disease prevention and the patient's health and wellness;

(ii) the provision of patient care services within the pharmacist's authorized scope of practice, including medication therapy management, comprehensive medication review, and postdiagnostic disease state management services; or

(iii) the practice of pharmacy by a pharmacist pursuant to a collaborative practice agreement.

(C) A rule shall not be adopted by the Board under this chapter that shall require the sale and distribution of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist or otherwise interfere with the sale and distribution of such medicines.

* * *

(19) "Collaborative practice agreement" means a written agreement between a pharmacist and a health care facility or prescribing practitioner that permits the pharmacist to engage in the practice of clinical pharmacy for the benefit of the facility's or practitioner's patients.

Sec. 6. 26 V.S.A. § 2023 is added to read:

§ 2023. CLINICAL PHARMACY

In accordance with rules adopted by the Board, a pharmacist may engage in the practice of clinical pharmacy.

Sec. 7. 8 V.S.A. § 4089j is amended to read:

§ 4089j. RETAIL PHARMACIES; FILLING OF PRESCRIPTIONS

(a) ~~A health insurer and pharmacy benefit manager doing business in Vermont shall permit a retail pharmacist licensed under 26 V.S.A. chapter 36 to fill prescriptions in the same manner and at the same level of reimbursement as they are filled by mail order pharmacies with respect to the quantity of drugs or days' supply of drugs dispensed under each prescription.~~

~~(b)~~ As used in this section:

(1) "Health insurer" ~~is defined by~~ shall have the same meaning as in 18 V.S.A. § 9402 and shall also include Medicaid and any other public health care assistance program.

(2) "Pharmacy benefit manager" means an entity that performs pharmacy benefit management. "Pharmacy benefit management" means an arrangement for the procurement of prescription drugs at negotiated dispensing rates, the administration or management of prescription drug benefits provided by a health insurance plan for the benefit of beneficiaries, or any of the following services provided with regard to the administration of pharmacy benefits:

(A) mail service pharmacy;

(B) claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;

(C) clinical formulary development and management services;

(D) rebate contracting and administration;

(E) certain patient compliance, therapeutic intervention, and generic substitution programs; and

(F) disease management programs.

(3) "Health care provider" means a person, partnership, or corporation, other than a facility or institution, that is licensed, certified, or otherwise authorized by law to provide professional health care service in this State to an individual during that individual's medical care, treatment, or confinement.

(b) A health insurer and pharmacy benefit manager doing business in Vermont shall permit a retail pharmacist licensed under 26 V.S.A. chapter 36 to fill prescriptions in the same manner and at the same level of reimbursement as they are filled by mail order pharmacies with respect to the quantity of drugs or days' supply of drugs dispensed under each prescription.

(c) ~~This section shall apply to Medicaid and any other public health care assistance program.~~ Notwithstanding any provision of a health insurance plan to the contrary, if a health insurance plan provides for payment or reimbursement that is within the lawful scope of practice of a pharmacist, the insurer may provide payment or reimbursement for the service when the service is provided by a pharmacist.

Sec. 8. ROLE OF PHARMACIES IN PREVENTING OPIOID ABUSE; REPORT

(a) The Department of Health, in consultation with the Board of Pharmacy, pharmacists, prescribing health care practitioners, health insurers, pharmacy benefit managers, and other interested stakeholders shall consider the role of pharmacies in preventing opioid misuse, abuse, and diversion. The Department's evaluation shall include a consideration of whether, under what circumstances, and in what amount pharmacists should be reimbursed for counting or otherwise evaluating the quantity of pills, films, patches, and solutions of opioid controlled substances prescribed by a health care provider to his or her patients.

(b) On or before January 15, 2017, the Department shall report to the House Committees on Health Care and on Human Services and the Senate Committee on Health and Welfare its findings and recommendations with respect to the appropriate role of pharmacies in preventing opioid misuse, abuse, and diversion.

* * * Continuing Medical Education * * *

Sec. 9. CONTINUING EDUCATION

(a) All physicians, osteopathic physicians, dentists, pharmacists, advanced practice registered nurses, optometrists, and naturopathic physicians with a registration number from the U.S. Drug Enforcement Administration (DEA), who have a pending application for a DEA number, or who dispense controlled substances shall complete a total of at least two hours of continuing education for each licensing period beginning on or after July 1, 2016 on the topics of the abuse and diversion, safe use, and appropriate storage and disposal of controlled substances; the appropriate use of the Vermont Prescription Monitoring System; risk assessment for abuse or addiction; pharmacological

and nonpharmacological alternatives to opioids for managing pain; medication tapering; and relevant State and federal laws and regulations concerning the prescription of opioid controlled substances.

(b) The Department of Health shall consult with the Board of Veterinary Medicine and the Agency of Agriculture, Food and Markets to develop recommendations regarding appropriate safe prescribing and disposal of controlled substances prescribed by veterinarians for animals and dispensed to their owners, as well as appropriate continuing education for veterinarians on the topics described in subsection (a) of this section. On or before January 15, 2017, the Department shall report its findings and recommendations to the House Committees on Agriculture and Forest Products and on Human Services and the Senate Committees on Agriculture and on Health and Welfare.

* * * Medical Education Core Competencies * * *

Sec. 10. MEDICAL EDUCATION CORE COMPETENCIES; PREVENTION AND MANAGEMENT OF PRESCRIPTION DRUG MISUSE

The Commissioner of Health shall convene medical educators and other stakeholders to develop appropriate curricular interventions and innovations to ensure that students in medical education programs have access to certain core competencies related to safe prescribing practices and to screening, prevention, and intervention for cases of prescription drug misuse and abuse. The goal of the core competencies shall be to support future health care professionals over the course of their medical education to develop skills and a foundational knowledge in the prevention of prescription drug misuse. These competencies should be clear baseline standards for preventing prescription drug misuse, treating patients at risk for substance use disorders, and managing substance use disorders as a chronic disease, as well as developing knowledge in the areas of screening, evaluation, treatment planning, and supportive recovery.

* * * Community Grant Program for Opioid Prevention * * *

Sec. 11. REGIONAL PREVENTION PARTNERSHIPS

The Department of Health shall establish a community grant program for the purpose of supporting local opioid prevention strategies. This program shall support evidence-based approaches and shall be based on a comprehensive community plan, including community education and initiatives designed to increase awareness or implement local programs, or both. Partnerships involving schools, local government, and hospitals shall receive priority.

* * * Pharmaceutical Manufacturer Fee * * *

Sec. 12. 33 V.S.A. § 2004 is amended to read:

§ 2004. MANUFACTURER FEE

(a) Annually, each pharmaceutical manufacturer or labeler of prescription drugs that are paid for by the Department of Vermont Health Access for individuals participating in Medicaid, Dr. Dynasaur, or VPharm shall pay a fee to the Agency of Human Services. The fee shall be ~~0.5~~ 1.5 percent of the previous calendar year's prescription drug spending by the Department and shall be assessed based on manufacturer labeler codes as used in the Medicaid rebate program.

(b) Fees collected under this section shall fund collection and analysis of information on pharmaceutical marketing activities under 18 V.S.A. §§ 4632 and 4633~~,~~; analysis of prescription drug data needed by the Office of the Attorney General for enforcement activities~~,~~; the Vermont Prescription Monitoring System established in 18 V.S.A. chapter 84A~~,~~; the evidence-based education program established in 18 V.S.A. chapter 91, subchapter 2~~,~~; statewide unused prescription drug disposal initiatives; prevention of prescription drug misuse, abuse, and diversion; treatment of substance use disorder; exploration of nonpharmacological approaches to pain management; a hospital antimicrobial program for the purpose of reducing hospital-acquired infections; the purchase and distribution of naloxone to emergency medical services personnel; and any opioid-antagonist education, training, and distribution program operated by the Department of Health or its agents. The fees shall be collected in the Evidence-Based Education and Advertising Fund established in section 2004a of this title.

(c) The Secretary of Human Services or designee shall make rules for the implementation of this section.

(d) A pharmaceutical manufacturer that fails to pay a fee as required under this section shall be assessed penalties and interest in the same amounts and under the same terms as apply to late payment of income taxes pursuant to 32 V.S.A. chapter 151. The Department shall maintain on its website a list of the manufacturers who have failed to provide timely payment as required under this section.

Sec. 13. 33 V.S.A. § 2004a(a) is amended to read:

(a) The Evidence-Based Education and Advertising Fund is established in the State Treasury as a special fund to be a source of financing for activities relating to fund collection and analysis of information on pharmaceutical marketing activities under 18 V.S.A. §§ 4632 and 4633~~,~~; for analysis of

prescription drug data needed by the Office of the Attorney General for enforcement activities~~,~~; for the Vermont Prescription Monitoring System established in 18 V.S.A. chapter 84A~~,~~; for the evidence-based education program established in 18 V.S.A. chapter 91, subchapter 2~~,~~; for statewide unused prescription drug disposal initiatives; for the prevention of prescription drug misuse, abuse, and diversion; for treatment of substance use disorder; for exploration of nonpharmacological approaches to pain management; for a hospital antimicrobial program for the purpose of reducing hospital-acquired infections; for the purchase and distribution of naloxone to emergency medical services personnel; and for the support of any opioid-antagonist education, training, and distribution program operated by the Department of Health or its agents. Monies deposited into the Fund shall be used for the purposes described in this section.

* * * Controlled Substances and Pain Management Advisory Council * * *

Sec. 14. 18 V.S.A. § 4255 is added to read:

§ 4255. CONTROLLED SUBSTANCES AND PAIN MANAGEMENT ADVISORY COUNCIL

(a) There is hereby created a Controlled Substances and Pain Management Advisory Council for the purpose of advising the Commissioner of Health on matters related to the Vermont Prescription Monitoring System and to the appropriate use of controlled substances in treating acute and chronic pain and in preventing prescription drug abuse, misuse, and diversion.

(b)(1) The Controlled Substances and Pain Management Advisory Council shall consist of the following members:

(A) the Commissioner of Health or designee, who shall serve as chair;

(B) the Deputy Commissioner of Health for Alcohol and Drug Abuse Programs or designee;

(C) the Commissioner of Mental Health or designee;

(D) the Commissioner of Public Safety or designee;

(E) the Commissioner of Labor or designee;

(F) the Vermont Attorney General or designee;

(G) the Director of the Blueprint for Health or designee;

(H) the Medical Director of the Department of Vermont Health Access;

(I) the Chair of the Board of Medical Practice or designee, who shall be a clinician;

(J) a representative of the Vermont State Dental Society, who shall be a dentist;

(K) a representative of the Vermont Board of Pharmacy, who shall be a pharmacist;

(L) a faculty member of the academic detailing program at the University of Vermont's College of Medicine;

(M) a faculty member of the University of Vermont's College of Medicine with expertise in the treatment of addiction or chronic pain management;

(N) a representative of the Vermont Medical Society, who shall be a primary care clinician;

(O) a representative of the American Academy of Family Physicians, Vermont chapter, who shall be a primary care clinician;

(P) a representative from the Vermont Board of Osteopathic Physicians, who shall be an osteopath;

(Q) a representative from the Vermont Association of Naturopathic Physicians, who shall be a naturopathic physician;

(R) a representative of the Federally Qualified Health Centers, who shall be a primary care clinician selected by the Bi-State Primary Care Association;

(S) a representative of the Vermont Ethics Network;

(T) a representative of the Hospice and Palliative Care Council of Vermont;

(U) a representative of the Office of the Health Care Advocate;

(V) a representative of health insurers, to be selected by the three health insurers with the most covered lives in Vermont;

(W) a clinician who works in the emergency department of a hospital, to be selected by the Vermont Association of Hospitals and Health Systems in consultation with any nonmember hospitals;

(X) a clinician who specializes in occupational medicine, to be selected by the Commissioner of Health;

(Y) a clinician who specializes in physical medicine and rehabilitation, to be selected by the Commissioner of Health;

(Z) a member of the Vermont Board of Nursing Subcommittee on APRN Practice, who shall be an advanced practice registered nurse who has clinical experience that includes working with patients who are experiencing acute or chronic pain;

(AA) a representative from the Vermont Assembly of Home Health and Hospice Agencies;

(BB) a psychologist licensed pursuant to 26 V.S.A. chapter 55 who has experience in treating chronic pain, to be selected by the Board of Psychological Examiners;

(CC) a drug and alcohol abuse counselor licensed pursuant to 33 V.S.A. chapter 8, to be selected by the Deputy Commissioner of Health for Alcohol and Drug Abuse Programs;

(DD) a retail pharmacist, to be selected by the Vermont Pharmacists Association;

(EE) an advanced practice registered nurse full-time faculty member from the University of Vermont's College of Nursing and Health Sciences with a current clinical practice that includes caring for patients with acute or chronic pain;

(FF) a licensed acupuncturist with experience in pain management, to be selected by the Vermont Acupuncture Association;

(GG) a representative of the Vermont Substance Abuse Treatment Providers Association;

(HH) a consumer representative who is either a consumer in recovery from prescription drug abuse or a consumer receiving medical treatment for chronic noncancer-related pain; and

(II) a consumer representative who is or has been an injured worker and has been prescribed opioids.

(2) In addition to the members appointed pursuant to subdivision (1) of this subsection (b), the Council shall consult with the Opioid Prescribing Task Force, specialists, and other individuals as appropriate to the topic under consideration.

(c) Advisory Council members who are not employed by the State or whose participation is not supported through their employment or association shall be entitled to a per diem and expenses as provided by 32 V.S.A. § 1010.

(d)(1) The Advisory Council shall provide advice to the Commissioner concerning rules for the appropriate use of controlled substances in treating acute pain and chronic noncancer pain; the appropriate use of the Vermont

Prescription Monitoring System; and the prevention of prescription drug abuse, misuse, and diversion.

(2) The Advisory Council shall evaluate the use of nonpharmacological approaches to treatment for pain, including the appropriateness, efficacy, and cost-effectiveness of using complementary and alternative therapies such as chiropractic, acupuncture, and massage.

(e) The Commissioner of Health may adopt rules pursuant to 3 V.S.A. chapter 25 regarding the appropriate use of controlled substances in treating acute pain and chronic noncancer pain; the appropriate use of the Vermont Prescription Monitoring System; and the prevention of prescription drug abuse, misuse, and diversion, after seeking the advice of the Council.

* * * Unused Prescription Drug Disposal Program * * *

Sec. 14a. 18 V.S.A. § 4224 is added to read:

§ 4224. UNUSED PRESCRIPTION DRUG DISPOSAL PROGRAM

The Department of Health shall establish and maintain a statewide unused prescription drug disposal program to provide for the safe disposal of Vermont residents' unused and unwanted prescription drugs. The program may include establishing secure collection and disposal sites and providing medication envelopes for sending unused prescription drugs to an authorized collection facility for destruction.

* * * Acupuncture * * *

Sec. 15. INSURANCE COVERAGE FOR ACUPUNCTURE; REPORT

Each nonprofit hospital and medical service corporation licensed to do business in this State pursuant to both 8 V.S.A. chapters 123 and 125 and providing coverage for pain management shall evaluate the evidence supporting the use of acupuncture as a modality for treating and managing pain in its enrollees, including the experience of other states in which covered by health insurance plans. On or before January 15, 2017, each such corporation shall report to the House Committees on Health Care and on Human Services and the Senate Committee on Health and Welfare its assessment of whether its insurance plans should provide coverage for acupuncture when used to treat or manage pain.

Sec. 15a. ACUPUNCTURE; MEDICAID PILOT PROJECT

(a) The Department of Vermont Health Access shall develop a pilot project to offer acupuncture services to Medicaid-eligible Vermonters with a diagnosis of chronic pain. The project would provide acupuncture services for a defined period of time to determine if acupuncture treatment as an alternative or

adjunctive to prescribing opioids is as effective or more effective than opioids alone for returning individuals to social, occupational, and psychological function. The project shall include:

(1) an advisory group of pain management specialists and acupuncture providers familiar with the current science on evidence-based use of acupuncture to treat or manage chronic pain;

(2) specific patient eligibility requirements regarding the specific cause or site of chronic pain for which the evidence indicates acupuncture may be an appropriate treatment; and

(3) input and involvement from the Department of Health to promote consistency with other State policy initiatives designed to reduce the reliance on opioid medications in treating or managing chronic pain.

(b) On or before January 15, 2017, the Department of Vermont Health Access, in consultation with the Department of Health, shall provide a progress report on the pilot project to the House Committees on Health Care and on Human Services and the Senate Committee on Health and Welfare that includes an implementation plan for the pilot project described in this section. In addition, the Departments shall consider any appropriate role for acupuncture in treating substance use disorder, including consulting with health care providers using acupuncture in this manner, and shall make recommendations in the progress report regarding the use of acupuncture in treating Medicaid beneficiaries with substance use disorder.

* * * Health Department Position * * *

Sec. 16. HEALTH DEPARTMENT; POSITION

One new permanent classified position—a substance abuse program manager—is authorized in the Department of Health in order to coordinate a secure prescription drug collection and disposal program as part of the unused prescription drug disposal program established pursuant to Sec. 14a of this act. The position shall be transferred and converted from an existing vacant position in the Executive Branch of State government.

* * * Appropriations* * *

Sec. 17. APPROPRIATIONS

(a) The sum of $250,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Health in fiscal year 2017 for the purpose of funding the evidence-based education program established in 18 V.S.A. chapter 91, subchapter 2, including evidence-based information about safe prescribing of controlled substances and alternatives to opioids for treating pain.

(b) The sum of $625,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Health in fiscal year 2017 for the purpose of funding statewide unused prescription drug disposal initiatives, of which $100,000.00 shall be used for a secure prescription drug collection and disposal program and the program manager established by Sec. 16 of this act, $50,000.00 shall be used for unused medication envelopes for a mail-back program, $225,000.00 shall be used for a public information campaign on the safe disposal of controlled substances, and $250,000.00 shall be used for a public information campaign on the responsible use of prescription drugs.

(c) The sum of $150,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Health in fiscal year 2017 for the purpose of purchasing and distributing opioid antagonist rescue kits.

(d) The sum of $250,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Health in fiscal year 2017 for the purpose of establishing a hospital antimicrobial program to reduce hospital-acquired infections.

(e) The sum of $32,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Health in fiscal year 2017 for the purpose of purchasing and distributing naloxone to emergency medical services personnel throughout the State.

(f) The sum of $200,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Vermont Health Access in fiscal year 2017 for the purpose of exploring nonpharmacological approaches to pain management by implementing the pilot project established in Sec. 15a of this act to evaluate the use of acupuncture in treating chronic pain in Medicaid beneficiaries.

Sec. 18. REPEAL

2013 Acts and Resolves No. 75, Sec. 14, as amended by 2014 Acts and Resolves No. 199, Sec. 60 (Unified Pain Management System Advisory Council), is repealed.

* * * Effective Dates * * *

Sec. 19. EFFECTIVE DATES

(a) Secs. 1–2 (VPMS), 3 (opioid addiction treatment care coordination), 4 (telemedicine), 13 (use of Evidence-Based Education and Advertising Fund), 14 (Controlled Substances and Pain Management Advisory Council), 16 (Health Department position), 17 (appropriations), and 18 (repeal) shall take

effect on July 1, 2016, except that in Sec. 2, 18 V.S.A. § 4289(f)(2) (dispenser reporting to VPMS) shall take effect 30 days following notice and a determination by the Commissioner of Health that daily reporting is practicable.

(b) Secs. 2a (rulemaking), 5–7 (clinical pharmacy), 8 (role of pharmacies; report), 10 (medical education), 11 (regional partnerships), 14a (unused drug disposal program), 15–15a (acupuncture studies), and this section shall take effect on passage.

(c) Sec. 9 (continuing education) shall take effect on July 1, 2016 and shall apply beginning with licensing periods beginning on or after that date.

(d) Notwithstanding 1 V.S.A. § 214, Sec. 12 (manufacturer fee) shall take effect on passage and shall apply retroactive to January 1, 2016.

(Committee vote: 10-1-0)

(For text see Senate Journal March 30, 2016)

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: In Sec. 9, continuing education, in subsection (a), following "medication tapering", by inserting before the semicolon "and cessation of the use of controlled substances"

Second: In Sec. 10, medical education core competencies; prevention and management of prescription drug misuse, by striking out "medical education programs", and inserting in lieu thereof "undergraduate and graduate medical education and dental and pharmacy residency programs"

(Committee Vote: 11-0-0)

S. 250

An act relating to alcoholic beverages

Rep. Stevens of Waterbury, for the Committee on **General, Housing & Military Affairs,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 7 V.S.A. § 2 is amended to read:

§ 2. DEFINITIONS

The following words as used in this title, unless a contrary meaning is required by the context, shall have the following meaning:

* * *

(5) ~~"Cabaret license": a first-class license or first- and third-class licenses where the business is devoted primarily to providing entertainment, dancing, and the sale of alcoholic beverages to the public and not the service of food. The holder of a "cabaret license" shall serve food at all times when open for business and shall have adequate and sanitary space and equipment for preparing and serving food. However, the gross receipts from the sale of food shall be less than the combined receipts from the sales of alcoholic beverages, entertainment, and dancing in the prior reporting year. All laws and regulations pertaining to a first-class license or first- and third-class licenses shall apply to the first-class or first- and third-class cabaret licenses.~~ [Repealed.]

(6) "Caterer's license": a license issued by the Liquor Control Board authorizing the holder of a first-class license or first- and third-class licenses for a ~~cabaret,~~ restaurant~~,~~ or hotel premises to serve malt or vinous beverages, spirits, or fortified wines at a function located on premises other than those occupied by a first-, first- and third-, or second-class licensee to sell alcoholic beverages.

* * *

(15) "Manufacturer's or rectifier's license": a license granted by the Liquor Control Board that permits the holder to manufacture or rectify ~~spirits or~~ malt beverages, or vinous beverages and fortified wines, or spirits and fortified wines. Spirits and fortified wines may be manufactured or rectified by a license holder for export and sale to the Liquor Control Board, ~~or~~ and malt beverages and vinous beverages may be manufactured or rectified by a license holder for export and sale to bottlers or wholesale dealers. This license permits a manufacturer of vinous beverages or fortified wines to receive from another manufacturer licensed in or outside this State bulk shipments of vinous beverages to rectify with the licensee's own product, provided that the vinous beverages or fortified wines produced by a Vermont manufacturer may contain no more than 25 percent imported vinous beverage. The Liquor Control Board may grant to a licensed manufacturer or rectifier of spirits, fortified wines, vinous beverages, or malt beverages a first-class ~~restaurant or cabaret~~ license or a first- and a third-class ~~restaurant or cabaret~~ license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer's premises~~,~~ which for the purposes of a manufacturer of malt beverages, includes up to two licensed establishments that are located on the contiguous real estate of the holder of the manufacturer's license, provided the manufacturer or rectifier owns or has direct control over those establishments. ~~A manufacturer of malt beverages who also holds a first-class restaurant or cabaret license may serve~~

~~to a customer malt beverage by the glass, not to exceed eight glasses at one time and not to exceed four ounces in each glass.~~ The Liquor Control Board may grant to a licensed manufacturer or a rectifier of malt beverages a second-class license permitting the licensee to sell alcoholic beverages to the public anywhere on the manufacturer's or rectifier's premises. A licensed manufacturer or rectifier ~~of vinous beverages~~ may serve, with or without charge, at an event held on the premises of the licensee or ~~the vineyard property~~ at a location on the contiguous real estate of the licensee, spirits, fortified wines, vinous beverages, and malt beverages, provided the licensee gives the Department written notice of the event, including details required by the Department, at least five days before the event. Any beverages not manufactured by the licensee and served at the event shall be purchased on invoice from a licensed manufacturer or wholesale dealer or the Liquor Control Board.

(16) "Person~~,~~": as applied to licensees, means ~~individuals~~ an individual who ~~are citizens~~ is a citizen or a lawful permanent resident of the United States~~, partnerships~~; a partnership composed of individuals, a majority of whom are citizens or lawful permanent residents of the United States~~, and corporations~~; a corporation organized under the laws of this State or another state in which a majority of the directors are citizens or lawful permanent residents of the United States ~~and to~~; or a limited liability ~~companies~~ company organized under the laws of this State or another state in which a majority of the members or managers are citizens or lawful permanent residents of the United States.

* * *

(27) "Special events permit": a permit granted by the Liquor Control Board permitting a ~~person holding a manufacturer's or rectifier's license~~ licensed manufacturer or rectifier to sell by the glass or by unopened bottle spirits, fortified wines, malt beverages, or vinous beverages manufactured or rectified by the license holder at an event open to the public that has been approved by the local licensing authority. For the purposes of tasting only, the permit holder may distribute, with or without charge, beverages manufactured by the permit holder by the glass no more than two ounces per product and eight ounces total of malt beverages or vinous beverages and no more than one ounce in total of spirits or fortified wines to each individual. No more than 104 special events permits may be issued to a ~~holder of a manufacturer's or rectifier's license~~ licensed manufacturer or rectifier during a year. A special ~~event~~ events permit shall be valid for the duration of each public event or four days, whichever is shorter. Requests for a special events permit, accompanied by the fee as required by subdivision 231(13) of this title, shall be submitted to the Department of Liquor Control at least five days prior to the date of the

event. Each manufacturer or rectifier planning to attend a single special event under this permit may be listed on a single permit. However, each attendance at a special event shall count toward the manufacturer's or rectifier's annual limit of 104 ~~special event permit limitation~~ special events permits.

(28) "Fourth-class license" or "farmers' market license": the license granted by the Liquor Control Board permitting a ~~manufacturer or rectifier of malt beverages, vinous beverages, fortified wines, or spirits~~ licensed manufacturer or rectifier to sell by the unopened container and distribute by the glass with or without charge, beverages manufactured by the licensee. No more than a combined total of ten fourth-class and farmers' market licenses may be granted to a licensed manufacturer or rectifier. At only one fourth-class license location, a ~~manufacturer or rectifier of vinous beverages, malt beverages, fortified wines, or spirits~~ licensed manufacturer or rectifier may sell by the unopened container and distribute by the glass, with or without charge, vinous beverages, malt beverages, fortified wines, or spirits produced by no more than five additional manufacturers or rectifiers, provided these beverages are purchased on invoice from the manufacturer or rectifier. A manufacturer or rectifier ~~of vinous beverages, malt beverages, fortified wines, or spirits~~ may sell its product to no more than five additional manufacturers or rectifiers. A fourth-class licensee may distribute by the glass no more than two ounces of malt beverages or vinous beverages with a total of eight ounces to each retail customer and no more than one-quarter ounce of spirits or fortified wine with a total of one ounce to each retail customer for consumption on the manufacturer's premises or at a farmers' market. A ~~fourth class~~ fourth-class licensee may distribute by the glass up to four mixed drinks containing a combined total of no more than one ounce of spirits or fortified wine to each retail customer for consumption only on the manufacturer's premises. A farmers' market license is valid for all dates of operation for a specific farmers' market location.

* * *

(36) "Outside consumption permit": a permit granted by the Liquor Control Board allowing the holder of a first-class ~~or~~, first- and third-class ~~license holder and~~, or fourth-class license ~~holder~~ to allow for consumption of alcohol in a delineated outside area.

* * *

(40) "Retail delivery permit": a permit granted by the Liquor Control Board that permits a second-class licensee to deliver malt beverages or vinous beverages sold from the licensed premises for consumption off the premises to an individual who is at least 21 years of age at a physical address in Vermont.

(41) "Destination resort master license": a license granted by the Liquor Control Board pursuant to section 472 of this title permitting a destination resort to designate licensed caterers and commercial caterers that will be permitted to cater individual events within the boundaries of the resort without being required to obtain a request to cater permit for each individual event. For purposes of a destination resort master license, a "destination resort" is a resort that contains at least 100 acres of land, offers at least 50 units of sleeping accommodations, offers food and beverage service to the public for consideration, and has related sports and recreational facilities for the convenience or enjoyment of its guests. "Destination resort" does not include the University of Vermont, the Vermont State Colleges, or any other university, college, or postsecondary school.

Sec. 2. 7 V.S.A. § 67 is amended to read:

§ 67. ALCOHOLIC BEVERAGE TASTINGS; PERMIT; PENALTIES

* * *

(d) Promotional alcoholic beverage tasting:

(1) At the request of a holder of a first- or second-class license, a holder of a manufacturer's, rectifier's, or wholesale dealer's license may distribute without charge to the first- or second-class licensee's management and staff, provided they are of legal drinking age and are off duty for the rest of the day, two ounces per person of vinous or malt beverages for the purpose of promoting the beverage. At the request of a holder of a third-class license, a manufacturer or rectifier of spirits or fortified wines may distribute without charge to the third-class licensee's management and staff, provided they are of legal drinking age and are off duty for the rest of the day, one-quarter ounce of each beverage and no more than a total of one ounce to each individual for the purpose of promoting the beverage. No permit is required under this subdivision, but written notice of the event shall be provided to the Department of Liquor Control at least ~~five days~~ two days prior to the date of the tasting.

* * *

(e) Tastings for product quality assurance. A licensed manufacturer or rectifier may distribute to its management and staff who are directly involved in the production of the licensee's products, provided they are of legal drinking age and at the licensed premises, samples of the licensee's products for the purpose of assuring the quality of the products. Each sample of vinous or malt beverages shall be no larger than two ounces, and each sample of spirits or fortified wines shall be no larger than one-quarter ounce. No permit is required under this subsection.

(f) Age and training of servers. No individual who is under ~~the age of~~ 18 years of age or who has not received training as required by the Department may serve alcoholic beverages at an event under this section.

~~(f)~~(g) Penalties. The holder of a permit issued under this section that provides alcoholic beverages to an underage individual or permits an individual under ~~the age of~~ 18 years of age to serve alcoholic beverages at a beverage tasting event under this section shall be fined not less than $500.00 nor more than $2,000.00 or imprisoned not more than two years, or both.

Sec. 3. 7 V.S.A. § 231 is amended to read:

§ 231. FEES FOR LICENSES AND PERMITS; DISPOSITION OF FEES

(a) The following fees shall be paid:

(1) For a manufacturer's or rectifier's license to manufacture or rectify malt beverages ~~and~~, or vinous beverages and fortified wines, or ~~to manufacture or rectify~~ spirits and fortified wines, $285.00 for ~~either~~ each license.

* * *

(11) For up to ten fourth-class ~~vinous~~ licenses, $70.00.

* * *

(25) For a retail delivery permit, $100.00.

(26) For a destination resort master license, $1,000.00.

* * *

Sec. 4. 7 V.S.A. § 222 is amended to read:

§ 222. FIRST- AND SECOND-CLASS LICENSES; GRANTING OF; SALE TO MINORS; CONTRACTING FOR FOOD SERVICE

With the approval of the Liquor Control Board, the control commissioners may grant the following licenses to a retail dealer for the premises where the dealer carries on business:

(1) Upon making application and paying the license fee provided in section 231 of this title, a first-class license which authorizes the dealer to sell malt and vinous beverages for consumption only on those premises, and upon satisfying the Liquor Control Board that the premises are leased, rented, or owned by the retail dealer and are devoted primarily to dispensing meals to the public, except clubs ~~and cabarets~~, and that the premises have adequate and sanitary space and equipment for preparing and serving meals. The term "public" includes patrons of hotels, boarding houses, restaurants, dining cars, and similar places where meals are served. A retail dealer carrying on business

in more than one place shall acquire a first-class license for each place where the retail dealer sells malt and vinous beverages. No malt or vinous beverages shall be sold by a first-class licensee to a minor. Partially consumed bottles of vinous beverages or specialty beers that were purchased with a meal may be removed from first-class licensed premises provided the beverages are recapped or resealed.

* * *

(7)(A)(i) The Liquor Control Board may grant a retail delivery permit to a second-class licensee if the licensee files an application accompanied by the fee provided in section 231 of this title.

(ii) Notwithstanding subdivision (i) of this subdivision (7)(A), the Liquor Control Board shall not grant a retail delivery permit in relation to a second-class license issued to a licensed manufacturer or rectifier for the manufacturer's or rectifier's premises.

(B) A retail delivery permit holder may deliver malt beverages or vinous beverages sold from the licensed premises for consumption off the premises to an individual who is at least 21 years of age subject to the following requirements:

(i) Deliveries shall only be made by the permit holder or an employee of the permit holder.

(ii) Deliveries shall only occur between the hours of 9:00 a.m. and 5:00 p.m.

(iii) Deliveries shall only be made to a physical address located in Vermont.

(iv) An employee of a retail delivery permit holder shall not be permitted to make deliveries of malt beverages or vinous beverages pursuant to the permit unless he or she has completed a training program approved by the Department as required pursuant to section 239 of this chapter.

(v) Malt beverages and vinous beverages delivered pursuant to a retail delivery permit shall be for personal use and not for resale.

Sec. 5. RETAIL DELIVERY PERMIT; RULEMAKING

On or before January 1, 2017, the Liquor Control Board shall adopt rules necessary to implement the retail delivery permit created by Sec. 4 of this act. The rules shall include:

(1) minimum insurance requirements for a retail delivery permit holder;

(2) limitations on the quantity of malt beverages and vinous beverages that may be delivered;

(3) training and age requirements for employees permitted to make deliveries; and

(4) requirements related to age verification of delivery recipients, recordkeeping, labeling of deliveries, and the identification of delivery personnel or delivery vehicles.

Sec. 6. 7 V.S.A. § 224 is amended to read:

§ 224. THIRD-CLASS LICENSES; OPEN CONTAINERS

(a) The Liquor Control Board may grant to a person who operates a hotel, restaurant~~, cabaret~~, or club a license of the third class if the person files an application accompanied by the license fee as provided in section 231 of this title for the premises in which the business of the hotel, restaurant~~, cabaret~~, or club is carried on. The holder of a third-class license may sell spirits and fortified wines for consumption only on the premises covered by the license. The applicant for a third-class license shall satisfy the Liquor Control Board that the applicant is the bona fide owner or lessee of the premises and that the premises are operated for the purpose covered by the license.

* * *

Sec. 7. 7 V.S.A. § 242 is added to read:

§ 242. DESTINATION RESORT MASTER LICENSES

(a) The Liquor Control Board may grant a destination resort master license to a person that operates a destination resort if the applicant files an application with the Liquor Control Board accompanied by the license fee provided in section 231 of this title. In addition to any information required pursuant to rules adopted by the Board, the application shall:

(1) designate all licensed caterers and commercial caterers that are proposed to be permitted to cater individual events within the boundaries of the resort pursuant to the destination resort master license;

(2) demonstrate that the destination resort:

(A) contains at least 100 acres of land; and

(B) offers at least 50 units of sleeping accommodations; and

(3) include a plan of the destination resort that sets forth:

(A) the destination resort boundaries;

(B) the ownership of the destination resort lands;

(C) the location and general design of buildings and other improvements within the resort boundaries; and

(D) the location of any sports and recreational facilities within the resort boundaries.

(b) A licensee may, upon five days' notice to the Department, amend the list of licensed caterers and commercial caterers that are designated in the destination resort master license.

(c) The holder of the destination resort master license shall, at least two days prior to the date of the event, provide the Department and local control commissioners with written notice of an event within the resort boundaries that will be catered pursuant to the master license. A licensed caterer or commercial caterer that is designated in the master license shall not be required to obtain a request to cater permit to cater an event occurring within the destination resort boundaries if the master licensee has provided the Department and local control commissioners with the required notice pursuant to this subsection.

(d) Real estate of a destination resort master license holder that is not contiguous with the license holder's principal premises or is located in a different municipality from the license holder's principal premises may be included in the destination resort's boundaries if it is clearly identified and delineated on the plan of the destination resort that is submitted pursuant to subsection (a) of this section.

Sec. 8. 7 V.S.A. § 421 is amended to read:

§ 421. TAX ON MALT AND VINOUS BEVERAGES

(a) Every bottler and wholesaler shall pay to the Commissioner of Taxes the sum of 26 and one-half cents per gallon for every gallon or its equivalent of malt beverage containing not more than six percent of alcohol by volume at 60 degrees Fahrenheit sold by them to retailers in the State and the sum of 55 cents per gallon for each gallon of malt beverage containing more than six percent of alcohol by volume at 60 degrees Fahrenheit and each gallon of vinous beverages sold by them to retailers in the State and shall also pay to the Liquor Control Board all fees for bottler's and wholesaler's licenses. A manufacturer or rectifier of malt or vinous beverages shall pay the taxes required by this subsection to the Commissioner of Taxes for all malt and vinous beverages manufactured or rectified by them and sold at retail.

* * *

(c)(1) For the purpose of ascertaining the amount of tax, ~~on or before the tenth day of each calendar month~~ on the filing dates set out in subdivision (2)

of this subsection according to tax liability, each bottler and wholesaler shall transmit to the Commissioner of Taxes, upon a form prepared and furnished by the Commissioner, a statement or return under oath or affirmation showing the quantity of malt and vinous beverages sold by the bottler or wholesaler during the preceding ~~calendar month~~ filing period, and report any other information requested by the Commissioner accompanied by payment of the tax required by this section. The amount of tax computed under subsection (a) of this section shall be rounded to the nearest whole cent. At the same time this form is due, each bottler and wholesaler also shall transmit to the Commissioner in electronic format a separate report showing the description, quantity, and price of malt and vinous beverages sold by the bottler or wholesaler to each retail dealer as defined in subdivision 2(18) of this title; provided, however, for direct sales to retail dealers by manufacturers or rectifiers of vinous beverages, the report required by this subsection may be submitted in a nonelectronic format.

(2) Where the tax liability for the immediately preceding full calendar year has been (or would have been in cases when the business was not operating for the entire year):

(A) $2,000.00 or less, then payment of the tax and submission of the documents required by this section shall be due and payable in quarterly installments on or before the 25th day of the calendar month succeeding the quarter ending the last day of March, June, September, and December of each year; or

(B) More than $2,000.00, then payment of the tax and submission of the documents required by this section shall be due and payable monthly on or before the 25th (23rd of February) day of the month following the month for which the tax is due.

* * *

Sec. 9. 7 V.S.A. § 423 is amended to read:

§ 423. ~~REGULATIONS~~ RULES

(a) The ~~tax commissioner~~ Commissioner of Taxes and the ~~liquor control board~~ Liquor Control Board shall ~~make~~ adopt such rules ~~and regulations~~ as they deem necessary for the proper administration and collection of the tax imposed under section 422 of this title.

(b) Notwithstanding subsection (a) of this section, where the spirits and fortified wines tax liability of a manufacturer or rectifier under section 422 of this title for the immediately preceding full calendar year has been (or would have been in cases when the business was not operating for the entire year)

$1,000.00 or less, the tax imposed on the manufacturer or rectifier by section 422 of this title shall be due and payable in one annual payment on or before the 25th day of January. Where the spirits and fortified wines tax liability of a manufacturer or rectifier under section 422 of this title for the immediately preceding full calendar year has been (or would have been in cases when the business was not operating for the entire year) more than $1,000.00, the tax imposed on the manufacturer or rectifier by section 422 of this title shall be due and payable in quarterly installments on or before the 25th day of the calendar month succeeding the quarter ending the last day of March, June, September, and December of each year.

Sec. 10. 7 V.S.A. § 424 is amended to read:

§ 424. COLLECTION

The ~~liquor control board~~ Liquor Control Board shall collect the tax imposed under section 422 of this title ~~from the purchaser thereof~~. The taxes ~~so~~ collected on sales by the Liquor Control Board shall be paid weekly to the ~~state treasurer~~ State Treasurer, and the taxes collected on sales by a manufacturer or rectifier shall be paid quarterly to the State Treasurer.

Sec. 11. 32 V.S.A. § 9202 is amended to read:

§ 9202. DEFINITIONS

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

* * *

(4) "Operator" means any person, or his or her agent, operating a hotel, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise; and any person, or his or her agent, charging for a taxable meal or alcoholic beverage; and any person, or his or her agent, engaged in both of the foregoing activities. In the event that an operator is a corporation or other entity, the term "operator" shall include any officer or agent of such corporation or other entity who, as an officer or agent of the corporation, is under a duty to pay the gross receipts tax to the Commissioner as required by this chapter.

* * *

(11) "Alcoholic beverages" means any malt beverages, vinous beverages, ~~or spirituous liquors~~ spirits, or fortified wines as defined in 7 V.S.A. § 2 and served ~~on premises by a holder of a first or third class license issued under 7 V.S.A. chapter 9~~ for immediate consumption. "Alcoholic beverages" do not include any beverages served under the circumstances

enumerated in subdivision 9202(10)(D)(ii) of this chapter under which beverages are excepted from the definition of "taxable meal."

* * *

Sec. 12. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(10) Sales of meals or alcoholic beverages taxed or exempted under chapter 225 of this title, or any alcoholic beverages provided for immediate consumption.

* * *

Sec. 13. DEPARTMENT OF TAXES; STUDY OF TRANSFER OF MALT BEVERAGES BETWEEN LICENSED MANUFACTURING LOCATIONS; REPORT

(a) The Department of Taxes, in consultation with the Department of Liquor Control and interested stakeholders, shall study the bulk transfer of malt beverages without the payment of taxes pursuant to 7 V.S.A. § 421 between licensed manufacturers of malt beverages that are under the same ownership. In particular, the Department shall study:

(1) what legislative, regulatory, or administrative changes, if any, are necessary to enable the bulk transfer of malt beverages without the payment of taxes pursuant to 7 V.S.A. § 421 between licensed manufacturers of malt beverages that are under the same ownership; and

(2) whether permitting the bulk transfer of malt beverages without the payment of taxes pursuant to 7 V.S.A. § 421 between licensed manufacturers of malt beverages that are under the same ownership would adversely impact the State's tax revenues.

(b) On or before January 15, 2017, the Department of Taxes shall submit a written report to the House Committees on General, Housing and Military Affairs and on Ways and Means, and the Senate Committees on Economic Development, Housing and General Affairs and on Finance regarding its findings and any recommendations for legislative action.

(c) For purposes of this section, two licensed manufacturers of malt beverages are "under the same ownership" if:

(1) the manufacturers are part of the same company;

(2) one manufacturer owns the controlling interest in the other manufacturer; or

(3) the controlling interest in each manufacturer is owned by the same person.

Sec. 14. 7 V.S.A. § 101 is amended to read:

§ 101. COMPOSITION OF DEPARTMENT; COMMISSIONER OF LIQUOR CONTROL; LIQUOR CONTROL BOARD

(a) The Department of Liquor Control, created by 3 V.S.A. § 212, shall include the Commissioner of Liquor Control and the Liquor Control Board.

(b)(1) The Liquor Control Board shall consist of five persons, not more than three members of which shall belong to the same political party.

(2)(A) ~~Biennially, with~~ With the advice and consent of the Senate, the Governor shall appoint ~~a person as a member~~ members of ~~such~~ the Board for ~~a staggered five-year term, whose~~ staggered five-year terms.

(B) The Governor shall fill a vacancy occurring during a term by an appointment for the unexpired term in accordance with the provisions of 3 V.S.A. § 257(b).

(C) A member's term of office shall commence on February 1 of the year in which ~~such appointment is made~~ the member is appointed.

(3) The Governor shall biennially designate a member of ~~such~~ the Board to be its Chair.

Sec. 15. 7 V.S.A. § 102 is amended to read:

§ 102. REMOVAL

~~After~~ Notwithstanding any provision of 3 V.S.A. § 2004 to the contrary, after notice and hearing, the ~~governor~~ Governor may remove a member of the ~~liquor control board~~ Liquor Control Board for incompetency, failure to discharge his or her duties, malfeasance, immorality, or other cause inimical to the general good of the ~~state~~ State. In case of such removal, the ~~governor~~ Governor shall appoint a person to fill the unexpired term.

Sec. 16. 7 V.S.A. § 106 is amended to read:

§ 106. COMMISSIONER OF LIQUOR CONTROL; REPORTS;

RECOMMENDATIONS

~~The board shall employ an executive officer, who shall be the secretary of the board and shall be called the commissioner of liquor control. The commissioner shall be appointed for an indefinite period and shall be subject to removal upon the majority vote of the entire board. At such times and in such detail as the board directs, the commissioner shall make reports to the board concerning the liquor distribution system of the state, together with such recommendations as he deems proper for the promotion of the general good of the state.~~

(a)(1) With the advice and consent of the Senate, the Governor shall appoint from among no fewer than three candidates proposed by the Liquor Control Board a Commissioner of Liquor Control for a term of four years.

(2) The Board shall review the applicants for the position of Commissioner of Liquor Control and by a vote of the majority of the members of the Board shall select candidates to propose to the Governor. The Board shall consider each applicant's administrative expertise and his or her knowledge regarding the business of distributing and selling alcoholic beverages.

(b) The Commissioner shall serve at the pleasure of the Governor until the end of the term for which he or she is appointed or until a successor is appointed.

Sec. 17. 7 V.S.A. § 107 is amended to read:

§ 107. DUTIES OF COMMISSIONER OF LIQUOR CONTROL

The Commissioner of Liquor Control shall:

(1) In towns ~~which~~ that vote to permit the sale of spirits and fortified wines, establish ~~such number of~~ local agencies ~~therein~~ as the Board shall determine~~, enter into agreements for the rental of necessary and adequate quarters, and employ suitable assistants for the operation thereof~~. However, ~~it shall not be obligatory upon~~ the Liquor Control Board shall not be obligated to establish an agency in every town ~~which~~ that votes to permit the sale of spirits and fortified wines.

(2) ~~Make regulations~~ Recommend rules subject to ~~the~~ approval ~~of~~ and adoption by the Board governing the hours during which ~~such~~ local agencies shall be open for the sale of spirits and fortified wines ~~and governing,~~ the qualifications~~, deportment, and salaries~~ of the agencies' employees, and the business, operational, financial, and revenue standards that must be met for the establishment of an agency and its continued operation.

(3) ~~Make regulations~~ Recommend rules subject to ~~the~~ approval ~~of~~ and adoption by the Board governing:

(A) the prices at which spirits shall be sold by local agencies, the method for their delivery, and the quantities of spirits that may be sold to any one person at any one time; and

(B) the minimum prices at which fortified wines shall be sold by local agencies and second-class licensees that hold fortified wine permits, the method for their delivery, and the quantities of fortified wines that may be sold to any one person at any one time.

(4) Supervise the quantities and qualities of spirits and fortified wines to be kept as stock in local agencies and ~~make regulations~~ recommend rules subject to ~~the~~ approval ~~of~~ and adoption by the Board regarding the filling of requisitions therefor on the Commissioner of Liquor Control.

(5) Purchase through the Commissioner of Buildings and General Services spirits and fortified wines for and in behalf of the Liquor Control Board, supervise ~~the~~ their storage ~~thereof~~ and ~~the~~ distribution to local agencies, druggists ~~and, licensees of the third class~~, third-class licensees, and holders of fortified wine permits, and ~~make regulations~~ recommend rules subject to ~~the~~ approval ~~of~~ and adoption by the Board regarding the sale and delivery from the central storage plant.

(6) Check and audit the income and disbursements of all local agencies~~,~~ and the central storage plant.

(7) Report to the Board regarding the State's liquor control system and make recommendations for the promotion of the general good of the State.

(8) Devise methods and plans for eradicating intemperance and promoting the general good of the ~~state~~ State and make effective such methods and plans as part of the administration of this title.

Sec. 18. RULEMAKING

On or before July 1, 2017, the Commissioner shall prepare and submit to the Liquor Control Board for its approval and adoption his or her recommendation for rules to govern the business, operational, financial, and revenue standards for local agencies as necessary to implement this act.

Sec. 19. LEGISLATIVE COUNCIL; DRAFT LEGISLATION

On or before January 15, 2017, the Office of Legislative Council shall prepare and submit a draft bill to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs that makes statutory amendments of a technical

nature to improve the clarity of Title 7 through the reorganization of its provisions and the modernization of its statutory language. The draft bill shall also identify provisions of Title 7 that may require amendment in order to remove out-of-date and obsolete provisions or to reflect more accurately the current practices and programs of the Liquor Control Board and the Department of Liquor Control. The Office of Legislative Council shall consult with the Commissioner of Liquor Control, the Liquor Control Board, and the Office of the Attorney General to identify language requiring modernization and provisions that are out-of-date, obsolete, or do not reflect accurately the current practices and programs of the Liquor Control Board and the Department of Liquor Control.

Sec. 20. COMMISSIONER OF LIQUOR CONTROL; CURRENT TERM; APPOINTMENT OF SUCCESSOR

The Commissioner of Liquor Control in office on the effective date of this act shall be deemed to have commenced a four-year term pursuant to 7 V.S.A. § 106(a)(1) on February 1, 2016. The Commissioner shall serve until the end of the four-year term or until a successor is appointed as provided pursuant to 7 V.S.A. § 106. Notwithstanding any provision of 3 V.S.A. § 2004 or 7 V.S.A. § 106(b) to the contrary, during this current term, the Governor may remove the Commissioner for cause after notice and a hearing.

Sec. 21. EFFECTIVE DATES

(a) In Sec. 3, 7 V.S.A. § 231, subdivisions (a)(1) (manufacturer's or rectifier's license) and (a)(11) (fourth-class license) shall take effect on July 2, 2016. The remaining provisions of Sec. 3 shall take effect on July 1, 2016.

(b) In Sec. 4, 7 V.S.A. § 222, subdivision (7) shall take effect on January 1, 2017. The remaining provisions of Sec. 4 shall take effect on July 1, 2016.

(c) This section and the remaining sections of this act shall take effect on July 1, 2016.

(Committee vote: 8-0-0)

(For text see Senate Journal March 18, 2016)

Rep. Clarkson of Woodstock, for the Committee on **Ways & Means,** recommends the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on **General, Housing & Military Affairs** and when further amended as follows:

First: In Sec. 4, 7 V.S.A. § 222, in subdivision (7)(B)(ii), after the words "Deliveries shall only occur between the hours of 9:00 a.m. and" by striking out "5:00 p.m." and by inserting in lieu thereof "9:00 p.m."

Second: In Sec. 14, 7 V.S.A. § 101, by striking out Sec. 14 in its entirety and inserting in lieu thereof a new Sec. 14 to read as follows:

Sec. 14. 7 V.S.A. § 101 is amended to read:

§ 101. COMPOSITION OF DEPARTMENT; COMMISSIONER OF LIQUOR CONTROL; LIQUOR CONTROL BOARD

(a) The Department of Liquor Control, created by 3 V.S.A. § 212, shall include the Commissioner of Liquor Control and the Liquor Control Board.

(b)(1) The Liquor Control Board shall consist of five persons, not more than three members of which shall belong to the same political party.

(2)(A) ~~Biennially, with~~ With the advice and consent of the Senate, the Governor shall appoint ~~a person as a member~~ members of ~~such~~ the Board for ~~a staggered five-year term, whose~~ staggered five-year terms.

(B) The Governor shall fill a vacancy occurring during a term by an appointment for the unexpired term in accordance with the provisions of 3 V.S.A. § 257(b).

(C) A member's term of office shall commence on February 1 of the year in which ~~such appointment is made~~ the member is appointed.

(3) A member of the Board may serve for no more than two consecutive full terms. A member who is appointed to fill a vacancy occurring during a term may serve two consecutive full terms in addition to the unexpired portion of the term during which the member is first appointed.

(4) The Governor shall biennially designate a member of ~~such~~ the Board to be its Chair.

Third: After Sec. 20, Commissioner of Liquor Control; Current Term; Appointment of Successor, by inserting Secs. 21 and 22 to read as follows:

Sec. 21. CURRENT LIQUOR CONTROL BOARD MEMBERS; TERM LIMIT

For purposes of the term limit set forth in 7 V.S.A. § 101(b)(3), the current term of each of the Liquor Control Board members in office on the effective date of this act shall be deemed to be that member's first consecutive term as a member of the Board.

Sec. 22. RECAPTURE OF LOST SALES OF SPIRITS AND FORTIFIED WINES; DEPARTMENT OF LIQUOR CONTROL; PROPOSAL

(a) In order to increase revenue by recapturing sales of spirits and fortified wines that are lost to neighboring states, the Commissioner of Liquor Control shall develop a written proposal to improve, diversify, and increase the number of Vermont's agency liquor stores. The proposal shall include an optimal number of State agency liquor stores, taking into account population, geography, and proximity to Vermont's borders, and a recommendation for any legislative action that is necessary to implement it.

(b) The proposal also shall consider and address the following:

(1) The distribution of agency liquor stores in rural areas and underserved portions of the State, and whether additional stores that are permitted to carry a smaller or more limited selection of products should be added to serve such areas.

(2) Whether to create a new type of agency liquor store that owns the spirits and fortified wines it sells.

(3) Whether to permit certain agency liquor stores to decide to carry a modified selection of products subject to minimum requirements established by the Liquor Control Board.

(c) On or before January 15, 2017, the Commissioner shall submit the proposal to the House Committees on General, Housing and Military Affairs and on Ways and Means, and the Senate Committees on Economic Development, Housing and General Affairs and on Finance.

and by renumbering the remaining section to be numerically correct

(Committee Vote: 11-0-0)

S. 257

An act relating to residential rental agreements

Rep. Stevens of Waterbury, for the Committee on **General, Housing & Military Affairs,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 4451 is amended to read:

§ 4451. DEFINITIONS

As used in this chapter:

* * *

(9) "Sublease" means a rental agreement, written or oral, embodying terms and conditions concerning the use and occupancy of a dwelling unit and premises between two tenants, a sublessor and a sublessee.

(10) "Tenant" means a person entitled under a rental agreement to occupy a residential dwelling unit to the exclusion of others.

Sec. 2. 9 V.S.A. § 4452 is amended to read:

§ 4452. EXCLUSIONS

Unless created to avoid the application of this chapter, this chapter does not apply to any of the following:

* * *

(7) transient residence in a campground, which for the purposes of this chapter means any property used for seasonal or short-term vacation or recreational purposes on which are located cabins, tents, or lean-tos, or campsites designed for temporary set-up of portable or mobile camping, recreational, or travel dwelling units, including tents, campers, and recreational vehicles such as motor homes, travel trailers, truck campers, and van campers; ~~or~~

(8) transient occupancy in a hotel, motel, or lodgings during the time the occupant is a recipient of General Assistance or Emergency Assistance temporary housing assistance, regardless of whether the occupancy is subject to a tax levied under 32 V. S.A. chapter 225; or

(9) occupancy of a dwelling unit without right or permission by a person who is not a tenant.

Sec. 3. 9 V.S.A. § 4456b is added to read:

§ 4456b. SUBLEASES; LANDLORD AND TENANT RIGHTS AND OBLIGATIONS

(a)(1) A landlord may condition or prohibit subleasing a dwelling unit under the terms of a written rental agreement, and may require a tenant to provide written notice of the name and contact information of any sublessee occupying the dwelling unit.

(2) If the terms of a written rental agreement prohibit subleasing the dwelling unit, the landlord or tenant may bring an action for ejectment pursuant to 12 V.S.A. §§ 4761 and 4853b against a person that is occupying the dwelling unit without right or permission. This subdivision (2) shall not be

construed to limit the rights and remedies available to a landlord pursuant to this chapter.

(b) In the absence of a written rental agreement, a tenant shall provide the landlord with written notice of the name and contact information of any sublessee occupying the dwelling unit.

Sec. 4. 12 V.S.A. § 4761 is amended to read:

§ 4761. WHEN MAINTAINABLE; PARTIES

A person having claim to the seisin or possession of lands, tenements or hereditaments shall have an action of ejectment, according to the nature of the case, which shall be brought as well against the landlord, if any, as against the tenant in possession of the premises, or against a person that is occupying a dwelling unit, for which subleasing is prohibited pursuant to a written rental agreement, without right or permission pursuant to 9 V.S.A. § 4456b(a)(2); and, if otherwise brought, on motion, the same shall be abated. Tenants in common of lands may join in an action concerning their common interest in such lands.

Sec. 5. 12 V.S.A. § 4853b is added to read:

§ 4853b. UNLAWFUL OCCUPANT; EXPEDITED HEARING

(a)(1) In an action for ejectment, the landlord, the landlord's agent, or the tenant may file a motion for a judgment that the plaintiff is entitled to immediate possession of the premises on the grounds that the defendant is a person that is occupying a dwelling unit without right or permission and the written rental agreement for the dwelling unit prohibits subleasing pursuant to 9 V.S.A. § 4456b(a)(2).

(2) The motion may be filed and served with the complaint or at any time after the complaint has been filed. The motion shall be accompanied by an affidavit setting forth particular facts in support of the motion and a copy of the lease agreement.

(b) A hearing on the motion shall be held any time after 10 days' notice to the parties.

(c) At any time before the hearing, the defendant may oppose the motion pursuant to Rule 78(b) of the Vermont Rules of Civil Procedure by filing an affidavit, a signed written statement, or a memorandum in opposition to the motion. The affidavit, signed written statement, or memorandum shall set forth particular facts to show that a genuine dispute of fact exists in relation to the motion.

(d)(1) If the defendant fails to appear for the hearing, or to file an affidavit, signed written statement, or memorandum in opposition to the plaintiff's motion, or has failed to file an answer in the time provided pursuant to Rule 12 of the Vermont Rules of Civil Procedure, the plaintiff shall be entitled to judgment by default for immediate possession of the premises.

(2) If the court finds that the defendant is a person that is occupying the dwelling unit without right or permission and the written rental agreement for the dwelling unit prohibits subleasing pursuant to 9 V.S.A. § 4456b(a)(2), the court shall grant the plaintiff's motion and issue judgment in favor of the plaintiff for immediate possession of the premises.

(e) If the court issues judgment in favor of the plaintiff pursuant to subsection (d) of this section, the court shall, on the date judgment is entered, issue a writ of possession directing the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendant and, no sooner than five days after the writ is served, to put the plaintiff into possession.

(f) At any time prior to the execution of the writ of possession, the defendant may file an affidavit, signed written statement, or a motion with the court setting forth facts demonstrating that the defendant is occupying the premises lawfully. The court shall treat an affidavit, signed written statement, or a motion filed under this subsection as a motion pursuant to Rule 59 or 60 of the Vermont Rules of Civil Procedure, as appropriate.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

(Committee vote: 8-0-0)

(For text see Senate Journal March 17, 2016)

Senate Proposal of Amendment

H. 95

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

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

* * * Effective July 1, 2018 * * *

Sec. 1. 33 V.S.A. § 5280 is added to read:

§ 5280. COMMENCEMENT OF YOUTHFUL OFFENDER PROCEEDINGS IN THE FAMILY DIVISION

(a) A proceeding under this subchapter shall be commenced by:

(1) the filing of a youthful offender petition by a State's Attorney; or

(2) transfer to the Family Court of a proceeding from the Criminal Division of the Superior Court as provided in section 5281 of this title.

(b) A State's Attorney may commence a proceeding in the Family Division of the Superior court concerning a child who is alleged to have committed an offense after attaining 16 years of age, but not 22 years of age that could otherwise be filed in the Criminal Division.

(c) If a State's Attorney files a petition under subdivision (a)(1) of this section, the case shall proceed as provided under subsection 5281(b) of this title.

Sec. 2. 33 V.S.A. § 5281 is amended to read:

§ 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

(a) A motion may be filed in the Criminal Division of the Superior Court requesting that a defendant under ~~18~~ 22 years of age in a criminal proceeding who had attained ~~the age of 10~~ 12 years of age but not ~~the age of 18~~ 22 years of age at the time the offense is alleged to have been committed be treated as a youthful offender. The motion may be filed by the State's Attorney, the defendant, or the Court on its own motion.

(b) Upon the filing of a motion under this section ~~and the entering of a conditional plea of guilty by the youth, the Criminal Division shall enter an order deferring the sentence and transferring the case to~~ or the filing of a youthful offender petition pursuant to § 5280 of this title, the Family Division ~~for~~ shall hold a hearing ~~on the motion~~ pursuant to § 5283 of this title. Copies of all records relating to the case shall be forwarded to the Family Division. Conditions of release and any Department of Corrections supervision or custody shall remain in effect until the Family Division ~~approves the motion~~ accepts the case for treatment as a youthful offender and orders conditions of juvenile probation pursuant to section 5284 of this title, or the case is otherwise concluded.

(c) ~~A plea of guilty entered by the youth pursuant to subsection (b) of this section shall be conditional upon the Family Division granting the motion for youthful offender status.~~

~~(d)~~(1) If the Family Division ~~denies the motion~~ rejects the case for youthful offender treatment pursuant to subsection 5284 of this title, the case shall be ~~returned~~ transferred to the Criminal Division~~, and the youth shall be permitted to withdraw the plea~~. The conditions of release imposed by the Criminal Division shall remain in effect, and the case shall proceed as though the motion for youthful offender treatment or youthful offender petition had not been ~~made~~ filed.

(2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and Rule 410 of the Vermont Rules of Evidence, the Family Division's denial of the motion for youthful offender treatment and any information related to the youthful offender proceeding shall be inadmissible against the youth for any purpose in the subsequent Criminal Division proceeding.

(d) If the Family Division accepts the case for youthful offender treatment, the case shall proceed to a confidential merits hearing or admission pursuant to sections 5227–5229 of this title. If the youth is adjudicated, the Court will create a criminal case reflecting the charge and conviction.

Sec. 3. 33 V.S.A. § 5282 is amended to read:

§ 5282. REPORT FROM THE DEPARTMENT

(a) Within 30 days after the case is transferred to the Family Division or a youthful offender petition is filed in the Family Division, unless the Court extends the period for good cause shown, the Department shall file a report with the Family Division of the Superior Court.

(b) A report filed pursuant to this section shall include the following elements:

(1) a recommendation as to whether youthful offender status is appropriate for the youth;

(2) a disposition case plan including proposed services and proposed conditions of juvenile probation in the event youthful offender status is approved and the youth is adjudicated;

(3) a description of the services that may be available for the youth when he or she reaches 18 years of age.

(c) A report filed pursuant to this section is privileged and shall not be disclosed to any person other than the Department, the Court, the State's Attorney, the youth, the youth's attorney, the youth's guardian ad litem, the Department of Corrections, or any other person when the Court determines that the best interests of the youth would make such a disclosure desirable or helpful.

Sec. 4. 33 V.S.A. § 5283 is amended to read:

§ 5283. HEARING IN FAMILY DIVISION

(a) Timeline. A hearing on the motion for youthful offender status shall be held no later than 35 days after the transfer of the case from the Criminal Division or filing of a youthful offender petition in the Family Division.

(b) Notice. Notice of the hearing shall be provided to the State's Attorney; the youth; the youth's parent, guardian, or custodian; the Department; and the Department of Corrections.

(c) Hearing procedure.

(1) If the motion is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those persons making the reports, but sources of confidential information need not be disclosed.

(2) Hearings under subsection 5284(a) of this title shall be open to the public. All other youthful offender proceedings shall be confidential.

(d) The burden of proof shall be on the moving party to prove by a preponderance of the evidence that a child should be granted youthful offender status. If the Court makes the motion, the burden shall be on the youth.

(e) Further hearing. On its own motion or the motion of a party, the Court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case.

Sec. 5. 33 V.S.A. § 5284 is amended to read:

§ 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION ORDER

(a) In a hearing on a motion for youthful offender status, the Court shall first consider whether public safety will be protected by treating the youth as a youthful offender. If the Court finds that public safety will not be protected by treating the youth as a youthful offender, the Court shall deny the motion and ~~return~~ transfer the case to the Criminal Division of the Superior Court pursuant to subsection 5281(d) of this title. If the Court finds that public safety will be protected by treating the youth as a youthful offender, the Court shall proceed to make a determination under subsection (b) of this section.

(b)(1) The Court shall deny the motion if the Court finds that:

(A) the youth is not amenable to treatment or rehabilitation as a youthful offender; or

(B) there are insufficient services in the juvenile court system and the Department to meet the youth's treatment and rehabilitation needs.

(2) The Court shall grant the motion if the Court finds that:

(A) the youth is amenable to treatment or rehabilitation as a youthful offender; and

(B) there are sufficient services in the juvenile court system and the Department to meet the youth's treatment and rehabilitation needs.

(c) If the Court approves the motion for youthful offender treatment after an adjudication pursuant to subsection 5281(d) of this title, the Court:

(1) shall approve a disposition case plan and impose conditions of juvenile probation on the youth; and

(2) may transfer legal custody of the youth to a parent, relative, person with a significant relationship with the youth, or Commissioner, provided that any transfer of custody shall expire on the youth's 18th birthday.

(d) The Department shall be responsible for supervision of and providing services to the youth until he or she reaches ~~the age of~~ 18 years of age. A lead case manager shall be designated who shall have final decision-making authority over the case plan and the provision of services to the youth. The youth shall be eligible for appropriate community-based programming and services provided by the Department.

(e) The youth shall not be permitted to withdraw his or her plea of guilty after youthful offender status is approved except to correct manifest injustice pursuant to Rule 32(d) of the Vermont Rules of Criminal Procedure.

* * * Effective January 1, 2018 * * *

Sec. 6. 33 V.S.A. § 5103 is amended to read:

§ 5103. JURISDICTION

(a) The Family Division of the Superior Court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other Family Division proceedings and any order of another court of this State, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce,

parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child who has been adjudicated delinquent may be extended until six months beyond the child's ~~18th~~ 19th birthday if ~~the offense for which the child has been adjudicated delinquent is a nonviolent misdemeanor and~~ the child was 16 or 17 years old when he or she committed the offense.

(B) In no case shall custody of a child ~~aged~~ 18 years of age or older be retained by or transferred to the Commissioner for Children and Families.

(C) Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.

~~(D) As used in this subdivision, "nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7), an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64, or an offense involving violation of a protection order in violation of 13 V.S.A. § 1030.~~

(d) The Court may terminate its jurisdiction over a child prior to the child's 18th birthday by order of the Court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) upon the discharge of a child from juvenile probation, providing the child is not in the legal custody of the Commissioner;

(2) upon an order of the Court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision;

(3) upon the adoption of a child following a termination of parental rights proceeding.

Sec. 7. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

(a) Proceedings under this chapter shall be commenced by:

(1) transfer to the Court of a proceeding from another court as provided in section 5203 of this title; or

(2) the filing of a delinquency petition by a State's Attorney.

(b) If the proceeding is commenced by transfer from another court, no petition need be filed; however, the State's Attorney shall provide to the Court the name and address of the child's custodial parent, guardian, or custodian and the name and address of any noncustodial parent if known.

(c) Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining 14 years of age, but not 18 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

(d) Any proceeding concerning a child who is alleged to have committed a misdemeanor offense before attaining ~~17~~ 18 years of age shall originate in the Family Division of the Superior Court.

(e) Any proceeding concerning a child who is alleged to have committed a felony offense other than those specified in subsection 5204(a) of this title before attaining ~~17~~ 18 years of age shall originate in the Family Division of the Superior Court provided that jurisdiction may be transferred in accordance with this chapter.

* * *

Sec. 8. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a Criminal Division of the Superior Court that the defendant was under ~~17~~ 18 years of age at the time the offense charged was alleged to have been committed and the offense charged is a misdemeanor, that Court shall forthwith transfer the case to the Family Division of the Superior Court under the authority of this chapter.

(b) If it appears to a Criminal Division of the Superior Court that the defendant was under ~~17~~ 18 years of age at the time a felony offense not listed in subsection 5204(a) of this title was alleged to have been committed, that Court shall forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the State's Attorney that the defendant was ~~16~~ under 18 years of age at the time the felony offense charged was alleged to have been committed and the felony charged is not an offense specified in subsection 5204(a) of this title, the State's Attorney shall file charges in the Family Division of the Superior Court.

* * *

* * * Effective January 1, 2017 * * *

Sec. 9. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

(a) Proceedings under this chapter shall be commenced by:

(1) transfer to the Court of a proceeding from another court as provided in section 5203 of this title; or

(2) the filing of a delinquency petition by a State's Attorney.

(b) If the proceeding is commenced by transfer from another court, no petition need be filed; however, the State's Attorney shall provide to the Court the name and address of the child's custodial parent, guardian, or custodian and the name and address of any noncustodial parent if known.

(c) ~~Consistent with applicable provisions of Title 4, any~~ Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining ~~the age of~~ 14 years of age, but not ~~the age of~~ 18 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

(d) Any proceeding concerning a child who is alleged to have committed a misdemeanor offense before attaining 17 years of age shall originate in the Family Division of the Superior Court.

(e) Any proceeding concerning a child who is alleged to have committed a felony offense other than those specified in subsection 5204(a) of this title before attaining 17 years of age shall originate in the Family Division of the Superior Court provided that jurisdiction may be transferred in accordance with this chapter.

(f) If the State requests that custody of the child be transferred to the Department, a temporary care hearing shall be held as provided in subchapter 3 of this chapter.

~~(e)~~(g) A petition may be withdrawn by the State's Attorney at any time prior to the hearing thereon, in which event the child shall be returned to the custodial parent, guardian, or custodian, the proceedings under this chapter terminated, and all files and documents relating thereto sealed under section 5119 of this title.

Sec. 10. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a Criminal Division of the Superior Court that the defendant was under ~~the age of 16~~ 17 years of age at the time the offense charged was alleged to have been committed and the offense charged is ~~not one of those specified in subsection 5204(a) of this title~~ a misdemeanor, that Court shall forthwith transfer the case to the Family Division of the Superior Court under the authority of this chapter.

(b) If it appears to a Criminal Division of the Superior Court that the defendant was ~~over the age of 16 years and~~ under ~~the age of 18~~ 17 years of age at the time ~~the~~ a felony offense ~~charged~~ not specified in subsection 5204(a) of this title was alleged to have been committed, ~~or that the defendant had attained the age of 14 but not the age of 16 at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed,~~ that Court ~~may~~ shall forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the State's Attorney that the defendant was ~~over the age of~~ 16 years of age ~~and under the age of 18~~ at the time the ~~offense~~ felony charged was alleged to have been committed and the ~~offense~~ felony charged is not an offense specified in subsection 5204(a) of this title, the State's Attorney ~~may~~ shall file charges in the Family ~~or Criminal~~ Division of the Superior Court. ~~If charges in such a matter are filed in the Criminal Division of the Superior Court, the Criminal Division of the Superior Court may forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the person shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act~~.

(d) ~~Any such~~ A transfer under this section shall include a transfer and delivery of a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. Upon any such transfer, that court shall order that the defendant be taken forthwith to a place of detention designated by the Family Division of the Superior Court or to that court itself, or shall release the child to the custody of his or her parent or guardian or other person legally responsible for the child, to be brought before the Family Division of the Superior Court at a time designated by that court. The Family Division of the Superior Court shall then proceed as provided in this chapter as if a petition alleging delinquency had been filed with the Court under section 5223 of this title on the effective date of such transfer.

(e) Motions to transfer a case to the Family Division of the Superior Court for youthful offender treatment shall be made under section 5281 of this title.

Sec. 11. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court, if the child had attained 16 years of age but not 18 years of age at the time the act was alleged to have occurred and the delinquent act set forth in the petition ~~was not one of those specified in subdivisions (1) (12) of this subsection~~ is a felony not specified in subdivisions (1)–(12) of this subsection or if the child had attained 12 years of age but not 14 years of age at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

(1) arson causing death as defined in 13 V.S.A. § 501;

(2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

(3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);

(4) aggravated assault as defined in 13 V.S.A. § 1024;

(5) murder as defined in 13 V.S.A. § 2301;

(6) manslaughter as defined in 13 V.S.A. § 2304;

(7) kidnapping as defined in 13 V.S.A. § 2405;

(8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

(9) maiming as defined in 13 V.S.A. § 2701;

(10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

(11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or

(12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

* * *

(i) If a juvenile 16 years of age or older has been prosecuted as an adult for an offense not listed in subsection (a) of this section and is not convicted of a felony, but is convicted of a lesser included misdemeanor, jurisdiction shall be transferred to the Family Division of the Superior Court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of a crime, and the entire matter shall be treated as if it had remained in the Family Division throughout. In case of an

acquittal for a matter specified in this subsection and in case of a transfer to the Family Division under this subsection, the court shall order the sealing of all applicable files and records of the court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(j) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child.

* * * Effective July 1, 2016 * * *

Sec. 12. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court, if the child had attained ~~the age of~~ 16 years of age but not ~~the age of~~ 18 years of age at the time the act was alleged to have occurred and the delinquent act set forth in the petition was not one of those specified in subdivisions (1)-(12) of this subsection or if the child had attained ~~the age of 10~~ 12 years of age but not ~~the age of~~ 14 years of age at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

(1) arson causing death as defined in 13 V.S.A. § 501;

(2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

(3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);

(4) aggravated assault as defined in 13 V.S.A. § 1024;

(5) murder as defined in 13 V.S.A. § 2301;

(6) manslaughter as defined in 13 V.S.A. § 2304;

(7) kidnapping as defined in 13 V.S.A. § 2405;

(8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

(9) maiming as defined in 13 V.S.A. § 2701;

(10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

(11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or

(12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The State's Attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the Family Division of the Superior Court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed ~~an act listed in subsection (a) of this section~~ the charged offense; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to the Family Division of the Superior Court and delinquent children.

* * *

(g) The order granting or denying transfer of jurisdiction shall ~~not~~ constitute a final ~~judgment or~~ order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained ~~the age of~~ 16 years of age at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the Family Division of the Superior Court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire matter shall be treated as if it had remained in the Family Division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to the Family Division under this subsection, the Court shall order the sealing of all applicable files and records of the Court, and such order shall be carried out as provided in subsection 5119(e) of this title.

* * *

Sec. 13. 33 V.S.A. § 5106 is amended to read:

§ 5106. POWERS AND DUTIES OF COMMISSIONER

Subject to the limitations of the juvenile judicial proceedings chapters or those imposed by the Court, and in addition to any other powers granted to the Commissioner under the laws of this State, the Commissioner has the following authority with respect to a child who is or may be the subject of a petition brought under the juvenile judicial proceedings chapters:

(1) To undertake assessments and make reports and recommendations to the Court as authorized by the juvenile judicial proceedings chapters.

(2) To investigate complaints and allegations that a child is in need of care or supervision for the purpose of considering the commencement of proceedings under the juvenile judicial proceedings chapters.

(3) To supervise and assist a child who is placed under the Commissioner's supervision or in the Commissioner's legal custody by order of the Court, and to administer sanctions in accordance with graduated sanctions established by policy and that are consistent with the juvenile probation certificate.

* * *

Sec. 14. 33 V.S.A. § 5225 is amended to read:

§ 5225. PRELIMINARY HEARING; RISK ASSESSMENT

(a) A preliminary hearing shall be held at the time and date specified on the citation or as otherwise ordered by the Court. If a child is taken into custody prior to the preliminary hearing, the preliminary hearing shall be at the time of the temporary care hearing.

(b) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and need screenings for children alleged to have committed delinquent acts. If the child participates in such a screening, the Department or the community provider shall report the risk level result of the screening to the State's Attorney. In lieu of filing a charge, the State's Attorney may refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the State's Attorney to file a charge. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child's case shall return to the State's Attorney for charging consideration. If a charge is brought in the Family Division, the risk level result shall be provided to the child's

attorney. Except on agreement of the parties, the results shall not be provided to the Court until after a merits finding has been made.

(c) Counsel for the child shall be assigned prior to the preliminary hearing.

(d) At the preliminary hearing, the Court shall appoint a guardian ad litem for the child. The guardian ad litem may be the child's parent, guardian, or custodian. On its own motion or motion by the child's attorney, the Court may appoint a guardian ad litem other than a parent, guardian or custodian.

(e) At the preliminary hearing, a denial shall be entered to the allegations of the petition, unless the juvenile, after adequate consultation with the guardian ad litem and counsel, enters an admission. If the juvenile enters an admission, the disposition case plan required by section 5230 of this title may be waived and the Court may proceed directly to disposition, provided that the juvenile, the custodial parent, the State's Attorney, the guardian ad litem, and the Department agree.

(f) The Court may order the child to abide by conditions of release pending a merits or disposition hearing.

Sec. 15. 33 V.S.A. § 5285 is amended to read:

§ 5285. MODIFICATION OR REVOCATION OF DISPOSITION

(a) If it appears that the youth has violated the terms of juvenile probation ordered by the Court pursuant to subdivision 5284(c)(1) of this title, a motion for modification or revocation of youthful offender status may be filed in the Family Division of the Superior Court. The Court shall set the motion for hearing as soon as practicable. The hearing may be joined with a hearing on a violation of conditions of probation under section 5265 of this title. A supervising juvenile or adult probation officer may detain in an adult facility a youthful offender who has attained ~~the age of~~ 18 years of age for violating conditions of probation.

(b) A hearing under this section shall be held in accordance with section 5268 of this title.

(c) If the Court finds after the hearing that the youth has violated the terms of his or her probation, the Court may:

(1) maintain the youth's status as a youthful offender, with modified conditions of juvenile probation if the Court deems it appropriate;

(2) revoke the youth's status as a youthful offender status and return the case to the Criminal Division for sentencing; or

(3) transfer supervision of the youth to the Department of Corrections with all of the powers and authority of the Department and the Commissioner under Title 28, including graduated sanctions and electronic monitoring.

(d) If a youth's status as a youthful offender is revoked and the case is returned to the Criminal Division under subdivision (c)(2) of this section, the Court shall hold a sentencing hearing and impose sentence. When determining an appropriate sentence, the Court may take into consideration the youth's degree of progress toward rehabilitation while on youthful offender status. The Criminal Division shall have access to all Family Division records of the proceeding.

Sec. 16. 28 V.S.A. § 1101 is amended to read:

§ 1101. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER REGARDING JUVENILE SERVICES

The Commissioner is charged with the following powers and responsibilities regarding the administration of juvenile services:

(1) to provide appropriate, separate facilities for the custody and treatment of ~~children~~ offenders under 25 years of age committed to his or her custody in accordance with the laws of the State;

* * *

Sec. 17. 33 V.S.A. § 5206 is added to read:

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

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

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

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

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

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

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

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

Sec. 18. 13 V.S.A. § 7554 is amended to read:

§ 7554. RELEASE PRIOR TO TRIAL

* * *

(j) Any juvenile between 14 and 16 years of age who is charged with a listed crime as defined in subdivision 5301(7) of this title shall appear before a judicial officer and be ordered released pending trial in accordance with this section within 24 hours of the juvenile's arrest.

Sec. 19. 4 V.S.A. § 33 is amended to read:

§ 33. JURISDICTION; FAMILY DIVISION

(a) Notwithstanding any other provision of law to the contrary, the Family Division shall have exclusive jurisdiction to hear and dispose of the following proceedings filed or pending on or after October 1, 1990:

* * *

(b) The Family Division has nonexclusive jurisdiction to hear and dispose of proceedings involving misdemeanor motor vehicle offenses filed or pending on or after July 1, 2016, pursuant to 33 V.S.A. §§ 5201, 5203, and 5280. The Family Division of the Superior Court shall forward a record of any conviction for violation of a law related to motor vehicle traffic control, other than a parking violation, to the Commissioner of Motor Vehicles pursuant to 23 V.S.A. § 1709.

Sec. 20. 33 V.S.A. § 5102 is amended to read:

§ 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

* * *

(28) "Victim" shall have the same meaning as in 13 V.S.A. § 5301(4).

(29) "Youth" shall mean a person who is the subject of a motion for youthful offender status or who has been granted youthful offender status.

Sec. 21. 33 V.S.A. § 5234 is amended to read:

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

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

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

(A) when a delinquency petition has been filed, the name of the child and any conditions of release initially ordered for the child or modified by the Court that are related to the victim or a member of the victim's family or current household;

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

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

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

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

(3) To attend the disposition hearing and to present a ~~victim's~~ victim impact statement ~~at the disposition hearing in accordance with subsection 5233(b) of this title~~, including testimony in support of his or her claim for restitution pursuant to section 5235 of this title, and to be notified as to the disposition ~~pursuant to subsection 5233(d) of this title~~, including probation. The court shall consider the victim's statement when ordering disposition. The victim shall not be personally present at any portion of the disposition hearing except to present a victim impact statement or to testify in support of his or her claim for restitution unless the court finds that the victim's presence is necessary in the interest of justice.

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

(5) ~~To obtain the name of the child in accordance with sections 5226 and 5233 of this title.~~ To have the Court take his or her views into consideration in the Court's disposition order. If the victim is not present, the

Court shall consider whether the victim has expressed, either orally or in writing, views regarding disposition and shall take those views into account when ordering disposition.

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

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

Sec. 22. 33 V.S.A. § 5234a is added to read:

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

(a) The victim in a delinquency proceeding involving an offense that is not a listed crime shall have the following rights:

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

(A) his or her rights as provided by law, information regarding how a delinquency proceeding is adjudicated, the confidential nature of juvenile proceedings, and that it is unlawful to disclose confidential information concerning the proceedings;

(B) when a delinquency petition is filed, and any conditions of release initially ordered for the child or modified by the Court that relate to the victim or a member of the victim's family or current household; and

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

(2) That delinquency has been found and disposition has occurred, and any conditions of release or conditions of probation that are related to the victim or a member of the victim's family or current household and any restitution ordered.

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

(4) To attend the disposition hearing for the sole purpose of presenting to the Court a victim impact statement, including testimony in support of his or her claim for restitution pursuant to section 5235 of this title. The victim shall not be personally present at any portion of the disposition hearing except to present a victim impact statement or to testify in support of his or her claim for restitution unless the Court finds that the victim's presence is necessary in the interest of justice.

(5) To have the Court take his or her views into consideration in the Court's disposition order. If the victim is not present, the Court shall consider whether the victim has expressed, either orally or in writing, views regarding disposition and shall take those views into account when ordering disposition. The Court shall order that the victim be notified as to the identity of the child upon disposition if the Court finds that release of the child's identity to the victim is in the best interests of both the child and the victim and serves the interests of justice.

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

Sec. 23. 14 V.S.A. § 2666 is amended to read:

§ 2666. MODIFICATION; TERMINATION

* * *

(b) Where the permanent guardianship is terminated by the ~~probate division of the superior court~~ Probate Division of the Superior Court order or the death of the permanent guardian, the custody and guardianship of the child shall not revert to the parent, but to the ~~commissioner for children and families~~ Commissioner for Children and Families as if the child had been abandoned.

(1) Upon the death of the permanent guardian or when the permanent guardianship is otherwise terminated by order of the Probate Division, the Probate Division shall issue an order placing the child in the custody of the Commissioner and shall immediately notify the Department for Children and Families, the State's Attorney, and the Family Division.

(2) The order transferring the child's legal custody to the Commissioner shall have the same legal effect as a similar order issued by the Family Division under the authority of 33 V.S.A. chapters 51–53.

(3) After the Probate Division issues the order transferring legal custody of the child, the State shall commence proceedings under the authority of 33 V.S.A. chapters 51–53 as if the child were abandoned.

* * *

Sec. 24. 14 V.S.A. § 2667 is amended to read:

§ 2667. ORDER FOR VISITATION, CONTACT, OR INFORMATION; IMMEDIATE HARM TO THE MINOR

(a) The ~~probate division of the superior court~~ Probate Division of the Superior Court shall have exclusive jurisdiction to hear any action to enforce, modify, or terminate the initial order issued by the ~~family division of the~~

~~superior court~~ Family Division of the Superior Court for visitation, contact, or information.

(b) Upon a showing by affidavit of immediate harm to the child, the ~~probate division of the superior court~~ Probate Division of the Superior Court may temporarily stay the order of visitation or contact on an ex parte basis until a hearing can be held, or stay the order of permanent guardianship and ~~assign parental rights and responsibilities~~ transfer legal custody of the child to the ~~commissioner for children and families~~ Commissioner for Children and Families.

(1) The order transferring the child's legal custody to the Commissioner shall have the same legal effect as a similar order issued by the Family Division under the authority of 33 V.S.A. chapters 51–53.

(2) The Probate Division shall then immediately notify the Department for Children and Families, the State's Attorney, and the Family Division when it has issued an order transferring the child's legal custody to the Commissioner, and nothing in this subsection shall prohibit the State from commencing proceedings under 33 V.S.A. chapters 51–53.

* * *

Sec. 25. 33 V.S.A. § 5223 is amended to read:

§ 5223. FILING OF PETITION

(a) When notice to the child is provided by citation, the State's Attorney shall file the petition and supporting affidavit at least 10 business days prior to the date for the preliminary hearing specified in the citation.

(b) The Court shall send or deliver a copy of the petition and affidavit to the Commissioner after a finding of probable cause. A copy of the petition and affidavit shall be made available at the State's Attorney's office to all persons required to receive notice, including the noncustodial parent, as soon as possible after the petition is filed and at least five business days prior to the date set for the preliminary hearing.

Sec. 26. 33 V.S.A. § 5229 is amended to read:

§ 5229. MERITS ADJUDICATION

* * *

(g) If, based on the child's admission or the evidence presented, the Court finds beyond a reasonable doubt that the child has committed a delinquent act, the Court shall order the Department to prepare a disposition case plan ~~within 28 days of the merits adjudication and shall set the matter for a~~ not later than seven business days before the disposition hearing. In no event~~,~~ shall a

disposition hearing be held later than 35 days after a finding that a child is delinquent.

(h) The Court may proceed directly to disposition providing that the child, the custodial parent, the State's Attorney, and the Department agree.

Sec. 27. 33 V.S.A. § 5230 is amended to read:

§ 5230. DISPOSITION CASE PLAN

(a) Filing of case plan. ~~The~~ Following the finding by the Court that a child is delinquent, the Department shall file a disposition case plan ~~no~~ not later than ~~28 days from the date of the finding by the Court that a child is delinquent~~ seven business days before the scheduled disposition hearing. The disposition case plan shall not be used or referred to as evidence prior to a finding that a child is delinquent.

* * *

Sec. 28. 33 V.S.A. § 5315 is amended to read:

§ 5315. MERITS ADJUDICATION

* * *

(f) If the Court finds that the allegations made in the petition have not been established, the Court shall dismiss the petition and vacate any temporary orders in connection with this proceeding. A dismissal pursuant to this subsection is a final order subject to appeal.

(g) If the Court finds that the allegations made in the petition have been established based on the stipulation of the parties or on the evidence if the merits are contested, the Court shall order the Department to prepare a disposition case plan ~~within 28 days of the merits hearing and shall set the matter for a~~ not later than seven business days before a scheduled disposition hearing. An adjudication pursuant to this subsection is not a final order subject to appeal separate from the resulting disposition order.

* * *

Sec. 29. 33 V.S.A. § 5315a is added to read:

§ 5315a. MERITS STIPULATION

(a) At any time after the filing of the CHINS petition and prior to an order of adjudication on the merits, the court may approve a written stipulation to the merits of the petition and any or all elements of the disposition plan, including the permanency goal, placement, visitation, or services.

(b) The court may approve a written stipulation if:

(1) the parties to the petition, as defined in subdivision 5102(22) of this title, agree to the terms of the stipulation; and

(2) the court determines that:

(A) the agreement between the parties is voluntary;

(B) the parties to the agreement understand the nature of the allegation; and

(C) the parties to the agreement understand the rights waived if the court approves of and issues an order based upon the stipulation.

Sec. 30. 33 V.S.A. § 5316 is amended to read:

§ 5316. DISPOSITION CASE PLAN

(a) ~~The~~ Following a finding by the court that a child is in need of care or supervision, the Department shall file a disposition case plan ordered pursuant to subsection 5315(g) of this title ~~no~~ not later than ~~28 days from the date of the finding by the Court that a child is in need of care or supervision~~ seven business days before the scheduled disposition hearing.

* * *

Sec. 31. 15 V.S.A. § 1103 is amended to read:

§ 1103. REQUESTS FOR RELIEF

(a) Any family or household member may seek relief from abuse by another family or household member on behalf of ~~him~~ him- or herself or his or her children by filing a complaint under this chapter. A minor 16 years of age or older, or a minor of any age who is in a dating relationship as defined in §1101(2) of this chapter, may file a complaint under this chapter seeking relief on his or her own behalf. The plaintiff shall submit an affidavit in support of the order.

* * *

Sec. 32. 15 V.S.A. § 1104 is amended to read:

§ 1104. EMERGENCY RELIEF

(a) In accordance with the Vermont Rules of Civil Procedure, temporary orders under this chapter may be issued ex parte, without notice to the defendant, upon motion and findings by the Court that the defendant has abused the plaintiff or his or her children, or both. The plaintiff shall submit an affidavit in support of the order. A minor 16 years of age or older, or a minor of any age who is in a dating relationship as defined in §1101(2) of this

chapter, may seek relief on his or her own behalf. Relief under this section shall be limited as follows:

* * *

Sec. 33. DEPARTMENT OF CHILDREN AND FAMILIES; DEPARTMENT OF CORRECTIONS; YOUTHFUL OFFENDERS; REPORT

The Commissioners for Children and Families and of Corrections shall consider the implications of adjudicating as youthful offenders all defendants who have attained 18 years of age, but not 21 years of age, who have not been charged with an offense specified in 33 V.S.A. § 5204(a). The Commissioners shall report their findings and any associated recommendations or proposed legislation to the Joint Legislative Justice Oversight Committee on or before November 1, 2016.

Sec. 34. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE; 2016 LEGISLATIVE INTERIM

During the 2016 legislative interim, the Joint Legislative Justice Oversight Committee shall:

(1) evaluate the fiscal implications of adjudicating in the Family Division of the Superior Court all offenders 18–20 years of age who are not charged with an offense specified in 33 V.S.A. § 5204(a);

(2) consider whether the creation of an Office for Youth Justice or similar with jurisdiction to coordinate supervision and services for youth adjudicated juvenile delinquents and youthful offenders 25 years of age and younger would improve outcomes for youth in the justice system;

(3) consider expanding youthful offender status eligibility to offenders 24 years of age and younger, while requiring offenders 22–24 years of age to be under Department of Corrections supervision;

(4) consider whether State's Attorneys should have the discretion to bring charges against 14 and 15 year olds alleged to have committed an act specified in subsection 5204(a) in either the Criminal or Family Division of the Superior Court;

(5) explore options for housing offenders 16 and 17 years of age serving a sentence for an offense specified in 33 V.S.A. § 5204(a);

(6) evaluate the resources necessary to expand the jurisdiction of the juvenile courts for offenders 21 years of age and younger as contemplated by other state legislatures; and

(7) evaluate the resources necessary to expand youthful offender treatment for offenders 24 years of age and younger.

Sec. 35. AGENCY OF EDUCATION; RESTORATIVE JUSTICE PRACTICES

The Agency of Education shall explore the use of restorative and similar practices regarding school climate and culture, truancy, bullying and harassment, and school discipline. The Agency shall consider the research that demonstrates that restorative approaches lead to reductions in absenteeism, suspensions, and expulsions and to improved educational outcomes.

Sec. 36. REPEAL

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

Sec. 37. EFFECTIVE DATES

(a) Secs. 9 (Commencement of Delinquency Proceedings), 10 (Transfer from the Courts), and 11 (transfer from Family Division of the Superior Court) shall take effect on January 1, 2017.

(b) Secs. 6 (Jurisdiction), 7 (commencement of delinquency proceedings), and 8 (Transfer from other Courts) shall take effect on January 1, 2018.

(c) Secs. 1 (Commencement of Youthful Offender Proceedings in the Family Division), 2 (Motion in Criminal Division of Superior Court), 3 (Report from the Department), 4 (Hearing in Family Division), and 5 (Youthful Offender Determination and Disposition Order) shall take effect on July 1, 2018.

(d) The remaining sections shall take effect on July 1, 2016.

(For text see House Journal March 18, 2015)

H. 595

An act relating to potable water supplies from surface waters

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

Sec. 1. 10 V.S.A. § 1978(a) is amended to read:

(a) The Secretary shall adopt rules, in accordance with 3 V.S.A. chapter 25, necessary for the administration of this chapter. These rules shall include the following:

* * *

(15) Provisions authorizing the use by a residential dwelling of surface water as a source of a potable water supply permitted under this chapter.

Sec. 2. 10 V.S.A. § 1981 is added to read:

§ 1981. SURFACE WATER SOURCE; POTABLE WATER SUPPLY

The Secretary shall approve the use of a surface water as the source of a potable water supply under this chapter if the following conditions are satisfied:

(1) the building or structure using the surface water as a source is a single-family residence occupied by the owner of record;

(2) only one single-family residence shall be served by a potable water supply using a surface water as a source;

(3) a single-family residence with a potable water supply using a surface water as a source shall not be used as the site of a home occupation that employs persons other than family members and is visited by the public in a manner or duration that would presume the need for use of a potable water supply;

(4) a professional engineer shall design the potable water supply using a surface water as a source, including a treatment system for the surface water;

(5) only surface waters that meet criteria adopted by the Secretary by rule are eligible as the source of a potable water supply permitted under this chapter; and

(6) the applicant or permit holder shall comply with other criteria and requirements adopted by the Secretary by rule for potable water supplies using a surface water as a source.

Sec. 3. SURFACE WATER SOURCE; RULEMAKING

The Secretary shall adopt rules to implement 10 V.S.A. § 1981 on or before July 1, 2017.

Sec. 4. 10 V.S.A. § 1982 is added to read:

§ 1982. TESTING OF NEW GROUNDWATER SOURCES

(a) As used in this section, "groundwater source" means that portion of a potable water supply that draws water from the ground, including a drilled well, shallow well, driven well point, or spring.

(b) Prior to use of a new groundwater source as a potable water supply, where testing is not otherwise required, the person who owns or controls the groundwater source shall test the groundwater source for the parameters set forth in subsection (c) of this section.

(c) A water sample collected under this section shall be analyzed for, at a minimum: arsenic, lead, uranium, gross alpha radiation, total coliform bacteria, total nitrate and nitrite, fluoride, manganese, and any other parameters required by the Agency by rule. The Agency by rule may require testing for a parameter by region or specific geographic area of concern.

(d) The Secretary, after consultation with the Department of Health, the Wastewater and Potable Water Supply Technical Advisory Committee, the Vermont Realtors, the Vermont Association of Professional Home Inspectors, private laboratories, and other interested parties, shall adopt by rule requirements regarding:

(1) when, prior to use of a new groundwater source, the test required under subsection (b) of this section shall be conducted;

(2) who shall be authorized to sample the source for the test required under subsection (b) of this section, provided that the rule shall include the person who owns or controls the groundwater source and licensed well drillers among those authorized to conduct the test;

(3) how a water sample shall be collected in order to comply with the requirements of the analyses to be performed; and

(4) any other requirements necessary to implement this section.

Sec. 5. AGENCY OF NATURAL RESOURCES; GROUNDWATER SOURCE TESTING

The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 1982 on or before July 1, 2016. The Secretary shall adopt rules under 10 V.S.A. § 1982 on or before January 1, 2017.

Sec. 6. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

(a) The ~~commissioner~~ Commissioner may certify a laboratory that meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent to perform the testing and monitoring:

(1) required under 10 V.S.A. chapter 56 and the federal Safe Drinking Water Act; and

(2) of water from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6).

(b)(1) The ~~commissioner~~ Commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the ~~commissioner~~ Commissioner finds that the certificate holder has:

(A) submitted materially false or materially inaccurate information; or

(B) violated any material requirement, restriction, or condition of the certificate; or

(C) violated any statute, rule, or order relating to this title.

(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the certificate holder to reapply for certification if a previous certificate has been revoked.

(c) A person may appeal the suspension or revocation of the certificate to the ~~board~~ Board under section 128 of this title.

* * *

(f) A laboratory certified to conduct testing of groundwater sources or water supplies ~~from~~ under 10 V.S.A. § 1982 or other statute for use by a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), shall submit the results of groundwater analyses to the ~~department of health~~ Department of Health and the ~~agency of natural resources~~ Agency of Natural Resources in a format required by the ~~department of health~~ Department of Health.

Sec. 7. 10 V.S.A. § 1283(b) is amended to read:

(b) Disbursements under this subsection may be made for emergency purposes or to respond to other than emergency situations; provided, however, that disbursements in response to an individual situation which is not an emergency situation shall not exceed $100,000.00 for costs attributable to each of the subdivisions of this subsection, unless the Secretary has received the approval of the General Assembly, or the Joint Fiscal Committee, in case the General Assembly is not in session. Furthermore, the balance in the Fund shall not be drawn below the amount of $100,000.00, except in emergency situations. If the balance of the Fund becomes insufficient to allow a proper response to one or more emergencies that have occurred, the Secretary shall appear before the Emergency Board, as soon as possible, and shall request that necessary funds be provided. Within these limitations, disbursements from the Fund may be made:

* * *

(7) to pay costs of management oversight provided by the State for investigation and cleanup efforts conducted by voluntary responsible parties ~~where those responsible parties have contributed monies to the Fund pursuant to a written agreement under subsection (f) of this section~~;

* * *

Sec. 8. 10 V.S.A. § 6615c is added to read:

§ 6615c. INFORMATION REQUESTS

(a)(1) When the Secretary has reasonable cause to believe that the Secretary has identified a person who may be subject to liability for a release or threat of release under section 6615 of this title, the Secretary may require the person to furnish information related to:

(A) The type, nature, and quantity of any commercial chemical product or hazardous material that has been or is being used, generated, treated, stored, or disposed of at a facility or transported to a facility.

(B) The nature or extent of a release or threatened release of a hazardous material from a facility.

(C) Financial information related to the ability of a person to pay for or to perform a cleanup or information surrounding the corporate structure, if any, of such person who may be subject to liability for a release or threat of release under section 6615 of this title.

(2) A person served with an information request shall respond within 10 days of receipt of the request or by the date specified by the Secretary in the request.

(b)(1) A person who has received a request under subsection (a) of this section shall, at the discretion of the Secretary, either:

(A) grant the Secretary access, at reasonable times, to any facility, establishment, place, property, or location to inspect and copy all documents or records relating to information that was related to the request; or

(B) copy and furnish to the Secretary all such information at the option and expense of the person or provide a written explanation that the information has already been provided to the Secretary and a reference to the permit, enforcement action, or other matter under which the Secretary obtained the requested information.

(2) A person responding to a request under subsection (a) of this section may assert any privilege under statute, rule, or common law that is recognized in the State of Vermont to limit access to such information, including the attorney-client privilege. A person responding to a request for information

under this section shall not assert privileges related to business confidentiality, including trade secrets, in order to withhold requested information. Any information that is privileged shall be provided to the Secretary with the privileged material redacted. The Secretary may require that a person asserting a privilege under this section provide an index of all privileged information.

(c) The Secretary may require any person who has or may have knowledge of any information listed in subdivisions (a)(1) of this section to appear at the offices of the Secretary and may take testimony and require the production of records that relate to a release or threatened release of a hazardous material.

(d) Any request for information under this section shall be served personally or by certified mail.

(e) A response to a request under this section shall be personally certified by the person responding to the request that:

(1) the response is accurate and truthful; and

(2) the person has not omitted responsive information or will provide the responsive information according to a production schedule approved by the Secretary.

(f) Information that qualifies for the trade secret exemption under 1 V.S.A. § 317(c)(9) and other financial information submitted under this section shall be confidential and shall not be subject to inspection and copying under the Public Records Act. A person subject to an information request under this section shall be responsible for proving that submitted information qualifies for the trade secret exemption under 1 V.S.A. § 317(c)(9). The following information is not trade secret information or financial information for the purposes of this subsection:

(1) the trade name, common name, or generic class or category of the hazardous material;

(2) the physical properties of the hazardous material, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius;

(3) the hazards to health and the environment posed by the hazardous material, including physical hazards and potential acute and chronic health hazards;

(4) the potential routes of human exposure to the hazardous material at the facility;

(5) the location of disposal of any waste stream at the facility;

(6) any monitoring data or analysis of monitoring data pertaining to disposal activities;

(7) any hydrogeologic or geologic data; or

(8) any groundwater monitoring data.

(g) As used in this section, "information" means any written or recorded information, including all documents, records, photographs, recordings, e-mail, or correspondence.

Sec. 9. 10 V.S.A. § 6615d is added to read:

§ 6615d. NATURAL RESOURCE DAMAGES; LIABILITY; RULEMAKING

(a) Definitions. As used in this section:

(1) "Baseline condition" means the condition or conditions that would have existed at the area of assessed damages had the release of hazardous material not occurred.

(2) "Damages" means the amount of money sought by the Secretary for the injury, destruction, or loss of natural resources.

(3) "Destruction" means the total and irreversible loss of natural resources.

(4) "Injury" means a measurable adverse long-term or short-term change in the chemical or physical quality or viability of a natural resource resulting either directly or indirectly from exposure to a release of hazardous material or exposure to a product of reactions from a release of hazardous materials.

(5) "Loss" means a measurable adverse reaction of a chemical or physical quality of viability of a natural resource.

(6) "Natural resources" means fish, wildlife, biota, air, surface water, groundwater, wetlands, drinking water supplies, or State-held public lands.

(7) "Natural resource damage assessment" means the process of collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to determine the damages for injuries to natural resources.

(8) "Restoring," "restoration," "rehabilitating," or "rehabilitation" means actions undertaken to return an injured natural resource to its baseline condition, as measured in terms of the injured resource's physical, chemical, or biological properties or the services it had previously provided, when such actions are in addition to a response action.

(b) Authorization. The Secretary may assess damages against any person found to be liable under section 6615 of this title for a release or threatened release of hazardous material for injury to, destruction of, or loss of natural resources from the release or threatened release. The measure of damages that may be assessed for natural resources damages shall include the cost of restoring or rehabilitating injured, damaged, or destroyed natural resources, compensation for the interim injury to or loss of natural resources pending recovery, and any reasonable costs of the Secretary in conducting a natural resources damage assessment.

(c) Rulemaking; methodology. The Secretary shall adopt rules to implement the requirements of this section, including a methodology by which the Secretary shall assess and value natural resources damages. The rules shall include:

(1) requirements or acceptable standards for the preassessment of natural resources damages, including requirements for:

(A) notification of the Secretary or other necessary persons;

(B) authorized emergency response to natural resources damages, and

(C) sampling or screening of the potentially injured natural resources;

(2) requirements for the a natural resources damages assessment plan to ensure that the natural resources damage assessment is performed in a designed and systematic manner, including:

(A) the categories of reasonable and necessary costs that may be incurred as part of the assessment plan;

(B) the methodologies for identifying and screening costs;

(C) the types of assessment procedures available to the Secretary, when the available procedures are authorized, and the requirements of the available procedures;

(D) how injury or loss shall be determined and how injury or loss is quantified; and

(E) how damages are determined;

(3) requirements for post-natural resources damages assessment, including:

(A) the documentation that the Secretary shall produce to complete the assessment;

(B) how the Secretary shall seek recovery; and

(C) when and whether the Secretary shall require a restoration plan; and

(4) other requirements deemed necessary by the Secretary for implementation of the rules.

(d) Exceptions. The Secretary shall not seek to recover natural resources damages under this section when the person liable for the release or threatened release:

(1) demonstrates that the alleged natural resources damages were identified as a potential irreversible or irretrievable environmental effect on natural resource damages in an application for, renewal of, review of, or other environmental assessment of a permit, certification, license or other required authorization;

(2) the Secretary authorized the identified effect on natural resources in an issued permit, certification, license, or other authorization; and

(3) the person liable for the release or threatened release was operating within the terms of its permit, certification, license, or other authorization.

(e) Limitations. The natural resources damages authorized under this section and the requirements for assessment under the rules authorized by this section shall not limit the authority of the Secretary of Natural Resources to seek or recover natural resource damages under other State law, federal law, or common law.

Sec. 10. NATURAL RESOURCES DAMAGES; COMMENCEMENT; ADOPTION

(a) The Secretary of Natural Resources shall consult with interested parties in the adoption of rules under 10 V.S.A. § 6615d.

(b) The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 6615d on or before January 1, 2017. The Secretary shall adopt rules under 10 V.S.A. § 6615d on or before November 1, 2017.

(c) On or before February 15, 2017, the Secretary of Natural Resources shall submit to the Senate and House Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources a copy of the draft rules for natural resource damages required under 10 V.S.A. § 6615d for review.

(d) The Secretary of Natural Resources shall not seek natural resources damages under 10 V.S.A. § 6615d until the rules required under 10 V.S.A. § 6615d(c) are effective.

Sec. 11. 10 V.S.A. § 8005(b) is amended to read:

(b) Access orders and information requests.

(1) A Superior Court judge shall issue an access order when access has been refused and the investigator, by affidavit, describes the property to be examined and identifies:

(A) a provision of a permit that authorizes the inspection; or

(B) the property as being scheduled for inspection in accordance with a neutral inspection program adopted by the Secretary or the Natural Resources Board; or

(C) facts providing reasonable grounds to believe that a violation exists and that an examination of the specifically described property will be of material aid in determining the existence of the violation.

(2) A Superior Court shall issue an order requiring compliance with an information request submitted pursuant to section 6615c of this title when:

(A) the person served with the request fails to respond to the request in the time frame identified by the Secretary;

(B) the Secretary submits, by affidavit, facts providing reasonable grounds that a release or threatened release has taken place; and

(C) the information will be of material aid in responding to the release or threatened release.

(3) Issuance of an access order shall not negate the Secretary's authority to initiate criminal proceedings in the same matter by referring the matter to the Office of the Attorney General or a State's Attorney.

Sec. 12. AGENCY OF NATURAL RESOURCES' WORKING GROUP ON TOXIC CHEMICAL USE IN THE STATE

(a) Formation. On or before July 1, 2016, the Secretary of Natural Resources shall establish a working group of interested parties to develop recommendations for how to improve the ability of the State to:

(1) prevent citizens and communities in the State from being exposed to toxic chemicals, hazardous materials, or hazardous wastes;

(2) identify and regulate the use of toxic chemicals or hazardous materials that currently are unregulated by the State; and

(3) inform communities and citizens in the State of potential exposure to toxic chemicals, including contamination of groundwater, public drinking water systems, and private potable water supplies

(b) Duties. The Working Group shall:

(1) recommend actions the State of Vermont could take to improve how data is collected and what data is collected regarding the location of sites where toxic chemicals, hazardous materials, or hazardous waste is used, stored, or managed; and the proximity of these sites to both public and private water supplies;

(2) recommend actions the State of Vermont could take to improve what information is made available to the public, and how it is made publically available, regarding the risks to private and public drinking water supplies and groundwater from toxic chemicals, hazardous materials, or hazardous waste;

(3) recommend actions the State of Vermont could take to improve the identification process and consistency of listing and regulating hazardous materials, hazardous waste, and toxic chemicals regulated within DEC and the Department of Health, to ensure the State is adequately identifying chemicals that pose a threat to human health, and that it has the necessary tools to prevent and respond to chemical threats to human health;

(4) recommend actions the State of Vermont could take to improve the prevention, detection, and response to the contamination of public drinking water supplies and groundwater from toxic chemicals, hazardous materials, or hazardous waste;

(5) identify potential fiscal issues related to its recommendations, and make recommendations on actions the State of Vermont could take to better fund existing programs and any recommended improvements; and

(6) develop recommended legislative changes that may be needed to implement recommendations and strategies.

(c) The Working Group shall submit a report to the Senate and House Committees on Natural Resources and Energy and to the House Committee on Fish, Wildlife and Water Resources with its findings and recommendations on or before January 15, 2017.

Sec. 13. EFFECTIVE DATES

(a) This section and Secs. 1 (ANR authorization to adopt surface water rules), 3 (surface water source rules; potable water supply), 6 (certification of laboratories), 7 (Environmental Contingency Fund), 8 (ANR information requests), 9–10 (natural resources damages), 11 (ANR enforcement), and 12 (ANR working group on toxic chemicals) shall take effect on passage.

(b) Secs. 4–5 (testing of new groundwater sources) shall take effect on passage, except that 10 V.S.A. § 1982(b) (the requirement to test new groundwater sources) shall take effect on January 1, 2017.

(c) Sec. 2 (permitting of surface water sources) shall take effect July 1, 2017.

(For text see House Journal March 16, 2016)

Amendment to be offered by Rep. Krebs of South Hero to H. 595

That the House concur in the Senate proposal of amendment with the following further proposal of amendment by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Surface Water Sources; Potable Water Supply * * *

Sec. 1. 10 V.S.A. § 1978(a) is amended to read:

(a) The Secretary shall adopt rules, in accordance with 3 V.S.A. chapter 25, necessary for the administration of this chapter. These rules shall include the following:

* * *

(15) Provisions authorizing the use by a residential dwelling of surface water as a source of a potable water supply permitted under this chapter.

Sec. 2. 10 V.S.A. § 1981 is added to read:

§ 1981. SURFACE WATER SOURCE; POTABLE WATER SUPPLY

The Secretary shall approve the use of a surface water as the source of a potable water supply under this chapter if the following conditions are satisfied:

(1) the building or structure using the surface water as a source is a single-family residence occupied by the owner of record;

(2) only one single-family residence shall be served by a potable water supply using a surface water as a source;

(3) a single-family residence with a potable water supply using a surface water as a source shall not be used as the site of a home occupation that employs persons other than family members and is visited by the public in a manner or duration that would presume the need for use of a potable water supply;

(4) a professional engineer shall design the potable water supply using a surface water as a source, including a treatment system for the surface water;

(5) only surface waters that meet criteria adopted by the Secretary by rule are eligible as the source of a potable water supply permitted under this chapter; and

(6) the applicant or permit holder shall comply with other criteria and requirements adopted by the Secretary by rule for potable water supplies using a surface water as a source.

Sec. 3. SURFACE WATER SOURCE; RULEMAKING

The Secretary shall adopt rules to implement 10 V.S.A. § 1981 on or before July 1, 2017.

* * *Groundwater Testing; Technical Advisory Committee* * *

Sec. 4. TECHNICAL ADVISORY COMMITTEE; RECOMMENDATIONS ON GROUNDWATER TESTING

(a) The Secretary of Natural Resources shall seek the recommendations of the Technical Advisory Committee on Wastewater Systems and Potable Water Supplies regarding whether and how to test for contamination in groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64. The recommendations shall address:

(1) whether the State should require testing of groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64;

(2) if testing is recommended:

(A) in what situations or upon what occurrences should testing be required;

(B) from what component of a potable water supply the sample should be taken, including whether a sample from the wellhead of the potable water supply is sufficient;

(C) who should be authorized to take the sample; and

(D) what parameters or contaminants should be tested for in groundwater;

(3) any additional issues or requirements that the Technical Advisory Committee deems relevant to the testing of groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64.

(b) The Secretary of Natural Resources shall submit the recommendations of the Technical Advisory Committee to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy on or before January 15, 2017.

* * * Environmental Contingency Fund * * *

Sec. 5. 10 V.S.A. § 1283(b) is amended to read:

(b) Disbursements under this subsection may be made for emergency purposes or to respond to other than emergency situations; provided, however, that disbursements in response to an individual situation which is not an emergency situation shall not exceed $100,000.00 for costs attributable to each of the subdivisions of this subsection, unless the Secretary has received the approval of the General Assembly, or the Joint Fiscal Committee, in case the General Assembly is not in session. Furthermore, the balance in the Fund shall not be drawn below the amount of $100,000.00, except in emergency situations. If the balance of the Fund becomes insufficient to allow a proper response to one or more emergencies that have occurred, the Secretary shall appear before the Emergency Board, as soon as possible, and shall request that necessary funds be provided. Within these limitations, disbursements from the Fund may be made:

* * *

(7) to pay costs of management oversight provided by the State for investigation and cleanup efforts conducted by voluntary responsible parties ~~where those responsible parties have contributed monies to the Fund pursuant to a written agreement under subsection (f) of this section~~;

* * *

(9) to pay costs of required capital contributions and operation and maintenance when the remedial or response action was taken pursuant to 42 U.S.C. § 9601 et seq.;

(10) to pay the costs of oversight or conducting assessment of a natural resource damaged by the release of a hazardous material and being assessed for damages pursuant to section 6615d of this title; or

(11) to pay the costs of oversight or conducting restoration or rehabilitation to a natural resource damaged by the release of a hazardous material and being restored or rehabilitated pursuant to section 6615d of this title.

* * * ANR Information Requests; Hazardous Material Releases * * *

Sec. 6. 10 V.S.A. § 6615c is added to read:

§ 6615c. INFORMATION REQUESTS

(a)(1) When the Secretary has reasonable grounds to believe that the Secretary has identified a person who may be subject to liability for a release

or threat of release under section 6615 of this title, the Secretary may require the person to furnish information related to:

(A) The type, nature, and quantity of any commercial chemical product or hazardous material that has been or is being used, generated, treated, stored, or disposed of at a facility or transported to a facility.

(B) The nature or extent of a release or threatened release of a hazardous material from a facility.

(C) Financial information related to the ability of a person to pay for or to perform the cleanup or information surrounding the corporate structure, if any, of such person who may be subject to liability for a release or threat of release under section 6615 of this title, provided that the person has notified the Secretary that he or she does not have the ability to pay, refuses to perform, or fails to respond to a deadline established under section 6615b of this title to commit to performing a corrective action.

(2) A person served with an information request shall respond within 30 days of receipt of the request or by the date specified by the Secretary in the request, provided that the Secretary may require a person to respond within 10 days of receipt of a request when there is an imminent threat to the environment or other emergency that requires on expedited response.

(3) When the Secretary submits a request for information under this section, the Secretary shall provide the person who received the request information regarding the person's right to object or not comply with the request for information. The information shall include the potential actions that the Secretary may pursue if the person objects to or does not comply with the request for information.

(b)(1) A person who has received a request under subsection (a) of this section shall, at the discretion of the Secretary, either:

(A) grant the Secretary access, at reasonable times, to any facility, establishment, place, property, or location to inspect and copy all documents or records responsive to the request; or

(B) copy and furnish to the Secretary all information responsive to the request at the option and expense of the person or provide a written explanation that the information has already been provided to the Secretary and a reference to the permit, enforcement action, or other matter under which the Secretary obtained the requested information.

(2) A person responding to a request under subsection (a) of this section may assert any privilege under statute, rule, or common law that is recognized in the State of Vermont to limit access to such information, including the

attorney-client privilege. A person responding to a request for information under this section shall not assert privileges related to business confidentiality, including trade secrets, in order to withhold requested information. Any information that is privileged shall be provided to the Secretary with the privileged material redacted. The Secretary may require that a person asserting a privilege under this section provide an index of all privileged information.

(c) The Secretary may require any person who has or may have knowledge of any information listed in subdivision (a)(1) of this section to appear at the offices of the Secretary and may take testimony and require the production of records that relate to a release or threatened release of a hazardous material.

(d) Any request for information under this section shall be served personally or by certified mail.

(e) A response to a request under this section shall be personally certified by the person responding to the request that, under penalty of perjury and to the best of the person's knowledge:

(1) the response is accurate and truthful; and

(2) the person has not omitted responsive information or will provide the responsive information according to a production schedule approved by the Secretary.

(f) Information identified as qualifying for the trade secret exemption under 1 V.S.A. § 317(c)(9) and other financial information submitted under this section shall be confidential and shall not be subject to inspection and copying under the Public Records Act. A person subject to an information request under this section shall be responsible for proving that submitted information qualifies for the trade secret exemption under 1 V.S.A. § 317(c)(9). The following information is not trade secret information or financial information for the purposes of this subsection:

(1) the trade name, common name, or generic class or category of the hazardous material;

(2) the physical properties of the hazardous material, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius;

(3) the hazards to health and the environment posed by the hazardous material, including physical hazards and potential acute and chronic health hazards;

(4) the potential routes of human exposure to the hazardous material at the facility;

(5) the location of disposal of any waste stream at the facility;

(6) any monitoring data or analysis of monitoring data pertaining to disposal activities;

(7) any hydrogeologic or geologic data; or

(8) any groundwater monitoring data.

(g) As used in this section, "information" means any written or recorded information, including all documents, records, photographs, recordings, e-mail, correspondence, or other machine readable material.

Sec. 7. 10 V.S.A. § 8005(b) is amended to read:

(b) Access orders and information requests.

(1) A Superior Court judge shall issue an access order when access has been refused and the investigator, by affidavit, describes the property to be examined and identifies:

(A) a provision of a permit that authorizes the inspection; or

(B) the property as being scheduled for inspection in accordance with a neutral inspection program adopted by the Secretary or the Natural Resources Board; or

(C) facts providing reasonable grounds to believe that a violation exists and that an examination of the specifically described property will be of material aid in determining the existence of the violation.

(2) A Superior Court shall issue an order requiring compliance with an information request submitted pursuant to section 6615c of this title when:

(A) the person served with the request fails to respond to the request in the time frame identified by the Secretary;

(B) the Secretary submits, by affidavit, facts providing reasonable grounds that a release or threatened release has taken place; and

(C) the information will be of material aid in responding to the release or threatened release.

(3) Issuance of an access order shall not negate the Secretary's authority to initiate criminal proceedings in the same matter by referring the matter to the Office of the Attorney General or a State's Attorney.

* * * Natural Resource Damages * * *

Sec. 8. 10 V.S.A. § 6615d is added to read:

§ 6615d. NATURAL RESOURCE DAMAGES; LIABILITY;

RULEMAKING

(a) Definitions. As used in this section:

(1) "Acquisition of or acquiring the equivalent or replacement" means the substitution for an injured resource with a resource that provides the same or substantially similar services, when the substitution:

(A) is in addition to a substitution made or anticipated as part of a response action; and

(b) exceeds the level of response action determined appropriate for the site under section 6615b of this title.

(2) "Baseline condition" means the condition or conditions that would have existed at the area of assessed damages had the release of hazardous material at or from the facility in question not occurred.

(3) "Damages" means the amount of money sought by the Secretary for the injury, destruction, or loss of a natural resource.

(4) "Destruction" means the total and irreversible loss of natural resources.

(5) "Injury" means a measurable adverse long-term or short-term change in the chemical or physical quality or viability of a natural resource resulting either directly or indirectly from exposure to a release of hazardous material or exposure to a product of reactions from a release of hazardous materials.

(6) "Loss" means a measurable adverse reduction of a chemical or physical quality or viability of a natural resource.

(7) "Natural resource damage assessment" means the process of collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to determine the damages for injuries to a natural resource.

(8) "Natural resources" means fish, wildlife, biota, air, surface water, groundwater, wetlands, drinking water supplies, or State-held public lands.

(9) "Restoring," "restoration," "rehabilitating," or "rehabilitation" means actions undertaken to return an injured natural resource to its baseline condition, as measured in terms of the injured resource's physical, chemical, or biological properties or the services it had previously provided, when such actions are in addition to a response action under section 6615 of this title.

(10) "Services" means the physical and biological functions performed by the natural resource, including the human uses of those functions.

(b) Authorization. The Secretary may assess damages against any person found to be liable under section 6615 of this title for a release of hazardous material for injury to, destruction of, or loss of a natural resource from the release. The measure of damages that may be assessed for natural resource damages shall include the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the injured, damaged, or destroyed natural resources or the services the natural resources provided and any reasonable costs of the Secretary in conducting a natural resource damage assessment. The Secretary also may seek compensation for the interim injury to or loss of a natural resource pending recovery of services to the baseline condition of the natural resource.

(c) Rulemaking; methodology. The Secretary shall adopt rules to implement the requirements of this section, including a methodology by which the Secretary shall assess and value natural resource damages. The rules shall include:

(1) requirements or acceptable standards for the preassessment of natural resource damages, including requirements for:

(A) notification of the Secretary, natural resource trustees, or other necessary persons of potential damages to natural resources under investigation for the coordination of the assessments, investigations, and planning;

(B) authorized emergency response to natural resource damages when immediate action to avoid destruction of a natural resource is necessary or a situation in which there is a similar need for emergency action, and where the potentially liable party under section 6615 of this title fails to take emergency response actions requested by the Secretary; and

(C) sampling or screening of the potentially injured natural resource;

(2) requirements for a natural resource damages assessment plan to ensure that the natural resource damage assessment is performed in a planned and systematic manner, including:

(A) the categories of reasonable and necessary costs that may be incurred as part of the assessment plan;

(B) the methodologies for identifying and screening restoration alternatives and their costs;

(C) the types of reasonably reliable assessment procedures available to the Secretary, when the available procedures are authorized, and the requirements of the available procedures;

(D) how injury or loss shall be determined and how injury or loss is quantified; and

(E) how damages are measured in terms of the cost of:

(i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline condition; or

(ii) the replacement or acquisition of equivalent natural resources or services;

(3) requirements for post-natural resource damages assessment, including:

(A) the documentation that the Secretary shall produce to complete the assessment;

(B) how the Secretary shall seek recovery; and

(C) when and whether the Secretary shall require a restoration plan; and

(4) other requirements deemed necessary by the Secretary for implementation of the rules.

(d) Exceptions. The Secretary shall not seek to recover natural resource damages under this section when:

(1) the person liable for the release demonstrates that the nature and degree of the destruction, injury, or loss to the natural resources were identified in an application for, renewal of, review of, or other environmental assessment of a permit, certification, license, or other required authorization;

(2) the Secretary authorized the nature and degree of the destruction, injury, or loss to the natural resource in an issued permit, certification, license, or other authorization; and

(3) the person liable for the release was operating within the terms of its permit, certification, license, or other authorization.

(e) Limitations. The natural resource damages authorized under this section and the requirements for assessment under the rules authorized by this section shall not limit the authority of the Secretary of Natural Resources to seek or recover natural resource damages under other State law, federal law, or common law.

(f) Limit on double recovery. The Secretary or other natural resource trustee shall not recover natural resource damages under this section for the costs of damage assessment or restoration, rehabilitation, or acquisition of equivalent resources or services recovered by the Secretary or the other trustee

under other authority of this chapter or other law for the same release of hazardous material and the same natural resource.

(g) Actions for natural resource damages. No action may be commenced for natural resource damages under this chapter, unless that action is commenced within six years after the date of the discovery of the loss and its connection with the release of hazardous material in question.

(h) Limit on preenactment damages. There shall be no recovery under this section for natural resource damages that occurred wholly before the adoption of rules under subsection (c) of this section.

(i) Use of funds. Damages recovered as natural resource damages shall be deposited in the Environmental Contingency Fund established pursuant to section 1283 of this title.

Sec. 9. NATURAL RESOURCE DAMAGES; COMMENCEMENT; ADOPTION

(a) The Secretary of Natural Resources shall consult with interested parties and parties with expertise in natural resource damage assessment and valuation in the adoption of rules under 10 V.S.A. § 6615d. The Secretary shall convene a working group as part of this consultation. The Secretary shall convene the working group on or before July 1, 2016.

(b) On or before February 1, 2017, the Secretary of Natural Resources shall submit to the Senate and House Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources a copy of the draft rules for natural resource damages required under 10 V.S.A. § 6615d for review and any recommended amendments to 10 V.S.A. § 6615d for review.

(c) The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 6615d on or before July 1, 2017. The Secretary shall adopt rules under 10 V.S.A. § 6615d on or before March 1, 2018.

(d) The Secretary of Natural Resources shall not seek natural resource damages under 10 V.S.A. § 6615d until the rules required under 10 V.S.A. § 6615d(c) have taken effect.

* * * Working Group on Toxic Chemicals * * *

Sec. 10. AGENCY OF NATURAL RESOURCES' WORKING GROUP ON TOXIC CHEMICAL USE IN THE STATE

(a) Formation. On or before July 1, 2016, the Secretary of Natural Resources shall establish a working group of interested parties and parties with

expertise in the field of toxic chemical use and regulation to develop recommendations for how to improve the ability of the State to:

(1) prevent citizens and communities in the State from being exposed to toxic chemicals, hazardous materials, or hazardous wastes;

(2) identify and regulate the use of toxic chemicals or hazardous materials that currently are unregulated by the State; and

(3) inform communities and citizens in the State of potential exposure to toxic chemicals, including contamination of groundwater, public drinking water systems, and private potable water supplies

(b) Duties. The Working Group shall:

(1) Identify the existing State or federal programs that establish reporting or management requirements regarding the use or generation of a toxic substance, hazardous waste, or hazardous material. The Working Group shall identify how those programs identify the toxic substance, hazardous waste, or hazardous material for regulation and briefly describe the management of the waste or substance.

(2) Evaluate the State or federal programs identified in subdivision (1) of this subsection to determine:

(A) the program's effectiveness in preventing releases of toxic substances, hazardous wastes, or hazardous materials;

(B) whether gaps or duplication exists between the programs that should be addressed to reduce threats to human health and the environment; and

(C) whether the programs are adequately funded and staffed to meet their statutory and regulatory purpose.

(3) Identify State or federal programs that require a response to the release to a toxic substance, hazardous waste, or hazardous material and assess their effectiveness in responding to releases in a manner that minimizes impacts to human health and the environment.

(4) Identify programs in place in other states that address the threat to human health and the environment from emerging contaminants and assess their effectiveness in accomplishing those objectives.

(5) Evaluate the State of Vermont's existing sources of publicly available information about toxic chemicals, including emerging contaminants, hazardous waste, and hazardous materials in Vermont.

(6) Evaluate whether civil remedies under Vermont law are sufficient to ensure that private individuals are adequately protected from releases of hazardous materials, hazardous wastes, and toxic chemicals and that persons responsible for such releases pay for any harm caused.

(7) Evaluate the obligations on the Environmental Contingency Fund established under 10 V.S.A. § 1283 and funding alternatives that would ensure the long-term solvency of the Fund.

(c) The Working Group shall submit a report to the Senate and House Committees on Natural Resources and Energy and to the House Committee on Fish, Wildlife and Water Resources with its findings and recommendations on or before January 15, 2017.

* * * Chemicals of High Concern to Children * * *

Sec. 11. 18 V.S.A. § 1775 is amended to read:

§ 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF HIGH CONCERN

(a) Notice of chemical of high concern to children. ~~Unless the Commissioner adopts by rule a phased-in reporting requirement under section 1776 of this title, beginning on July 1, 2016, and biennially thereafter, a~~ A manufacturer of a children's product or a trade association representing a manufacturer of children's products shall submit to the Department the notice described in subsection (b) of this section for each chemical of high concern to children in a children's product if a chemical of high concern to children is:

* * *

(l) Submission of notice; dates. Unless the Commissioner adopts by rule a phased-in reporting requirement under section 1776 of this title, a manufacturer shall submit the notice required under subsection (a) of this section by:

(1) January 1, 2017; and

(2) August 31, 2018, and biennially thereafter.

* * * Basin Planning; Natural Resources Conservation Council * * *

Sec. 12. 10 V.S.A. § 1253(d) is amended to read:

(d)(1) Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an

overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and ~~natural resource conservation districts~~ the Natural Resources Conservation Council, shall revise all 15 basin plans and update the basin plans on a five-year rotating basis. On or before January 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forest Products, on Natural Resources and Energy, and on Fish, Wildlife and Water Resources, and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties encountered in revising basin plans. The report shall include a summary of basin planning activities in the previous calendar year, a schedule for the production of basin plans in the subsequent calendar year, and a summary of actions to be taken over the subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(2) In developing a basin plan under this subsection, the Secretary shall:

* * *

(G) develop, in consultation with the ~~applicable~~ regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

* * *

(3) The Secretary shall, contingent upon the availability of funding, contract with a regional planning commission or the Natural Resources Conservation Council to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection. When contracting with a regional planning commission or the Natural Resources Conservation Council to assist in or produce a basin plan, the Secretary may require the regional planning commission or the Natural Resources Conservation Council to:

(A) conduct any of the activities required under subdivision (2) of this subsection;

(B) provide technical assistance and data collection activities to inform municipal officials and the State in making water quality investment decisions;

(C) coordinate municipal planning and adoption or implementation of municipal development regulations to better meet State water quality policies and investment priorities; or

(D) assist the Secretary in implementing a project evaluation process to prioritize water quality improvement projects within the region to assure cost effective use of State and federal funds.

* * * State Grants; Water Quality Certification * * *

Sec. 13. SECRETARY OF ADMINISTRATION; WATER QUALITY STANDARDS CERTIFICATION FOR STATE-FUNDED GRANTS; REPORT

(a) As used in this section:

(1) "Applicant" shall include all entities, including businesses in which the applicant has a greater than 10 percent interest, or land owned or controlled by the applicant.

(2) "Good standing" means the applicant:

(A) is not a named party in any administrative order, consent decree, or judicial order relating to Vermont water quality standards issued by the State or any of its agencies or departments; and

(B) is in compliance with all federal and State water quality laws and regulations.

(b)(1) The Secretary of Administration shall amend the Standard State Provisions for Contracts and Grants, referred to as Attachment C to Administrative Bulletin 5, to require an applicant for a State-funded grant to certify, under penalty of perjury, that the applicant is in good standing with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets.

(2) The requirement under this subsection shall allow for an attachment or include space for an applicant who cannot certify under subdivision (1) of this subsection to explain the circumstances surrounding the applicant's inability to certify under subdivision (1) of this subsection.

(3) At any time prior to the award of a State-funded grant or during implementation of a State-funded grant, an applicant shall notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets.

(c) A State agency or department may consider an applicant's certification or explanation under subsection (b) of this section in determining whether or not to award a State-funded grant to the applicant.

(d)(1) If a State-funded grant applicant knowingly provides a false certification or explanation under subsection (b) of this section or fails to

notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets as required in subdivision (b)(3) of this section, the State or its agencies or departments may:

(A) seek to recover the grant award; and

(B) deny any future grant award to the applicant, based on the false certification or explanation or failure to notify, for up to five years.

(2) In recovering a grant award under this section, the State or its agencies or departments shall be entitled to costs and expenses, including attorney's fees.

(e) This section shall not apply to federally funded grants, contracts, or tax credits or federal or State loan programs.

(f) On or before January 15, 2021, the Secretary of Administration shall submit a report to the House Committees on Fish, Wildlife and Water Resources and on Commerce and Economic Development and the Senate Committees on Natural Resources and Energy and on Economic Development, Housing and General Affairs regarding methods to require all economic development assistance applications to include a certification that the applicant is not in violation of the requirements of programs enforced by the Agency of Natural Resources under 10 V.S.A. § 8003(a). The report shall also include information regarding any enforcement action taken by the State or its agencies or departments under subsection (d) of this section.

* * * Effective Dates * * *

Sec. 14. EFFECTIVE DATES

(a) This act shall take effect on passage, except that:

(1) Sec. 13 (State grants; water quality certification) shall take effect on July 1, 2016; and

(2) Sec. 2 (permitting of surface water sources) shall take effect on July 1, 2017.

Action Under Rule 52

H.R. 22

House resolution requesting the governors of the 19 states that have suspended state implementation planning to continue the compliance process under the Environmental Protection Agency's Carbon Pollution Emission Guidelines

(For text see House Journal April 28, 2016)

Action Postponed Until May 2, 2016

Favorable with Amendment

H. 866

An act relating to prescription drug manufacturer cost transparency

NOTICE CALENDAR

Favorable with Amendment

H. 880

An act relating to approval of the adoption and codification of the charter of the Town of Bridport

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

Sec. 1. CHARTER APPROVAL

The General Assembly approves the adoption of and codifies the charter of the Town of Bridport as set forth in this act. The voters approved the charter on March 1, 2016.

Sec. 2. 24 App. V.S.A. chapter 107A is added to read:

CHAPTER 107A. TOWN OF BRIDPORT

Subchapter 1. Corporate Existence Retained

§ 1. CORPORATE EXISTENCE RETAINED

(a) Pursuant to the authority granted by the General Assembly, there is hereby enacted a charter to govern the organization and operation of local government in the Town of Bridport.

(b) The inhabitants of the Town of Bridport, within the geographical limits as now established, shall continue to be a municipal corporation by the name of the Town of Bridport.

Subchapter 2. General Provisions

§ 2. GENERAL PROVISIONS

(a) Except when changed, enlarged, or modified by the provisions of this chapter, all provisions of the statutes of the State relating to municipalities shall apply to the Town.

(b) The Town shall have all the powers granted to towns and municipal corporations by the Constitution and laws of the State and this chapter,

together with all the implied powers necessary to carry into execution all the powers granted. The Town may enact ordinances not inconsistent with the Constitution of the State or this chapter, and impose penalties for violation thereof.

(c) In this chapter, any mention of a particular power shall not be construed to restrict the scope of the powers that the Town would have if the particular power were not mentioned, unless this chapter otherwise provides.

(d) Nothing in this chapter shall be construed to in any way limit the powers and functions conferred on the Town, the Selectboard, or its elected or appointed officers by general or special enactment of State statutes or rules in force or effect or hereafter enacted, and the powers and functions conferred by this chapter shall be cumulative and in addition to the provisions of the general or special enactment unless this chapter otherwise provides.

Subchapter 3. Appointed Officers

§ 3. APPOINTED OFFICERS

(a) In addition to all other offices that may be filled by appointment by the Selectboard pursuant to State law or this chapter, the Selectboard shall appoint the following Town officers, who shall serve for such terms as the Selectboard may establish in its act of appointment or until the office otherwise becomes vacant:

(1) A Town Treasurer who shall not simultaneously hold any elective office within Town government. The Town Treasurer shall:

(A) be open to the public at hours adopted by the Selectboard;

(B) be responsible for the collection of current taxes;

(C) perform duties as specified in the accounting and financial policies adopted by the Selectboard and required by State law; and

(D) make monthly reports to the Selectboard of the financial activities of the Town. These reports shall include:

(i) a listing of all expenditures during the preceding month;

(ii) a listing of all revenue received during the preceding month, including the source of these revenues;

(iii) an accounting of all reserve funds of the Town; and

(iv) a statement showing the balance in the general, highway, and all special funds at the end of the preceding month.

(2) A Town Clerk who shall not simultaneously hold any elective office within Town government. The Town Clerk shall:

(A) be open to the public at hours adopted by the Selectboard; and

(B) perform those duties adopted by the Selectboard and required by State law.

(b) The Selectboard shall adopt and revise, from time to time, a general statement of the qualifications necessary to perform the duties and responsibilities of each of these appointed Town offices and a job description of those offices. These appointed officers shall exercise all the powers and duties necessary to carry out the provisions of this chapter as well as those provided by State law generally.

(c) These appointed officers shall be employees of the Town, subject to all personnel and employment rules, regulations, and policies of the Town. An officer appointed hereunder shall be eligible to apply for reappointment at the expiration of his or her term of office, but failure by the Selectboard to make such reappointment shall not be construed as discharge from employment.

(d) A person appointed to the position of Town Treasurer or Town Clerk need not be a resident or voter of the Town.

Subchapter 4. Separability

§ 4. SEPARABILITY

If any provision of this chapter is held invalid, the other provisions of the chapter shall not be affected thereby.

Sec. 3. TRANSITIONAL PROVISIONS

Notwithstanding the provisions of Sec. 2 of this act, 24 App. V.S.A. chapter 107A, § 3 (appointed officers) that provides that the office of Town Clerk and Town Treasurer shall be appointed by the Selectboard, an elected Town Clerk or Town Treasurer in office immediately prior to the effective date of that section may continue to hold that office for the remainder of his or her term and until a successor is appointed. At the end of the elected Town Clerk and Town Treasurer's term of office or, in the case of a vacancy in his or her office, the provisions of Sec. 2 of this act, 24 App. V.S.A. chapter 107A, § 3, shall apply.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 10-0-1)

S. 155

An act relating to privacy protection

Rep. Grad of Moretown, for the Committee on **Judiciary,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Protected Health Information * * *

Sec. 1. 18 V.S.A. chapter 42B is added to read:

CHAPTER 42B. HEALTH CARE PRIVACY

§ 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION PROHIBITED

(a) As used in this section:

(1) "Covered entity" shall have the same meaning as in 45 C.F.R. § 160.103.

(2) "Protected health information" shall have the same meaning as in 45 C.F.R. § 160.103.

(b) A covered entity shall not disclose protected health information unless the disclosure is permitted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

* * * Drones * * *

Sec. 2. 20 V.S.A. part 11 is added to read:

PART 11. DRONES

CHAPTER 205. DRONES

§ 4621. DEFINITIONS

As used in this chapter:

(1) "Drone" means a powered aerial vehicle that does not carry a human operator and is able to fly autonomously or to be piloted remotely.

(2) "Law enforcement agency" means:

(A) the Vermont State Police;

(B) a municipal police department;

(C) a sheriff's department;

(D) the Office of the Attorney General;

(E) a State's Attorney's office;

(F) the Capitol Police Department;

(G) the Department of Liquor Control;

(H) the Department of Fish and Wildlife;

(I) the Department of Motor Vehicles;

(J) a State investigator; or

(K) a person or entity acting on behalf of an agency listed in this subdivision (2).

§ 4622. LAW ENFORCEMENT USE OF DRONES

(a) Except as provided in subsection (c) of this section, a law enforcement agency shall not use a drone or information acquired through the use of a drone for the purpose of investigating, detecting, or prosecuting crime.

(b)(1) A law enforcement agency shall not use a drone to gather or retain data on private citizens peacefully exercising their constitutional rights of free speech and assembly.

(2) This subsection shall not be construed to prohibit a law enforcement agency from using a drone:

(A) for observational, public safety purposes that do not involve gathering or retaining data; or

(B) pursuant to a warrant obtained under Rule 41 of the Vermont Rules of Criminal Procedure.

(c) A law enforcement agency may use a drone and may disclose or receive information acquired through the operation of a drone if the drone is operated:

(1) for a purpose other than the investigation, detection, or prosecution of crime, including search and rescue operations and aerial photography for the assessment of accidents, forest fires and other fire scenes, flood stages, and storm damage; or

(2) pursuant to:

(A) a warrant obtained under Rule 41 of the Vermont Rules of Criminal Procedure; or

(B) a judicially recognized exception to the warrant requirement.

(d)(1) When a drone is used pursuant to subsection (c) of this section, the drone shall be operated in a manner intended to collect data only on the target of the surveillance and to avoid data collection on any other person, home, or area.

(2) Facial recognition or any other biometric matching technology shall not be used on any data that a drone collects on any person, home, or area other than the target of the surveillance.

(e) Information or evidence gathered in violation of this section shall be inadmissible in any judicial or administrative proceeding.

§ 4623. USE OF DRONES; FEDERAL AVIATION ADMINISTRATION REQUIREMENTS

(a) Any use of drones by any person, including a law enforcement agency, shall comply with all applicable Federal Aviation Administration requirements and guidelines.

(b) It is the intent of the General Assembly that any person who uses a model aircraft as defined in the Federal Aviation Administration Modernization and Reform Act of 2012 shall operate the aircraft according to the guidelines of community-based organizations such as the Academy of Model Aeronautics National Model Aircraft Safety Code.

§ 4624. REPORTS

(a) On or before September 1 of each year, any law enforcement agency that has used a drone within the previous 12 months shall report the following information to the Department of Public Safety:

(1) The number of times the agency used a drone within the previous 12 months. For each use of a drone, the agency shall report the type of incident involved, the nature of the information collected, and the rationale for deployment of the drone.

(2) The number of criminal investigations aided and arrests made through use of information gained by the use of drones within the previous 12 months, including a description of how the drone aided each investigation or arrest.

(3) The number of times a drone collected data on any person, home, or area other than the target of the surveillance within the previous 12 months and the type of data collected in each instance.

(4) The cost of the agency's drone program and the program's source of funding.

(b) On or before December 1 of each year that information is collected under subsection (a) of this section, the Department of Public Safety shall report the information to the House and Senate Committees on Judiciary and on Government Operations.

Sec. 3. 13 V.S.A. § 4018 is added to read:

§ 4018. DRONES

(a) No person shall equip a drone with a dangerous or deadly weapon or fire a projectile from a drone. A person who violates this section shall be imprisoned not more than one year or fined not more than $1,000.00, or both.

(b) As used in this section:

(1) "Drone" shall have the same meaning as in 20 V.S.A. § 4621.

(2) "Dangerous or deadly weapon" shall have the same meaning as in section 4016 of this title.

Sec. 4. REPORT; AGENCY OF TRANSPORTATION AVIATION PROGRAM

On or before December 15, 2016, the Aviation Program within the Agency of Transportation shall report to the Senate and House Committees on Judiciary any recommendations or proposals it determines are necessary for the regulation of drones pursuant to 20 V.S.A. § 4623.

* * * Vermont Electronic Communication Privacy Act * * *

Sec. 5. 13 V.S.A. chapter 232 is added to read:

CHAPTER 232. VERMONT ELECTRONIC COMMUNICATION PRIVACY ACT

§ 8101. DEFINITIONS

As used in this chapter:

(1) "Electronic communication" means the transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature in whole or in part by a wire, a radio, electromagnetic, photoelectric, or photo-optical system.

(2) "Electronic communication service" means a service that provides to its subscribers or users the ability to send or receive electronic communications, including a service that acts as an intermediary in the transmission of electronic communications, or stores protected user information.

(3) "Electronic device" means a device that stores, generates, or transmits information in electronic form.

(4) "Government entity" means a department or agency of the State or a political subdivision thereof, or an individual acting for or on behalf of the State or a political subdivision thereof.

(5) "Law enforcement officer" means:

(A) a law enforcement officer certified at Level II or Level III pursuant to 20 V.S.A. § 2358;

(B) the Attorney General;

(C) an assistant attorney general;

(D) a State's Attorney; or

(E) a deputy State's attorney

(6) "Lawful user" means a person or entity who lawfully subscribes to or uses an electronic communication service, whether or not a fee is charged.

(7) "Protected user information" means electronic communication content, including the subject line of e-mails, cellular tower-based location data, GPS or GPS-derived location data, the contents of files entrusted by a user to an electronic communication service pursuant to a contractual relationship for the storage of the files whether or not a fee is charged, data memorializing the content of information accessed or viewed by a user, and any other data for which a reasonable expectation of privacy exists.

(8) "Service provider" means a person or entity offering an electronic communication service.

(9) "Specific consent" means consent provided directly to the government entity seeking information, including when the government entity is the addressee or intended recipient or a member of the intended audience of an electronic communication. Specific consent does not require that the originator of a communication have actual knowledge that an addressee, intended recipient, or member of the specific audience is a government entity.

(10) "Subscriber information" means the name, names of additional account users, account number, billing address, physical address, e-mail address, telephone number, payment method, record of services used, and record of duration of service provided or kept by a service provider regarding a user or account.

§ 8102. LIMITATIONS ON COMPELLED PRODUCTION OF ELECTRONIC INFORMATION

(a) Except as provided in this section, a law enforcement officer shall not compel the production of or access to protected user information from a service provider.

(b) A law enforcement officer may compel the production of or access to protected user information from a service provider:

(1) pursuant to a warrant;

(2) pursuant to a judicially recognized exception to the warrant requirement;

(3) with the specific consent of a lawful user of the electronic communication service;

(4) if a law enforcement officer, in good faith, believes that an emergency involving danger of death or serious bodily injury to any person requires access to the electronic device information without delay; or

(5) except where prohibited by State or federal law, if the device is seized from an inmate's possession or found in an area of a correctional facility, jail, or lock-up under the jurisdiction of the Department of Corrections, a sheriff, or a court to which inmates have access and the device is not in the possession of an individual and the device is not known or believed to be in the possession of an authorized visitor.

(c) A law enforcement officer may compel the production of or access to information kept by a service provider other than protected user information:

(1) pursuant to a subpoena issued by a judicial officer, who shall issue the subpoena upon a finding that:

(A) there is reasonable cause to believe that an offense has been committed; and

(B) the information sought is relevant to the offense or appears reasonably calculated to lead to discovery of evidence of the alleged offense;

(2) pursuant to a subpoena issued by a grand jury;

(3) pursuant to a court order issued by a judicial officer upon a finding that the information sought is reasonably related to a pending investigation or pending case; or

(4) for any of the reasons listed in subdivisions (b)(1)–(3) of this section.

(d) A warrant issued for protected user information shall comply with the following requirements:

(1) The warrant shall describe with particularity the information to be seized by specifying the time periods covered and, as appropriate and reasonable, the target individuals or accounts, the applications or services covered, and the types of information sought.

(2)(A) The warrant shall require that any information obtained through execution of the warrant that is unrelated to the warrant's objective not be subject to further review, use, or disclosure without a court order.

(B) A court shall issue an order for review, use, or disclosure of information obtained pursuant to subdivision (A) of this subdivision (2) if it finds there is probable cause to believe that:

(i) the information is relevant to an active investigation;

(ii) the information constitutes evidence of a criminal offense; or

(iii) review, use, or disclosure of the information is required by State or federal law.

(e) A warrant or subpoena directed to a service provider shall be accompanied by an order requiring the service provider to verify the authenticity of electronic information that it produces by providing an affidavit that complies with the requirements of Rule 902(11) or 902(12) of the Vermont Rules of Evidence.

(f) A service provider may voluntarily disclose information other than protected user information when that disclosure is not otherwise prohibited by State or federal law.

(g) If a law enforcement officer receives information voluntarily provided pursuant to subsection (f) of this section, the officer shall destroy the information within 90 days unless any of the following circumstances apply:

(1) A law enforcement officer has or obtains the specific consent of the sender or recipient of the electronic communications about which information was disclosed.

(2) A law enforcement officer obtains a court order authorizing the retention of the information. A court shall issue a retention order upon a finding that the conditions justifying the initial voluntary disclosure persist. The order shall authorize the retention of the information only for as long as:

(A) the conditions justifying the initial voluntary disclosure persist; or

(B) there is probable cause to believe that the information constitutes evidence of the commission of a crime.

(3) A law enforcement officer reasonably believes that the information relates to an investigation into child exploitation and the information is retained as part of a multiagency database used in the investigation of similar offenses and related crimes.

(h) If a law enforcement officer obtains electronic information without a warrant under subdivision (b)(4) of this section because of an emergency involving danger of death or serious bodily injury to a person that requires access to the electronic information without delay, the officer shall, within five

days after obtaining the information, apply for a warrant or order authorizing obtaining the electronic information or a motion seeking approval of the emergency disclosures. The application or motion shall set forth the facts giving rise to the emergency and shall, if applicable, include a request supported by a sworn affidavit for an order delaying notification under subdivision 8103(b)(1) of this section. The court shall promptly rule on the application or motion. If the court finds that the facts did not give rise to an emergency or denies the motion or application on any other ground, the court shall order the immediate destruction of all information obtained, and immediate notification pursuant to subsection 8103(a) if this title if it has not already been provided.

(i) This section does not limit the existing authority of a law enforcement officer to use legal process to do any of the following:

(1) require an originator, addressee, or intended recipient of an electronic communication to disclose any protected user information associated with that communication;

(2) require an entity that provides electronic communications services to its officers, directors, employees, or agents for the purpose of carrying out their duties to disclose protected user information associated with an electronic communication to or from an officer, director, employee, or agent of the entity; or

(3) require a service provider to provide subscriber information.

(j) A service provider shall not be subject to civil or criminal liability for producing or providing access to information in good faith reliance on the provisions of this section. This subsection shall not apply to gross negligence, recklessness, or intentional misconduct by the service provider.

§ 8103. RETURNS AND SERVICE

(a) Returns.

(1) If a warrant issued pursuant to section 8102 of this title is executed or electronic information is obtained in an emergency under subdivision 8102(b)(4) of this title, a return shall be made within 90 days. Upon certification by a law enforcement officer, an attorney for the State, or any other person authorized by law that an investigation related to the warrant or the emergency is ongoing, a judicial officer may extend the 90-day period for making the return for an additional period that the judicial officer deems reasonable.

(2) A return made pursuant to this subsection shall identify:

(A) the date the response was received from the service provider;

(B) the quantity of information or data provided; and

(C) the type of information or data provided.

(b) Service.

(1) At the time the return is made, the law enforcement officer who executed the warrant under section 8102 of this section or obtained electronic information under subdivision 8102(b)(4) of this section shall serve a copy of the warrant on the subscriber to the service provider, if known. Service need not be made upon any person against whom criminal charges have been filed related to the execution of the warrant or to the obtaining of electronic information under subdivision 8102(b)(4) of this section.

(2) Upon certification by a law enforcement officer, an attorney for the State, or any other person authorized by law that an investigation related to the warrant is ongoing, a judicial officer may extend the time for serving the return for an additional period that the judicial officer deems reasonable.

(3) Service pursuant to this subsection may be accomplished by:

(A) delivering a copy to the known person;

(B) leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location;

(C) delivering a copy by reliable electronic means; or

(D) mailing a copy to the person's last known address.

(c) Except as otherwise provided in this section, nothing in this chapter shall prohibit or limit a service provider or any other party from disclosing information about any request or demand for electronic information.

§ 8104. EXCLUSIVE REMEDIES FOR A VIOLATION OF THIS CHAPTER

(a) A defendant in a trial, hearing, or proceeding may move to suppress electronic information obtained or retained in violation of the U.S. Constitution, the Vermont Constitution, or this chapter.

(b) A defendant in a trial, hearing, or proceeding shall not move to suppress electronic information on the ground that Vermont lacks personal jurisdiction over a service provider, or on the ground that the constitutional or statutory privacy rights of an individual other than the defendant were violated.

(c) A service provider who receives a subpoena issued pursuant to this chapter may file a motion to quash the subpoena. The motion shall be filed in the court that issued the subpoena before the expiration of the time period for

production of the information. The court shall hear and decide the motion as soon as practicable. Consent to additional time to comply with process under section 806 of this title does not extend the date by which a service provider shall seek relief under this subsection.

§ 8105. EXECUTION OF WARRANT FOR INFORMATION KEPT BY SERVICE PROVIDER

A warrant issued under this chapter may be addressed to any Vermont law enforcement officer. The officer shall serve the warrant upon the service provider, the service provider's registered agent, or, if the service provider has no registered agent in the State, upon the Office of Secretary of State in accordance with 12 V.S.A. §§ 851–858. If the service provider consents, the warrant may be served via U.S. mail, courier service, express delivery service, facsimile, electronic mail, an Internet-based portal maintained by the service provider, or other reliable electronic means. The physical presence of the law enforcement officer at the place of service or at the service provider's repository of data shall not be required.

§ 8106. SERVICE PROVIDER'S RESPONSE TO WARRANT

(a) The service provider shall produce the items listed in the warrant within 30 days unless the court orders a shorter period for good cause shown, in which case the court may order the service provider to produce the items listed in the warrant within 72 hours. The items shall be produced in a manner and format that permits them to be searched by the law enforcement officer.

(b) This section shall not be construed to limit the authority of a law enforcement officer under existing law to search personally for and locate items or data on the premises of a Vermont service provider.

(c) As used in this section, "good cause" includes an investigation into a homicide, kidnapping, unlawful restraint, custodial interference, felony punishable by life imprisonment, or offense related to child exploitation.

§ 8107. CRIMINAL PROCESS ISSUED BY VERMONT COURT; RECIPROCITY

(a) Criminal process, including subpoenas, search warrants, and other court orders issued pursuant to this chapter, may be served and executed upon any service provider within or outside the State, provided the service provider has contact with Vermont sufficient to support personal jurisdiction over it by this State. Notwithstanding any other provision in this chapter, only a service provider may challenge legal process, or the admissibility of evidence obtained pursuant to it, on the ground that Vermont lacks personal jurisdiction over it.

(b) This section shall not be construed to limit the authority of a court to issue criminal process under any other provision of law.

(c) A service provider incorporated, domiciled, or with a principal place of business in Vermont that has been properly served with criminal process issued by a court of competent jurisdiction in another state, commonwealth, territory, or political subdivision thereof shall comply with the legal process as though it had been issued by a court of competent jurisdiction in this State.

§ 8108. REAL TIME INTERCEPTION OF INFORMATION PROHIBITED

A law enforcement officer shall not use a device which via radio or other electromagnetic wireless signal intercepts in real time from a user's device a transmission of communication content, real time cellular tower-derived location information, or real time GPS-derived location information, except for purposes of locating and apprehending a fugitive for whom an arrest warrant has been issued. This section shall not be construed to prevent a law enforcement officer from obtaining information from an electronic communication service as otherwise permitted by law.

* * * Automated License Plate Recognition Systems * * *

Sec. 6. EXTENSION OF SUNSET

2013 Acts and Resolves No. 69, Sec. 3, as amended by 2015 Acts and Resolves No. 32, Sec. 1, is further amended to read:

Sec. 3. EFFECTIVE DATE AND SUNSET

* * *

(b) Secs. 1–2 of this act, 23 V.S.A. §§ 1607 and 1608, shall be repealed on July 1, ~~2016~~ 2019.

Sec. 7. ANALYSIS OF ALPR SYSTEM-RELATED COSTS AND BENEFITS

(a) On or before January 15, 2017, the Department of Public Safety, in consultation with the Joint Fiscal Office, shall:

(1) Estimate the total annualized fixed and variable costs associated with all automated license plate recognition (ALPR) systems used by law enforcement officers in Vermont, including capital, operating, maintenance, personnel, training, and other costs. The estimate shall include a breakdown of costs by category.

(2) Estimate the total annualized fixed and variable costs associated with any planned increase in the number of ALPR systems used by law enforcement officers in Vermont and with any planned increase in the intensity of use of

existing ALPR systems, including capital, operating, maintenance, personnel, training, and other costs. The estimate shall include a breakdown of costs by category.

(3) Conduct a cost-benefit analysis of the existing and planned use of ALPR systems in Vermont, and an analysis of how these costs and benefits compare with other enforcement tools that require investment of Department resources.

(b) On or before January 15, 2017, the Department of Public Safety shall submit a written report to the House and Senate Committees on Judiciary and on Transportation of the estimates and analysis required under subsection (a) of this section.

(c) If the Department of Motor Vehicles establishes or designates an independent server to store data captured by ALPRs before January 15, 2017, it shall conduct the analysis required under subsection (a) of this section in consultation with the Joint Fiscal Office and submit a report in accordance with subsection (b) of this section.

Sec. 8. 23 V.S.A. § 1607 is amended to read:

§ 1607. AUTOMATED LICENSE PLATE RECOGNITION SYSTEMS

(a) Definitions. As used in this section:

(1) "Active data" is distinct from historical data as defined in subdivision (3) of this subsection and means data uploaded to individual automated license plate recognition system units before operation as well as data gathered during the operation of an ALPR system. Any data collected by an ALPR system in accordance with this section shall be considered collected for a legitimate law enforcement purpose.

(2) "Automated license plate recognition system" or "ALPR system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data.

(3) "Historical data" means any data collected by an ALPR system and stored on the statewide ALPR server operated by the Vermont Justice Information Sharing System of the Department of Public Safety. Any data collected by an ALPR system in accordance with this section shall be considered collected for a legitimate law enforcement purpose.

(4) "Law enforcement officer" means a State Police officer, municipal police officer, motor vehicle inspector, Capitol Police officer, constable, sheriff, or deputy sheriff certified by the Vermont Criminal Justice Training Council as ~~having satisfactorily completed the approved training programs~~

~~required to meet the minimum training standards applicable to that person~~ a level II or level III law enforcement officer under 20 V.S.A. § 2358.

(5) "Legitimate law enforcement purpose" applies to access to active or historical data and means investigation, detection, analysis, or enforcement of a crime~~, traffic violation, or parking violation~~ or of a commercial motor vehicle violation or defense against the same, or operation of AMBER alerts or missing or endangered person searches.

(6) "Vermont ~~Information and Analysis~~ Technology Center Analyst" means any sworn or civilian employee who through his or her employment with the Vermont ~~Information and Analysis~~ Technology Center ~~(VTIAC)~~ (VTC) has access to secure databases that support law enforcement investigations.

(b) Operation. A Vermont law enforcement officer shall be certified in ALPR operation by the Vermont Criminal Justice Training Council in order to operate an ALPR system.

(c) ALPR use and data access; confidentiality.

(1)(A) Deployment of ALPR equipment by Vermont law enforcement agencies is intended to provide access to law enforcement reports of wanted or stolen vehicles and wanted persons and to further other legitimate law enforcement purposes. Use of ALPR systems by law enforcement officers and access to active data are restricted to legitimate law enforcement purposes.

(B) Active ~~ALPR~~ data may be accessed by a law enforcement officer operating the ALPR system only if he or she has a legitimate law enforcement purpose for the data. Entry of any data into the system other than data collected by the ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(C)(i) Requests to ~~review~~ access active data shall be in writing and include the name of the requester, the law enforcement agency the requester is employed by, if any, and the law enforcement agency's Originating Agency Identifier (ORI) number. ~~The~~ To be approved, the request ~~shall describe the legitimate law enforcement purpose~~ must provide specific and articulable facts showing that there are reasonable grounds to believe that the data are relevant and material to an ongoing criminal, missing person, or commercial motor vehicle investigation or enforcement action. The written request and the outcome of the request shall be transmitted to ~~VTIAC~~ VTC and retained by ~~VTIAC~~ VTC for not less than three years.

(ii) In each department operating an ALPR system, access to active data shall be limited to designated personnel who have been provided

account access by the department to conduct authorized ALPR stored data queries. Access to active data shall be restricted to data collected within the past seven days.

(2)(A) A ~~VTIAC~~ VTC analyst shall transmit historical data only to a Vermont or out-of-state law enforcement officer or person who has a legitimate law enforcement purpose for the data. A law enforcement officer or other person to whom historical data are transmitted may use such data only for a legitimate law enforcement purpose. Entry of any data onto the statewide ALPR server other than data collected by an ALPR system itself must be approved by a supervisor and shall have a legitimate law enforcement purpose.

(B) Requests for historical data, whether from Vermont or out-of-state law enforcement officers or other persons, shall be made in writing to ~~an analyst at VTIAC~~ a VTC analyst. The request shall include the name of the requester, the law enforcement agency the requester is employed by, if any, and the law enforcement agency's ORI number. ~~The~~ To be approved, the request ~~shall describe the legitimate law enforcement purpose~~ must provide specific and articulable facts showing that there are reasonable grounds to believe that the data are relevant and material to an ongoing criminal, missing person, or commercial motor vehicle investigation or enforcement action. ~~VTIAC~~ VTC shall retain all requests and shall record in writing the outcome of the request and any information that was provided to the requester or, if applicable, why a request was denied or not fulfilled. ~~VTIAC~~ VTC shall retain the information described in this subdivision (c)(2)(B) for no fewer than three years.

(d) Retention.

(1) Any ALPR information gathered by a Vermont law enforcement agency shall be sent to the Department of Public Safety to be retained pursuant to the requirements of subdivision (2) of this subsection. The Department of Public Safety shall maintain the ALPR storage system for Vermont law enforcement agencies.

(2) Except as provided in this subsection and section 1608 of this title, information gathered by a law enforcement officer through use of an ALPR system shall only be retained for 18 months after the date it was obtained. When the permitted 18-month period for retention of the information has expired, the Department of Public Safety and any local law enforcement agency with custody of the information shall destroy it and cause to have destroyed any copies or backups made of the original data. Data may be retained beyond the 18-month period pursuant to a preservation request made or disclosure order issued under Section 1608 of this title or pursuant to a

warrant issued under Rule 41 of the Vermont or Federal Rules of Criminal Procedure.

(e) Oversight; rulemaking.

(1) The Department of Public Safety shall establish a review process to ensure that information obtained through use of ALPR systems is used only for the purposes permitted by this section. The Department shall report the results of this review annually on or before January 15 to the Senate and House Committees on Judiciary and on Transportation. The report shall contain the following information based on prior calendar year data:

(A) the total number of ALPR units being operated in the State and the number of units submitting data to the statewide ALPR database;

(B) the ~~total~~ number of ALPR readings each agency submitted, and the total number of all such readings submitted, to the statewide ALPR database;

(C) the 18-month cumulative number of ALPR readings being housed on the statewide ALPR database as of the end of the calendar year;

(D) the total number of requests made to ~~VTIAC~~ VTC for ~~ALPR~~ historical data~~;~~

~~(E)~~, the average age of the data requested, and the ~~total~~ number of these requests that resulted in release of information from the statewide ALPR database;

~~(F)~~(E) the total number of out-of-state requests~~; and~~

~~(G)~~ to VTC for historical data, the average age of the data requested, and the ~~total~~ number of out-of-state requests that resulted in release of information from the statewide ALPR database;

(F) the total number of alerts generated on ALPR systems operated by law enforcement officers in the State by a match between an ALPR reading and a plate number on an alert database and the number of these alerts that resulted in an enforcement action;

(G) the total number of criminal, missing person, and commercial motor vehicle investigations and enforcement actions to which active data contributed, and a summary of the nature of these investigations and enforcement actions;

(H) the total number of criminal, missing person, and commercial motor vehicle investigations and enforcement actions to which historical data contributed, and a summary of the nature of these investigations and enforcement actions; and

(I) the total annualized fixed and variable costs associated with all ALPR systems used by Vermont law enforcement agencies and an estimate of the total of such costs per unit.

(2) ~~The~~ Before January 1, 2018, the Department of Public Safety ~~may~~ shall adopt rules to implement this section.

Sec. 9. 23 V.S.A. § 1608 is amended to read:

§ 1608. PRESERVATION OF DATA

(a) Preservation request.

(1) A law enforcement agency or the Department of Motor Vehicles or other person with a legitimate law enforcement purpose may apply to the Criminal Division of the Superior Court for an extension of up to 90 days of the 18-month retention period established under subdivision 1607(d)(2) of this title if the agency or Department offers specific and articulable facts showing that there are reasonable grounds to believe that the captured plate data are relevant and material to an ongoing criminal or missing persons investigation or to a pending court or Judicial Bureau proceeding involving enforcement of a crime or of a commercial motor vehicle violation. Requests for additional 90-day extensions or for longer periods may be made to the Superior Court subject to the same standards applicable to an initial extension request under this subdivision.

(2) A governmental entity making a preservation request under this section shall submit an affidavit stating:

(A) the particular camera or cameras for which captured plate data must be preserved or the particular license plate for which captured plate data must be preserved; and

(B) the date or dates and time frames for which captured plate data must be preserved.

(b) Captured plate data shall be destroyed on the schedule specified in section 1607 of this title if the preservation request is denied or 14 days after the denial, whichever is later.

* * * Information Related to Use of Ignition Interlock Devices * * *

Sec. 10. 23 V.S.A. § 1213 is amended to read:

§ 1213. IGNITION INTERLOCK RESTRICTED DRIVER'S LICENSE; PENALTIES

* * *

(m)(1) Images and other individually identifiable information in the custody of a public agency related to the use of an ignition interlock device is exempt from public inspection and copying under the Public Records Act and shall not be disclosed except:

(A) pursuant to a warrant;

(B) if a law enforcement officer, in good faith, believes that an emergency involving danger of death or serious bodily injury to any person requires access to the information without delay; or

(C) in connection with enforcement proceedings under this section or rules adopted pursuant to this section.

(2) Images or information disclosed in violation of this subsection shall be inadmissible in any judicial or administrative proceeding.

* * * Administrative Procedure Act; Code of Administrative Rules * * *

Sec. 11. 3 V.S.A. § 847 is amended to read:

§ 847. AVAILABILITY OF ADOPTED RULES; RULES BY SECRETARY OF STATE

(a) The Secretary of State shall keep open to public inspection a permanent register of rules. The Secretary also shall publish a code of administrative rules that contains the rules adopted under this chapter. The requirement to publish a code shall be considered satisfied if a commercial publisher offers such a code in print at a competitive price and at no charge online.

(b) The Secretary of State shall publish not less than quarterly a bulletin setting forth the text of all rules filed since the immediately preceding publication and any objections filed under subsection 842(b) or 844(e) of this title. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(c) The bulletin may omit any rule if either:

(1) a commercial publisher offers a comparable publication at a competitive price; or

(2) all three of the following apply:

(A) its publication would be unduly cumbersome or expensive; and

(B) the rule is made available on application to the adopting agency; and

(C) the bulletin contains a notice stating the general subject matter of the omitted rule and stating how a copy of the rule and any objection filed under subsection 842(b) or 844(e) of this title may be obtained.

(d) Bulletins shall be made available upon request to agencies and officials of this State free of charge and to other persons at prices fixed by the Secretary of State to cover mailing and publication costs.

(e) The Secretary of State shall adopt rules for the effective administration of this chapter. These rules shall be applicable to every agency and shall include ~~but not be limited to~~ uniform procedural requirements, style, appropriate forms, and a system for compiling and indexing rules.

Sec. 12. 3 V.S.A. § 848 is amended to read:

§ 848. RULES REPEAL; OPERATION OF LAW

(a) A rule shall be repealed without formal proceedings under this chapter if:

(1) the agency ~~which~~ that adopted the rule is abolished and its authority, specifically including its authority to implement its existing rules, has not been transferred to another agency~~,~~; or

(2) a court of competent jurisdiction has declared the rule to be invalid~~,~~; or

(3) the statutory authority for the rule, as stated by the agency under subdivision 838(b)(4) of this title, is repealed by the General Assembly or declared invalid by a court of competent jurisdiction.

(b) When a rule is repealed by operation of law under this section, the Secretary of State shall delete the rule from the published code of administrative rules.

(c)(1) On July 1, 2018, a rule shall be repealed without formal proceedings under this chapter if:

(A) as of July 1, 2016, the rule was in effect but not published in the code of administrative rules; and

(B) the rule is not published in such code before July 1, 2018.

(2) An agency seeking to publish a rule described in subdivision (1) of this subsection may submit a digital copy of the rule to the Secretary of State with proof acceptable to the Secretary that as of July 1, 2016 the rule was adopted and in effect under this chapter and the digital copy consists of the text of such rule without change.

(d) If the statutory authority for a rule, as stated by the agency under subdivision 838(b)(4), is amended by the General Assembly, the agency shall review the rule and make a determination whether such statutory amendment repeals the authority upon which the rule is based, and shall, within 60 days of the effective date of the statutory amendment, inform in writing the Secretary of State and the Legislative Committee on Administrative Rules whether repeal or revision of the rule is required by the statutory amendment.

* * * Effective Dates * * *

Sec. 13. EFFECTIVE DATES

(a) This section and Secs. 6–7 shall take effect on passage.

(b) Secs. 8–12 shall take effect on July 1, 2016, except that in Sec. 8, 23 V.S.A. § 1607(e)(1) (oversight, reporting) shall take effect on January 16, 2017.

(c) Secs. 1, 2, 3, 4, and 5 shall take effect on October 1, 2016.

and that after passage the title of the bill be amended to read: "An act relating to privacy protection and a code of administrative rules"

(Committee vote: 9-2-0)

(For text see Senate Journal January 13, 2016)

S. 169

An act relating to the Rozo McLaughlin Farm-to-School Program

Rep. Connor of Fairfield, for the Committee on **Agriculture and Forest Products,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Farm-to-School * * *

Sec. 1. 6 V.S.A. chapter 211 is amended to read:

CHAPTER 211. THE ROZO MCLAUGHLIN
FARM-TO-SCHOOL PROGRAM

§ 4719. PURPOSE AND STATE GOAL

(a) Purpose. It is the purpose of this chapter to establish a farm-to-school program to:

(1) encourage Vermont residents in developing healthy and lifelong habits of eating nutritious local foods;

(2) maximize use by Vermont schools of fresh and locally grown, produced, or processed food;

(3) work with partners to establish a food, farm, and nutrition education program that educates Vermont students regarding healthy eating habits through the use of educational materials, classes, and hands-on techniques that inform students of the connections between farming and the foods that students consume;

(4) increase the size and stability of direct sales markets available to farmers; and

(5) increase participation of Vermont students in school meal programs by increasing the selection of available foods.

(b) State Farm to School Network goal. It is the goal of the Farm-to-School Program to establish a food system that by 2025:

(1) engages 75 percent of Vermont schools in an integrated food system education program that incorporates community-based learning; and

(2) purchases 50 percent of food from local or regional food sources.

§ 4720. DEFINITIONS

As used in this chapter, "Farm-to-School Program" means an integrated food, farm, and nutrition education program that utilizes community-based learning opportunities to connect schools with nearby farms to provide students with locally produced fresh fruits and vegetables, dairy and protein products, and other nutritious, locally produced foods in child nutrition programs; help children develop healthy eating habits; provide nutritional and agricultural education in the classroom, cafeteria, and school community; and improve farmers' incomes and direct access to markets.

§ 4721. LOCAL FOODS GRANT PROGRAM

(a) There is created in the Agency of Agriculture, Food and Markets the Rozo McLaughlin Farm-to-School Program to award local grants for the purpose of helping Vermont schools develop farm-to-school programs that will sustain relationships with local farmers and producers, enrich the educational experience of students, improve the health of Vermont children, and enhance Vermont's agricultural economy.

(b) A school, a school district, a consortium of schools, ~~or~~ a consortium of school districts, or licensed childcare providers may apply to the Secretary of Agriculture, Food and Markets for a grant award to:

(1) fund equipment, resources, training, and materials that will help to increase use of local foods in the School ~~Food Service~~ Nutrition Program;

(2) fund items, including local ~~farm~~ food products, gardening supplies, field trips to farms, gleaning on farms, and stipends to visiting farmers, that will help teachers to use hands-on educational techniques to teach children about nutrition and farm-to-school connections; and

(3) ~~provide~~ fund professional development and technical assistance, in partnership with the Agency of Education and farm-to-school technical service providers, to help teachers, school nutrition personnel, and members of the farm-to-school community educate students about nutrition and farm-to-school connections and assist schools in developing a farm-to-school program.

(4) fund technical assistance or support strategies to increase participation in federal child nutrition programs that increase viability of sustainable meal programs.

(c) The Secretaries of Agriculture, Food and Markets and of Education and the Commissioner of Health, in consultation with farmers, ~~food service workers~~ school nutrition staff, and educators, and farm-to-school technical service providers jointly shall ~~jointly~~ adopt ~~rules~~ procedures relating to the content of the grant application and the criteria for making awards.

(d) The Secretary shall determine that there is significant interest in the school community before making an award and shall give priority consideration to schools ~~and~~, school districts and licensed child care providers that are developing farm-to-school connections and education that indicate a willingness to make changes to their school or childcare nutrition programs that increase student access and participation and that are making progress toward the implementation of the Vermont ~~nutrition and fitness policy guidelines~~ School Wellness Policy Guidelines developed by the Agency of Agriculture, Food and Markets, the Agency of Education, and the Department of Health, ~~dated November 2005~~ updated in June 2015 or of the successor of these guidelines.

(e) No award shall be greater than $15,000.00.

§ 4722. FARM ASSISTANCE; SECRETARY OF AGRICULTURE, FOOD AND MARKETS

(a) The Secretary of Agriculture, Food and Markets shall work with existing programs and organizations to develop and implement educational

opportunities for farmers to help them to increase their markets through selling their products to schools, licensed child care providers, and State government agencies ~~and participating in the federal food commodities program, including the federal Department of Defense Fresh Program, and selling to regulated child care programs participating in the Adult and Child Food Program~~ that operate or participate in child nutrition programs.

(b) ~~For the purposes of this section and section 4723 of this title, the Secretary may provide funds to one or more technical assistance providers to provide farm-to-school education and teacher training to more school districts and to assist the Secretaries of Agriculture, Food and Markets and of Education to carry out farmer and food service worker training.~~ The Secretary of Agriculture, Food and Markets shall work with distributors that sell products to schools, licensed child care providers, and State government agencies to increase the availability of local products.

§ 4723. PROFESSIONAL DEVELOPMENT FOR FOOD SERVICE PERSONNEL

(a) The Secretary of Education, in consultation with the Secretary of Agriculture, Food and Markets, the Commissioner of Health, and farm-to-school organizations and partners, shall offer ~~expanded regional training sessions~~ professional development opportunities for public school food service and child care personnel and child care resource development specialists ~~as funds are made available~~. Training shall include information about strategies for ~~purchasing~~ procuring, processing, and serving locally grown foods, especially with regard to federal procurement program requirements, as well as information about nutrition, obesity prevention, coping with severe food allergies, universal recycling, and food service operations. The Secretary of Education may use a portion of the funds appropriated for this training session to pay a portion of or all expenses for attendees and to develop manuals or other materials to help in the training.

(b) The Secretary of Education shall ~~train people as funds are made available to~~, with existing programs and organizations, provide training related to procurement of local food and technical assistance to school food service and child care personnel and use a portion of the funds appropriated for this purpose to enable the trained people to provide technical assistance at the school and school district levels.

(c) Training provided under this section shall promote the policies established in the Vermont ~~nutrition and fitness policy guidelines~~ School Wellness Policy Guidelines developed by the Agencies of Agriculture, Food and Markets and of Education and the Department of Health, ~~dated November 2005~~ updated in June 2015, or the guidelines' successor.

§ 4724. ~~LOCAL FOODS COORDINATOR~~ FOOD SYSTEMS ADMINISTRATOR

(a) The position of ~~local food coordinator~~ Food Systems Administrator is established in the ~~agency of agriculture, food and markets~~ Agency of Agriculture, Food and Markets for the purpose of assisting Vermont producers ~~to increase~~ in increasing their access to commercial markets and institutions, including schools, ~~state~~ licensed child care providers, State and municipal governments, and hospitals.

(b) The duties of the ~~local foods coordinator~~ Food Systems Administrator shall include:

(1) working with institutions, schools, licensed child care providers, distributors, producers, commercial markets, and others to create matchmaking opportunities that increase the number of Vermont institutions that purchase foods grown or produced in Vermont;

(2) coordinating funding and providing support to the farm-to-school and farm-to-institutions programs within the ~~agency of agriculture, food and markets~~ Agency of Agriculture, Food and Markets, and coordinating with interested parties to access funding or create matchmaking opportunities across the supply chain that increase participation in those programs;

(3) encouraging and facilitating ~~the enrollment of state employees~~ State employee access and awareness of opportunities for purchasing local food, including: enrollment in a local community supported agriculture (CSA) organization, purchasing from local farm stands, and participation in a farmers' market;

(4) developing a database of producers and potential purchasers and enhancing the ~~agency's website~~ Agency and partners' ability to improve and support local foods coordination through the use of information technology; and

(5) providing technical support to local communities with their food security efforts.

(c) The ~~local foods coordinator~~ Food Systems Administrator, working with the ~~commissioner of buildings and general services~~ Commissioner of Buildings and General Services pursuant to rules adopted under 29 V.S.A. § 152(14), shall:

(1) encourage and facilitate ~~CSA enrollment~~ awareness of and opportunities to procure healthy local foods by ~~state~~ State employees through the use of approved advertisements and solicitations on ~~state-owned~~ State-owned property; and

(2) implement guidelines for the appropriate use of ~~state~~ State property for employee participation in CSA organizations, including reasonable restrictions on the time, place, and manner of solicitations, advertisements, deliveries, and related activities to ensure the safety and welfare of ~~state~~ State property and its occupants.

(d) The ~~local foods coordinator~~ Food Systems Administrator shall administer a local foods grant program, the purpose of which shall be to provide grants to allow Vermont producers to increase their access to commercial and institutional markets.

Sec. 2. 16 V.S.A. § 559 is amended to read:

§ 559. PUBLIC BIDS

(a) When the cost exceeds $15,000.00. A school board or supervisory union board shall publicly advertise or invite three or more bids from persons deemed capable of providing items or services if costs are in excess of $15,000.00 for any of the following:

(1) the construction, purchase, lease, or improvement of any school building;

(2) the purchase or lease of any item or items required for supply, equipment, maintenance, repair, or transportation of students; or

(3) a contract for transportation, maintenance, or repair services.

* * *

(e) Application of this section. Any contract entered into or purchase made in violation of the provisions of this section shall be void; provided, however, that:

* * *

(4) nothing in this section shall be construed to prohibit a school board from awarding a school nutrition contract after using any method of bidding or requests for proposals permitted under federal law for award of the contract. Notwithstanding the monetary amount in subsection (a) of this section for which a school board is required to advertise publicly or invite three or more bids or requests for proposal, a school board is required to publicly advertise or invite three or more bids or requests for proposal for purchases made from the nonprofit school food service account for purchases in excess of $25,000.00, unless a municipality sets a lower threshold for purchases from the nonprofit school food service account;

* * *

* * * Shelter of Dogs and Cats * * *

Sec. 3. 13 V.S.A. § 351 is amended to read:

§ 351. DEFINITIONS

As used in this chapter:

(1) "Animal" means all living sentient creatures, not human beings.

* * *

(11) "Livestock" means cattle, bison, horses, sheep, goats, swine, cervidae, ratites, and camelids.

* * *

(13) "Livestock and poultry husbandry practices" means the raising, management, and using of animals to provide humans with food, fiber, or transportation in a manner consistent with:

(A) husbandry practices recommended for the species by agricultural colleges and the U.S. Department of Agriculture Extension Service;

(B) husbandry practices modified for the species to conform to the Vermont environment and terrain; and

(C) husbandry practices that minimize pain and suffering.

* * *

(15) "Living space" means any cage, crate, or other structure used to confine an animal that serves as its principal, primary housing and that provides protection from the elements. Living space does not include a structure, such as a doghouse, in which an animal is not confined, or a cage, crate, or other structure in which the animal is temporarily confined.

(16) "Adequate food" means food that is not spoiled or contaminated and is of sufficient quantity and quality to meet the normal daily requirements for the condition and size of the animal and the environment in which it is kept. An animal shall be fed or have food available at least once each day, unless a licensed veterinarian instructs otherwise, or withholding food is in accordance with accepted ~~agricultural or veterinarian~~ veterinary practices or livestock and poultry husbandry practices.

(17) "Adequate water" means ~~fresh, potable water provided at suitable intervals for the species, and which, in no event, shall exceed 24 hours at any interval. The animal must have access to the water~~ potable water that is either accessible to the animal at all times or is provided at suitable intervals for the species and in sufficient quantity for the health of the animal. In no event shall

the interval when water is provided exceed 24 hours. Snow or ice is not an adequate water source unless provided in accordance with livestock and poultry husbandry practices.

(18) "Adequate shelter" means shelter ~~which~~ that protects the animal from injury and environmental hazards.

(19) "Enclosure" means any structure, fence, device, or other barrier used to restrict an animal or animals to a limited amount of space.

(20) "Livestock guardian dog" means a purpose-bred dog that is:

(A) specifically trained to live with livestock without causing them harm while repelling predators;

(B) being used to live with and guard livestock; and

(C) acclimated to local weather conditions.

Sec. 4. 13 V.S.A. § 365 is amended to read:

§ 365. SHELTER OF ANIMALS

(a) Adequate shelter. All livestock and animals ~~which~~ that are to be predominantly maintained ~~out-of-doors must~~ in an outdoor area shall be provided with adequate shelter to prevent direct exposure to the elements.

(b) Shelter for livestock.

(1) Adequate natural shelter, or a three-sided, roofed building with exposure out of the prevailing wind and of sufficient size to adequately accommodate all livestock maintained ~~out-of-doors~~ in an outdoor area shall be provided. The building opening size and height ~~must~~ shall, at a minimum, extend one foot above the withers of the largest animal housed and ~~must~~ shall be maintained at that level even with manure and litter build-up. Nothing in this section shall control dairy herd housing facilities, either loose housing, comfort stall, or stanchion ties, or other housing under control of the ~~department of agriculture, food and markets~~ Agency of Agriculture, Food and Markets. This section shall not apply to any accepted housing or grazing practices for any livestock industry.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, livestock may be temporarily confined in a space sufficient for them to stand and turn about freely, provided that they are exercised in accordance with livestock and poultry husbandry practices, and are provided sufficient food, water, shelter, and proper ventilation.

(c) Minimum size of living space; dogs and cats.

(1) A dog~~, whether chained or penned,~~ shall be provided an adequate living space ~~no less than three feet by four feet for 25 pound and smaller dogs, four feet by four feet for 26-35 pound dogs, four feet by five feet for 36-50 pound dogs, five feet by five feet for 51-99 pound dogs, and six feet by five feet for 100 pound and larger dogs~~ that is large enough to allow the dog, in a normal manner, to turn about freely, stand, sit, and lie down. A dog shall be presumed to have adequate living space if provided with the floor space in square footage calculated according to the following formula: Floor space in square feet = (length of dog in inches + 6) × (length of dog in inches + 6) ÷ 144. The length of the dog in inches shall be measured from the tip of the nose of the dog to the base of its tail.

(2) The specifications required by subdivision (c)(1) of this section shall ~~apply to~~ be required for each dog, regardless of whether the dog is housed individually or with other animals.

(3)(A) A cat over the age of two months shall be provided adequate living space that is large enough to allow the cat, in a normal manner, to turn about freely, stand, sit, and lie down. A cat shall be presumed to have adequate living space if provided with:

(i) floor space, including raised resting platforms, of at least nine square feet; and

(ii) a primary structure of at least 24 inches in height.

(B) The requirements of this subdivision (c)(3) shall apply to each cat regardless of whether the cat is housed individually or with other animals.

(4)(A) Each female dog with nursing puppies shall be provided the living space required under subdivision (1) of this subsection (c) plus sufficient additional floor space to allow for a whelping box and the litter, based on the size or the age of the puppies. When the puppies discontinue nursing, the living space requirements of subdivisions (1) and (2) of this subsection shall apply for all dogs housed in the same living space.

(B) Each female cat with nursing kittens shall be provided the living space required under subdivision (3) of this subsection (c) plus sufficient additional floor space to allow for a queening box and the litter, based on the size or the age of the kittens. When the kittens discontinue nursing, the living space requirements of subdivision (3) of this subsection shall apply for all cats housed in the same living space.

(5) Dogs or cats that are housed in the same primary living space or enclosure shall be compatible, as determined by observation, provided that:

(A) Females in heat (estrus) shall not be housed in the same primary living space or enclosure with males, except for breeding purposes.

(B) A dog or cat exhibiting a vicious or overly aggressive disposition shall be housed separately from other dogs or cats.

(6) All dogs or cats shall have access to adequate water and adequate food.

(d) Daily exercise; dogs or cats. A dog or cat confined in a living space shall be permitted outside the ~~cage, crate, or structure~~ living space for an opportunity of at least one hour of daily exercise, unless otherwise modified or restricted by a licensed veterinarian. Separate space for exercise is not required if an animal's living space is at least three times larger than the minimum requirements set forth in subdivision (c)(1) of this section.

(e) Shelter for dogs maintained outdoors in enclosures.

(1) ~~A~~ Except as provided in subdivision (2) of this subsection, a dog or dogs maintained ~~out-of-doors must~~ outdoors in an enclosure shall be provided with ~~suitable housing that assures that the dog is protected from wind and draft, and from excessive sun, rain and other environmental hazards throughout the year a primary~~ one or more shelter ~~structure~~ structures. A shelter structure shall:

(A) Provide each dog housed in the structure sufficient space to, in a normal manner, turn about freely, stand, sit, and lie down.

(B) Be structurally sound and constructed of suitable, durable material.

(C) Have four sides, a roof, and a ground or floor surface that enables the dog to stay clean and dry.

(D) Have an entrance or portal large enough to allow each dog housed in the shelter unimpeded access to the structure, and the entrance or portal shall be constructed with a windbreak or rainbreak.

(E) Provide adequate protection from cold and heat, including protection from the direct rays of the sun and the direct effect of wind, rain, or snow. Shivering due to cold is evidence of inadequate shelter for any dog.

(F) Contain clean, dry bedding material if the ambient temperature is below 50 degrees Fahrenheit.

(2) A shelter structure is not required for a healthy livestock guardian dog that is maintained outdoors in an enclosure.

(3) If multiple dogs are maintained outdoors in an enclosure at one time:

(A) Each dog will be provided with an individual structure, or the structure or structures provided shall be cumulatively large enough to contain all of the dogs at one time.

(B) A shelter structure shall be accessible to each dog in the enclosure.

(4) The following categories of dogs shall not be maintained outdoors in an enclosure when the ambient temperature is below 50 degrees Fahrenheit:

(A) dogs that are not acclimated to the temperatures prevalent in the area or region where they are maintained;

(B) dogs that cannot tolerate the prevalent temperatures of the area without stress or discomfort; and

(C) sick or infirm dogs or dogs that cannot regulate their own body temperature.

(5) Metal barrels, cars, refrigerators, freezers, and similar objects shall not be used as a shelter structure for a dog maintained in an outdoor enclosure.

(6) In addition to the shelter structure, one or more separate outdoor areas of shade shall be provided, large enough to contain all the animals and protect them from the direct rays of the sun.

(f) Tethering of dog.

(1) ~~A~~ Except as provided under subdivision (2) of this subsection, a dog ~~chained to a shelter must~~ maintained outdoors on a tether shall be on a tether ~~chain~~ or trolley and cable system that is, in its entirety, at least four times the length of the dog as measured from the tip of its nose to the base of its tail, and shall allow the dog access to the shelter.

(2) A dog regularly used in training or participation in competitive or recreational sled dog activities and housed outdoors in close proximity with other dogs may, if necessary for the safety of the dog, be maintained on a tether at least two times the length of the dog, as measured from the tip of its nose to the base of its tail.

(3) A tether used for any dog shall be attached to both the dog and the anchor using swivels or similar devices that prevent the tether from becoming entangled or twisted. The tether shall be attached to a well-fitted collar or harness on the dog. The tether shall be of a size and weight that will not cause discomfort to a tethered dog. A choke collar shall not be used as part of a tethering method. The tether system shall function properly regardless of snow depth.

(g) ~~A cat, over the age of two months, shall be provided minimum living space of nine square feet, provided the primary structure shall be constructed and maintained so as to provide sufficient space to allow the cat to turn about freely, stand, sit, and lie down. Each primary enclosure housing cats must be at least 24 inches high. These specifications shall apply to each cat regardless of whether the cat is housed individually or with other animals.~~ [Repealed.]

(h) ~~Notwithstanding the provisions of this section, animals may be temporarily confined in a space sufficient for them to stand and turn about freely, provided that they are exercised in accordance with accepted agricultural or veterinarian practices, and are provided sufficient food, water, shelter, and proper ventilation.~~ [Repealed.]

(i) Violations. Failure to comply with this section shall be a violation of subdivision 352(3) or (4) of this title.

(j) ~~Notwithstanding the provisions of this section, an animal may be sheltered, chained, confined, or maintained out-of-doors if doing so is directed by a licensed veterinarian or is in accordance with accepted agricultural or veterinarian practices.~~ [Repealed.]

* * * State Vegetable * * *

Sec. 5. 1 V.S.A. § 519 is added to read:

§ 519. STATE VEGETABLE

The State Vegetable shall be the Gilfeather turnip.

* * * Effective Date * * *

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

and that after passage the title of the bill be amended to read: "An act relating to miscellaneous agricultural subjects"

(Committee vote: 10-0-1)

(For text see Senate Journal March 18, 22, 2016)

Rep. Feltus of Lyndon, for the Committee on **Appropriations,** recommends the bill ought to pass in concurrence with proposal of amendment recommended by the Committee on **Agriculture and Forest Products** and when further amendment as follows:

In Sec. 1, in 6 V.S.A. § 4721, in subsection (a), after "Rozo McLaughlin Farm-to-School Program to" and before "award local grants for" by inserting "execute, operate, and"

(Committee Vote: 11-0-0)

Favorable

H. 883

An act relating to approval of amendments to the charter of the City of Winooski

Rep. Lewis of Berlin, for the Committee on **Government Operations,** recommends the bill ought to pass.

(Committee Vote: 10-0-1)

H. 887

An act relating to approval of amendments to the charter of the Village of Barton

Rep. Lewis of Berlin, for the Committee on **Government Operations,** recommends the bill ought to pass.

(Committee Vote: 10-0-1)

S. 198

An act relating to the Government Accountability Committee and the annual report on the State's population-level outcomes

Rep. Evans of Essex, for the Committee on **Government Operations**, recommends that the bill ought to pass in concurrence.

(Committee Vote: 10-0-1)

(For text see Senate Journal February 3, 4, 2016)

Committee Relieved

H. 867

An act relating to classification of employees and independent contractors

Senate Proposal of Amendment

H. 858

An act relating to miscellaneous criminal procedure amendments

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

Sec. 1. 13 V.S.A. § 2651(6) is amended to read;

(6) "Human trafficking" means:

* * *

(B) "severe form of trafficking" as defined by ~~21 U.S.C. § 7105~~ 22 U.S.C. § 7105.

* * *

Sec. 2. 13 V.S.A. § 5238 is amended to read:

§ 5238. CO-PAYMENT AND REIMBURSEMENT ORDERS

* * *

(d) To the extent that the Court finds that the eligible person has income or assets available to enable payment of an immediate co-payment, it shall order such a co-payment to cover in whole or in part the amount of the costs of representation to be borne by the eligible person. ~~When a co-payment is ordered, the assignment of counsel shall be contingent on prior payment of the co-payment.~~ The co-payment shall be paid to the clerk of the Court. Any portion of the co-payment not paid to the clerk may be included in a reimbursement order.

* * *

Sec. 2a. 13 V.S.A. § 7606 is amended to read:

§ 7606. EFFECT OF EXPUNGEMENT

(a) Upon entry of an expungement order, the order shall be legally effective immediately and the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The Court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The Court shall provide notice of the expungement to the respondent, Vermont Crime Information Center (VCIC), the arresting agency, and any other entity that may have a record related to the order to expunge. The VCIC shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

* * *

Sec. 2b. 13 V.S.A. § 7607 is amended to read:

§ 7607. EFFECT OF SEALING

(a) Upon entry of an order to seal, the order shall be legally effective immediately and the person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The Court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that

its effect is to annul the record of arrest, conviction, and sentence. The Court shall provide notice of the sealing to the respondent, Vermont Crime Information Center (VCIC), the arresting agency, and any other entity that may have a record related to the order to seal. The VCIC shall provide notice of the sealing to the Federal Bureau of Investigation's National Crime Information Center.

* * *

Sec. 3. 13 V.S.A. § 5301 is amended to read:

§ 5301. DEFINITIONS

As used in this chapter:

* * *

(7) ~~For the purpose of this chapter, "listed~~ "Listed crime" means any of the following offenses:

* * *

(W) operating vehicle under the influence of intoxicating liquor or other substance with either death or serious bodily injury resulting as defined in 23 V.S.A. § 1210~~(e)~~(f) and ~~(f)~~(g);

* * *

Sec. 4. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding 20 V.S.A. §§ 2056a-2056e, the Department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon ~~their~~ the offender's release from confinement or, if the offender was not subject to confinement, upon the offender's conviction:

* * *

Sec. 5. 13 V.S.A. § 5572(a) is amended to read:

(a) A person convicted and imprisoned for a crime of which the person was exonerated pursuant to ~~subchapter 1 of~~ this chapter shall have a cause of action for damages against the ~~state~~ State.

Sec. 6. 13 V.S.A. § 5578 is added to read:

§ 5578. APPLICABILITY; RETROACTIVITY

Notwithstanding 1 V.S.A. § 214(b), this subchapter and any amendments thereto shall apply to any exoneration that occurs on or after July 1, 2007.

Sec. 7. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

* * *

(5) ~~Prior to accepting a plea of guilty or a plea of nolo contendere from a defendant charged with a violation of this subsection, the court shall address the defendant personally in open court, informing the defendant and determining that the defendant understands that admitting to facts sufficient to warrant a finding of guilt or pleading guilty or nolo contendere to the charge may have collateral consequences such as loss of education financial aid, suspension or revocation of professional licenses, and restricted access to public benefits such as housing.~~ If ~~the~~ a court fails to provide the defendant with notice of collateral consequences in accordance with ~~this subdivision~~ 13 V.S.A. § 8005(b) and the defendant later at any time shows that the plea and conviction for a violation of this subsection may have or has had a negative consequence, the court, upon the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to vacate.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully selling marijuana or hashish shall be imprisoned not more than two years or fined not more than $10,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing ~~one-half ounce or~~ more than one ounce of marijuana or ~~2.5~~ five grams or more of hashish shall be imprisoned not more than five years or fined not more than $100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing one pound or more of marijuana or 2.8 ounces of hashish shall be imprisoned not more than 15 years or fined not more than $500,000.00, or both.

* * *

Sec. 8. 18 V.S.A. § 4230a is amended to read:

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

(a)(1) ~~A person 21 years of age or older who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows:~~

~~(1) not more than $200.00 for a first offense;~~

~~(2) not more than $300.00 for a second offense;~~

~~(3) not more than $500.00 for a third or subsequent offense.~~

~~(b)~~(1) Except as otherwise provided in this section, a person 21 years of age or older who possesses one ounce or less of marijuana or five grams or less of hashish or who possesses paraphernalia for marijuana use shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under State law.

(2)(A) ~~A violation of this section shall not result in the creation of a criminal history record of any kind~~ A person shall not consume marijuana in a public place. "Public place" means any street, alley, park, sidewalk, public building other than individual dwellings, any place of public accommodation as defined in 9 V.S.A. § 4501, and any place where the possession of a lighted tobacco product is prohibited pursuant to section 1421 of this title or chapter 37 of this title.

(B) A person who violates this subdivision (a)(2) shall be assessed a civil penalty as follows:

(i) not more than $100.00 for a first offense;

(ii) not more than $200.00 for a second offense; and

(iii) not more than $500.00 for a third or subsequent offense.

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

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

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

(1) permit a person to cultivate marijuana without a license from the Department of Public Safety;

(2) exempt a person from arrest, citation, or prosecution for being under the influence of marijuana while operating a vehicle of any kind or for consuming marijuana while operating a motor vehicle;

(3) repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana or for consuming marijuana while operating a motor vehicle;

(4) limit the authority of primary and secondary schools to impose administrative penalties for the possession of marijuana on school property;

(5) prohibit a municipality from adopting a civil ordinance to provide additional penalties for consumption of marijuana in a public place;

(6) prohibit a landlord from banning possession or use of marijuana in a lease agreement; or

(7) allow an inmate of a correctional facility to possess or use marijuana or to limit the authority of law enforcement, the courts, the Department of Corrections, or the Parole Board to impose penalties on offenders who use marijuana in violation of a court order, conditions of furlough, parole, or rules of a correctional facility.

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

~~(e)~~(c)(1) A law enforcement officer is authorized to detain a person if:

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

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

(2) The person may be detained only until the person identifies himself or herself satisfactorily to the officer or is properly identified. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a judge in the Criminal Division of the Superior Court for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

~~(f)~~(d) Fifty percent of the civil penalties imposed by the Judicial Bureau for violations of this section shall be deposited in the Drug Task Force Special Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7,

subchapter 5, and available to the Department of Public Safety for the funding of law enforcement officers on the Drug Task Force, except for a $12.50 administrative charge for each violation which shall be deposited in the Court Technology Special Fund, in accordance with 13 V.S.A. § 7252. The remaining 50 percent shall be deposited in the Youth Substance Abuse Safety Program Special Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and available to the Court Diversion Program for funding of the Youth Substance Abuse Safety Program as required by section 4230b of this title.

(e) Nothing in this section shall be construed to do any of the following:

(1) require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace;

(2) prevent an employer from adopting a policy that prohibits the use of marijuana in the workplace;

(3) create a cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees; or

(4) prevent an employer from prohibiting or otherwise regulating the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana on the employer's premises.

Sec. 9. 18 V.S.A. § 4230e is added to read:

§ 4230e. SALE OR FURNISHING MARIJUANA TO A PERSON UNDER 21 YEARS OF AGE

(a) No person shall:

(1) sell or furnish marijuana to a person under 21 years of age; or

(2) knowingly enable the consumption of marijuana by a person under 21 years of age.

(b) As used in this section, "enable the consumption of marijuana" means creating a direct and immediate opportunity for a person to consume marijuana.

(c)(1) Except as provided in subdivision (2) of this subsection and subsection (d) of this section, a person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than $2,000.00, or both.

(2) A person who violates subdivision (a)(1) of this section by selling or furnishing marijuana to a person under 18 years of age shall be imprisoned not more than four years or fined not more than $4,000.00, or both.

(d) An employee of a marijuana establishment licensed pursuant to chapter 87 of this title, who, in the course of employment, violates subdivision (a)(1) of this section during a compliance check conducted by a law enforcement officer shall be:

(1) assessed a civil penalty of not more than $100.00 for the first violation and a civil penalty of not less than $100.00 nor more than $500.00 for a second violation that occurs more than one year after the first violation; and

(2) subject to the criminal penalties provided in subsection (c) of this section for a second violation within a year of the first violation, and for a third or subsequent violation within three years of the first violation.

(e) An employee alleged to have committed a violation of subsection (d) of this section may plead as an affirmative defense that:

(1) the purchaser exhibited and the employee carefully viewed photographic identification that indicated the purchaser to be 21 years of age or older;

(2) an ordinary prudent person would believe the purchaser to be of legal age to make the purchase; and

(3) the sale was made in good faith, based upon the reasonable belief that the purchaser was of legal age to purchase marijuana.

(f) A person who violates subsection (a) of this section, where the person under 21 years of age, while operating a motor vehicle on a public highway, causes death or serious bodily injury to himself or herself or to another person as a result of the violation, shall be imprisoned not more than five years or fined not more than $10,000.00, or both.

(g) This section shall not apply to:

(1) A person under 21 years of age who sells or furnishes marijuana to a person under 21 years of age or who knowingly enables the consumption of marijuana by a person under 21 years of age. Possession of an ounce or less of marijuana by a person under 21 years of age shall be punished in accordance with sections 4230b–4230d of this title and dispensing or selling marijuana shall be punished in accordance with sections 4230 and 4237 of this title.

(2) A dispensary registered pursuant to chapter 86 of this title.

Sec. 10. 18 V.S.A. § 4230f is added to read:

§ 4230f. SALE OR FURNISHING MARIJUANA TO A PERSON UNDER 21 YEARS OF AGE; CIVIL ACTION FOR DAMAGES

(a) A spouse, child, guardian, employer, or other person who is injured in person, property, or means of support by a person under 21 years of age who is impaired by marijuana, or in consequence of the impairment by marijuana of any person under 21 years of age, shall have a right of action in his or her own name, jointly or severally, against any person or persons who have caused in whole or in part such impairment by selling or furnishing marijuana to a person under 21 years of age.

(b) Upon the death of either party, the action and right of action shall survive to or against the party's executor or administrator. The party injured or his or her legal representatives may bring either a joint action against the impaired person under 21 years of age and the person or persons who sold or furnished the marijuana, or a separate action against either or any of them.

(c) An action to recover for damages under this section shall be commenced within two years after the cause of action accrues, and not after.

(d) In an action brought under this section, evidence of responsible actions taken or not taken is admissible if otherwise relevant. Responsible actions may include a marijuana establishment's instruction to employees as to laws governing the sale of marijuana to adults 21 years of age or older and procedures for verification of age of customers.

(e) A defendant in an action brought under this section has a right of contribution from any other responsible person or persons, which may be enforced in a separate action brought for that purpose.

(f)(1) Except as provided in subdivision (2) of this subsection, nothing in this section shall create a statutory cause of action against a social host for furnishing marijuana to any person without compensation or profit. However, this subdivision shall not be construed to limit or otherwise affect the liability of a social host for negligence at common law.

(2) A social host who knowingly furnishes marijuana to a person under 21 years of age may be held liable under this section if the social host knew, or a reasonable person in the same circumstances would have known, that the person who received the marijuana was under 21 years of age.

(3) As used in this subsection, "social host" means a person who is not the holder of a marijuana establishment license and is not required under chapter 87 of this title to hold a marijuana establishment license.

Sec. 11. 18 V.S.A. § 4230g is added to read:

§ 4230g. CHEMICAL EXTRACTION PROHIBITED

(a) No person shall manufacture concentrated marijuana by chemical extraction or chemical synthesis using a solvent such as butane, hexane, isopropyl alcohol, ethanol, or carbon dioxide unless authorized as a dispensary pursuant to a registration issued by the Department of Public Safety pursuant to chapter 86 of this title. This section does not preclude extraction by vegetable glycerin.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than $2,000.00, or both. A person who violates subsection (a) of this section and causes serious bodily injury to another person shall be imprisoned not more than five years or fined not more than $5,000.00, or both.

Sec. 12. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE

During 2016 the Joint Legislative Justice Oversight Committee shall study:

(1) how a criminal defendant's credit for time served is determined with respect to time that the defendant was in Department of Corrections custody on nonincarcerative status or conditions of release; and

(2) when the name of an offender who has committed a qualifying offense is posted on the Internet Sex Offender Registry if the offender was in Department of Corrections custody on nonincarcerative status.

* * * Findings * * *

Sec. 13. LEGISLATIVE FINDINGS AND INTENT

The General Assembly finds the following:

(1) According to a 2014 study commissioned by the administration and conducted by the RAND Corporation, marijuana is commonly used in Vermont with an estimated 80,000 residents having used marijuana in the last month.

(2) For over 75 years, Vermont has debated the issue of marijuana regulation and amended its marijuana laws numerous times in an effort to protect public health and safety. Criminal penalties for possession rose in the 1940s and 50s to include harsh mandatory minimums, dropped in the 1960s and 70s, rose again in the 1980s and 90s, and dropped again in the 2000s. A study published in the American Journal of Public Health found that no evidence supports the claim that criminalization reduces marijuana use.

(3) Vermont seeks to take a new comprehensive approach to marijuana use and abuse that incorporates prevention, education, regulation, treatment, and law enforcement which results in a net reduction in public harm and an overall improvement in public safety. Responsible use of marijuana by adults 21 years of age or older should be treated the same as responsible use of alcohol, the abuse of either treated as a public health matter, and irresponsible use of either that causes harm to others sanctioned with penalties.

(4) Policymakers recognize legitimate federal concerns about marijuana reform and seek through this legislation to provide better control of access and distribution of marijuana in a manner that prevents:

(A) distribution of marijuana to persons under 21 years of age;

(B) revenue from the sale of marijuana going to criminal enterprises;

(C) diversion of marijuana to states that do not permit possession of marijuana;

(D) State-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or activity;

(E) violence and the use of firearms in the cultivation and distribution of marijuana;

(F) drugged driving and the exacerbation of any other adverse public health consequences of marijuana use;

(G) growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and

(H) possession or use of marijuana on federal property.

(5) In his 2016 State of the State address, the Governor identified five essential elements to a well-regulated framework for marijuana legalization, which the General Assembly believes have been addressed in this Act:

(A) Keeping marijuana and other drugs out of the hands of youth.

(B) Creating a regulated marijuana market that shifts demand away from the illegal market and the inherent public health and safety risks associated with the illegal market.

(C) Using revenue from commercial marijuana sales to expand drug prevention and treatment programs.

(D) Strengthening law enforcement's capacity to improve the response to impaired drivers under the influence of marijuana or other drugs.

(E) Prohibiting the commercial production and sale of marijuana concentrates and edible marijuana products until other states that are currently permitting such products successfully develop consumer protections that are shown to prevent access by youth and potential misuse by adults.

(6) Revenue generated by this act shall be used to provide for the implementation, administration, and enforcement of this chapter and to provide additional funding for State efforts on the prevention of substance abuse, treatment of substance abuse, and criminal justice efforts to combat the illegal drug trade and impaired driving. As used in this subdivision, "criminal justice efforts" shall include efforts by both State and local criminal justice agencies, including law enforcement, prosecutors, public defenders, and the courts.

(7)(A) The General Assembly understands there are a number of Vermonters who would prefer to cultivate small amounts of marijuana for personal use instead of buying marijuana through a licensed retailer and to allow small "craft" marijuana cultivators to sell to the public without the same restrictions and licensing of commercial cultivators. At this time, the General Assembly believes there is insufficient information to determine whether Vermont could effectively regulate personal cultivation in a manner that would not create diversion or enforcement issues that hinder efforts to divert the marijuana economy from the illegal to the regulated market.

(B) Marijuana is illegal for any purpose under federal law and the federal government retains prosecutorial discretion to enforce the provisions of the Controlled Substances Act. In a 2013 memo from Deputy Attorney General James M. Cole, the U.S. Department of Justice provided guidance on its use of this discretion stating, "[i]n jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong effective regulatory and enforcement systems to control cultivation, distribution, sale and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten [federal priorities] . . . If state enforcement efforts are not sufficiently robust to protect against the harms [identified in the memo], the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focusing on those harms."

(C) The Marijuana Program Review Commission created by this act will take testimony on the issues identified in subdivision (7)(A) and consider whether and when Vermont may move toward increasing opportunities for small-scale cultivation while meeting State and federal interests concerning public health and safety.

* * * Prevention * * *

Sec. 14. MARIJUANA YOUTH EDUCATION AND PREVENTION

(a)(1) Relying on lessons learned from tobacco and alcohol prevention efforts, the Department of Health, in collaboration with the Department of Public Safety, the Agency of Education, and the Governor's Highway Safety Program, shall develop and administer an education and prevention program focused on use of marijuana by youths under 25 years of age. In so doing, the Department shall consider at least the following:

(A) Community- and school-based youth and family-focused prevention initiatives that strive to:

(i) expand the number of school-based grants for substance abuse services to enable each Supervisory Union to develop and implement a plan for comprehensive substance abuse prevention education in a flexible manner that ensures the needs of individual communities are addressed;

(ii) improve the Screening, Brief Intervention and Referral to Treatment (SBIRT) practice model for professionals serving youths in schools and other settings; and

(iii) expand family education programs.

(B) An informational and counter-marketing campaign using a public website, printed materials, mass and social media, and advertisements for the purpose of preventing underage marijuana use.

(C) Education for parents and health care providers to encourage screening for substance use disorders and other related risks.

(D) Expansion of the use of SBIRT among the State's pediatric practices and school-based health centers.

(E) Strategies specific to youths who have been identified by the Youth Risk Behavior Survey as having an increased risk of substance abuse.

(2) On or before March 15, 2017, the Department shall adopt rules to implement the education and prevention program described in subsection (a) of this section and implement the program on or before September 15, 2017.

(b) The Department shall include questions in its biannual Youth Risk Behavior Survey to monitor the use of marijuana by youths in Vermont and to understand the source of marijuana used by this population.

(c) Any data collected by the Department on the use of marijuana by youths shall be maintained and organized in a manner that enables the pursuit of future longitudinal studies.

* * * Regulation of Commercial Marijuana * * *

Sec. 15. 18 V.S.A. § 4201(15) is amended to read:

(15)(A) "Marijuana" means ~~any plant material of the genus licenses or any preparation, compound, or mixture thereof except:~~

~~(A) sterilized seeds of the plant;~~

~~(B) fiber produced from the stalks; or~~

~~(C) hemp or hemp products, as defined in 6 V.S.A. § 562~~ all parts of the plant Cannabis sativa L., except as provided by subdivision (B) of this subdivision (15), whether growing or harvested, and includes:

(i) the seeds of the plant;

(ii) the resin extracted from any part of the plant; and

(iii) any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

(B) "Marijuana" does not include:

(i) the mature stalks of the plant and fiber produced from the stalks;

(ii) oil or cake made from the seeds of the plant;

(iii) any compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; or

(iv) the sterilized seed of the plant that is incapable of germination.

Sec. 16. 18 V.S.A. chapter 87 is added to read:

CHAPTER 87. MARIJUANA ESTABLISHMENTS

Subchapter 1. General Provisions

§ 4501. DEFINITIONS

As used in this chapter:

(1) "Affiliate" means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

(2) "Applicant" means a person that applies for a license to operate a marijuana establishment pursuant to this chapter.

(3) "Child care facility" means a child care facility or family day care home licensed or registered under 33 V.S.A. chapter 35.

(4) "Commissioner" means the Commissioner of Public Safety.

(5) "Department" means the Department of Public Safety.

(6) "Dispensary" means a person registered under section 4474e of this title that acquires, possesses, cultivates, manufactures, transfers, transports, supplies, sells, or dispenses marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her center and to his or her registered caregiver for the registered patient's use for symptom relief.

(7) "Enclosed, locked facility" shall be either indoors or outdoors, not visible to the public, and may include a building, room, greenhouse, fully enclosed fenced-in area, or other location enclosed on all sides and equipped with locks or other security devices that permit access only by:

(A) Employees, agents, or owners of the cultivator, all of whom shall be 21 years of age or older.

(B) Government employees performing their official duties.

(C) Contractors performing labor that does not include marijuana cultivation, packaging, or processing. Contractors shall be accompanied by an employee, agent, or owner of the cultivator when they are in areas where marijuana is being grown, processed, or stored.

(D) Registered employees of other cultivators, members of the media, elected officials, and other individuals 21 years of age or older visiting the facility, provided they are accompanied by an employee, agent, or owner of the cultivator.

(8) "Financier" means a person, other than a financial institution as defined in 8 V.S.A. § 11101, that makes an equity investment, a gift, loan, or otherwise provides financing to a person with the expectation of a financial return.

(9) "Handbill" means a flyer, leaflet, or sheet that advertises marijuana or a marijuana establishment.

(10) "Marijuana" shall have the same meaning as provided in section 4201 of this title.

(11) "Marijuana cultivator" or "cultivator" means a person registered with the Department to engage in commercial cultivation of marijuana in accordance with this chapter.

(12) "Marijuana establishment" means a marijuana cultivator, retailer, or testing laboratory licensed by the Department to engage in commercial marijuana activity in accordance with this chapter.

(13) "Marijuana retailer" or "retailer" means a person licensed by the Department to sell marijuana to consumers for off-site consumption in accordance with this chapter.

(14) "Marijuana testing laboratory" or "testing laboratory" means a person licensed by the Department to test marijuana for cultivators and retailers in accordance with this chapter.

(15) "Owns or controls," "is owned or controlled by," and "under common ownership or control" mean direct ownership or beneficial ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the power to direct, or cause the direction of, the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(16) "Person" shall include any natural person; corporation; municipality; the State of Vermont or any department, agency, or subdivision of the State; and any partnership, unincorporated association, or other legal entity.

(17) "Plant canopy" means the square footage dedicated to live plant production and does not include areas such as office space or areas used for the storage of fertilizers, pesticides, or other products.

(18) "Principal" means an individual vested with the authority to conduct, manage, or supervise the business affairs of a person, and may include the president, vice president, secretary, treasurer, manager, or similar executive officer of a business; a director of a corporation, nonprofit corporation, or mutual benefit enterprise; a member of a nonprofit corporation, cooperative, or member-managed limited liability company; and a partner of a partnership.

(19) "Public place" means any street, alley, park, sidewalk, public building other than individual dwellings, any place of public accommodation as defined in 9 V.S.A. § 4501, and any place where the possession of a lighted tobacco product is prohibited pursuant to section 1421 of this title or chapter 37 of this title.

(20) "Resident" means a person who is domiciled in Vermont, subject to the following:

(A) The process for determining the domicile of an individual shall be the same as that required by rules adopted by the Department of Taxes related to determining domicile for the purpose of the interpretation and administration of 32 V.S.A. § 5401(14).

(B) The domicile of a business entity is the State in which it is organized.

(21) "School" means a public school, independent school, or facility that provides early childhood education as those terms are defined in 16 V.S.A. § 11.

§ 4502. MARIJUANA POSSESSED UNLAWFULLY SUBJECT TO SEIZURE AND FORFEITURE

Marijuana possessed unlawfully in violation of this chapter may be seized by law enforcement and is subject to forfeiture.

§ 4503. NOT APPLICABLE TO HEMP OR THERAPEUTIC USE OF CANNABIS

This chapter shall not apply to activities regulated by 7 V.S.A. chapter 34 (hemp) or 86 (therapeutic use of cannabis) of this title.

§ 4504. CONSUMPTION OF MARIJUANA IN A PUBLIC PLACE PROHIBITED

This chapter shall not be construed to permit consumption of marijuana in a public place. Violations shall be punished in accordance with section 4230a of this title.

§ 4505. REGULATION BY LOCAL GOVERNMENT

(a)(1) A marijuana establishment shall obtain a permit from a town, city, or incorporated village prior to beginning operations within the municipality.

(2) A municipality that hosts a marijuana establishment may establish a board of marijuana control commissioners, who shall be the members of the municipal legislative body. The board shall administer the municipal permits under this subsection for the marijuana establishments within the municipality.

(b) Nothing in this chapter shall be construed to prevent a town, city, or incorporated village from regulating marijuana establishments through local ordinances as set forth in 24 V.S.A. § 2291 or through land use bylaws as set forth in 24 V.S.A. § 4414.

(c)(1) A town, city, or incorporated village, by majority vote of those present and voting at annual or special meeting warned for the purpose, may prohibit the operation of a marijuana establishment within the municipality. The provisions of this subdivision shall not apply to a marijuana establishment that is operating within the municipality at the time of the vote.

(2) A vote to prohibit the operation of a marijuana establishment within the municipality shall remain in effect until rescinded by majority vote of those present and voting at an annual or special meeting warned for the purpose.

§ 4506. YOUTH RESTRICTIONS

(a) A marijuana establishment shall not dispense or sell marijuana to a person under 21 years of age or employ a person under 21 years of age.

(b) A marijuana establishment shall not be located within 1,000 feet of a preexisting public or private school or licensed or regulated child care facility.

(c) A marijuana establishment shall not permit a person under 21 years of age to enter a building or enclosure on the premises where marijuana is located. This subsection shall not apply to a registered patient visiting his or her designated dispensary even if that dispensary is located in a building that is located on the same premises of a marijuana establishment.

§ 4507. ADVERTISING

(a) Marijuana advertising shall not contain any statement or illustration that:

(1) is false or misleading;

(2) promotes overconsumption;

(3) represents that the use of marijuana has curative or therapeutic effects;

(4) depicts a person under 21 years of age consuming marijuana; or

(5) is designed to be appealing to children or persons under 21 years of age.

(b) Outdoor marijuana advertising shall not be located within 1,000 feet of a preexisting public or private school or licensed or regulated child care facility.

(c) Handbills shall not be posted or distributed.

(d) In accordance with section 4512 of this chapter, the Department shall adopt regulations on marijuana establishment advertising that reflect the policies of subsection (a) of this section and place restrictions on the time, place, and manner, but not content, of the advertising.

(e) All advertising shall contain the following warnings:

(1) For use only by adults 21 years of age or older. Keep out of the reach of children.

(2) Marijuana has intoxicating effects and may impair concentration, coordination, and judgment. Do not operate a motor vehicle or heavy machinery or enter into any contractual agreement under the influence of marijuana.

Subchapter 2. Administration

§ 4511. AUTHORITY

(a) For the purpose of regulating the cultivation, processing, packaging, transportation, testing, purchase, and sale of marijuana in accordance with this chapter, the Department shall have the following authority and duties:

(1) rulemaking in accordance with this chapter and 3 V.S.A. chapter 25;

(2) administration of a program for the licensure of marijuana establishments, which shall include compliance and enforcement; and

(3) submission of an annual budget to the Governor.

(b)(1) For the purpose of regulating the cultivation and testing of marijuana in accordance with this chapter, the Agency of Agriculture, Food and Markets shall have the following authority and duties:

(A) rulemaking in accordance with this chapter and 3 V.S.A. chapter 25;

(B) the inspection of licensed marijuana cultivators and testing of marijuana; and

(C) the prevention of contaminated or adulterated marijuana from being offered for sale.

(2) The authority and duties of the Agency shall be in addition to, and not a substitute for, the authority and duties of the Department.

(c)(1) There is established a Marijuana Advisory Board within the Department for the purpose of advising the Department and other administrative agencies and departments regarding policy for the implementation and operation of this chapter. The Board shall be composed of the following members:

(A) the Commissioner of Public Safety or designee;

(B) the Secretary of Agriculture, Food and Markets or designee;

(C) the Commissioner of Health or designee;

(D) the Commissioner of Taxes or designee; and

(E) a member of local law enforcement appointed by the Governor.

(2) The Department shall endeavor to notify and consult with the Board prior to the adoption of any significant policy decision.

(3) The Secretary of Administration shall convene the first meeting of the Board on or before June 1, 2016 and shall attend Board meetings.

§ 4512. RULEMAKING

(a) The Department shall adopt rules to implement this chapter on or before March 15, 2017, in accordance with subdivisions (1)–(4) of this section.

(1) Rules concerning any marijuana establishment shall include:

(A) the form and content of license and renewal applications;

(B) qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment, including submission of an operating plan and the requirement for a fingerprint-based criminal history record check and regulatory record check pursuant to subsection 4522(d) of this title;

(C) oversight requirements;

(D) inspection requirements;

(E) records to be kept by licensees and the required availability of the records;

(F) employment and training requirements, including requiring that each marijuana establishment create an identification badge for each employee;

(G) security requirements, including lighting, physical security, video, and alarm requirements;

(H) restrictions on advertising, marketing, and signage;

(I) health and safety requirements;

(J) regulation of additives to marijuana, including those that are toxic or designed to make the product more addictive, more appealing to children, or to mislead consumers;

(K) procedures for seed to sale traceability of marijuana, including any requirements for tracking software;

(L) regulation of the storage and transportation of marijuana;

(M) sanitary requirements;

(N) pricing guidelines with a goal of ensuring marijuana is sufficiently affordable to undercut the illegal market;

(O) procedures for the renewal of a license, which shall allow renewal applications to be submitted up to 90 days prior to the expiration of the marijuana establishment's license;

(P) procedures for suspension and revocation of a license; and

(Q) requirements for banking and financial transactions.

(2) Rules concerning cultivators shall include:

(A) labeling requirements for products sold to retailers; and

(B) regulation of visits to the establishments, including the number of visitors allowed at any one time and recordkeeping concerning visitors.

(3) Rules concerning retailers shall include:

(A) labeling requirements, including appropriate warnings concerning the carcinogenic effects and other potential negative health consequences of consuming marijuana, for products sold to customers;

(B) requirements for proper verification of age and residency of customers;

(C) restrictions that marijuana shall be stored behind a counter or other barrier to ensure a customer does not have direct access to the marijuana; and

(D) regulation of visits to the establishments, including the number of customers allowed at any one time and recordkeeping concerning visitors.

(4) Rules concerning testing laboratories shall include:

(A) procedures for destruction of all samples; and

(B) requirements for chain of custody recordkeeping.

(b) In addition to the rules adopted by the Department pursuant to subsection (a) of this section, the Agency of Agriculture, Food and Markets shall adopt rules regarding the cultivation and testing of marijuana regulated pursuant to this chapter as follows:

(1) restrictions on the use by cultivators of pesticides that are injurious to human health;

(2) standards for both the indoor and outdoor cultivation of marijuana, including environmental protection requirements;

(3) procedures and standards for testing marijuana for contaminants and potency and for quality assurance and control;

(4) reporting requirements of a testing laboratory; and

(5) inspection requirements for cultivators and testing laboratories.

§ 4513. IMPLEMENTATION

(a)(1) On or before April 15, 2017, the Department shall begin accepting applications for cultivator licenses and testing laboratory licenses. The initial application period shall remain open for 30 days. The Department may reopen the application process for any period of time at its discretion.

(2) On or before June 15, 2017, the Department shall begin issuing cultivator licenses and testing laboratory licenses to qualified applicants.

(b)(1) On or before May 15, 2017, the Department shall begin accepting applications for retail licenses. The initial application period shall remain open for 30 days. The Department may reopen the application process for any period of time at its discretion.

(2) On or before September 15, 2017, the Department shall begin issuing retailer licenses to qualified applicants. A license shall not permit a licensee to open the store to the public or sell marijuana to the public prior to January 2, 2018.

(c)(1) Prior to July 1, 2018, provided applicants meet the requirements of this chapter, the Department shall issue:

(A) a maximum of 10 cultivator licenses that permit a cultivation space of not more than 1,000 square feet;

(B) a maximum of four cultivator licenses that permit a cultivation space of 1,001–2,500 square feet;

(C) a maximum of 10 cultivator licenses that permit a cultivation space of 2,501–5,000 square feet;

(D) a maximum of three cultivator licenses that permit a cultivation space of 5,001–10,000 square feet;

(E) a maximum of five testing laboratory licenses; and

(F) a maximum of 15 retailer licenses.

(2) On or after July 1, 2018 and before July 1, 2019, provided applicants meet the requirements of this chapter and in addition to the licenses authorized in subdivision (1) of this subsection, the Department shall issue:

(A) a maximum of 10 cultivator licenses that permit a cultivation space of not more than 1,000 square feet for a total of 20 such licenses;

(B) a maximum of four cultivator licenses that permit a cultivation space of 1,001–2,500 square feet for a total of eight such licenses;

(C) a maximum of 10 cultivator licenses that permit a cultivation space of 2,501–5,000 square feet for a total of 20 such licenses;

(D) a maximum of three cultivator licenses that permit a cultivation space of 5,001–10,000 square feet for a total of six such licenses;

(E) a maximum of five testing laboratory licenses for a total of 10 such licenses; and

(F) a maximum of 15 retailer licenses for a total of 30 such licenses.

(3) On or after July 1, 2019, the limitations in subdivisions (1) and (2) of this subsection shall not apply and the Department shall use its discretion to issue licenses in a number and size for the purpose of competing with and undercutting the illegal market based on available data and recommendations of the Marijuana Program Review Commission. A cultivator licensed under the limitations of subdivisions (1) or (2) of this subsection may apply to the Department to modify its license to expand its cultivation space.

§ 4514. CIVIL CITATIONS; SUSPENSION AND REVOCATION OF LICENSES

(a) The Department shall have the authority to adopt rules for the issuance of civil citations for violations of this chapter and the rules adopted pursuant to section 4512 of this title. Any proposed rule under this section shall include the full, minimum, and waiver penalty amounts for each violation.

(b) The Department shall have the authority to suspend or revoke a license for violations of this chapter in accordance with rules adopted pursuant to section 4512 of this title.

Subchapter 3. Licenses

§ 4521. GENERAL PROVISIONS

(a) Except as otherwise permitted by this chapter, a person shall not engage in the cultivation, preparation, processing, packaging, transportation, testing, or sale of marijuana without obtaining a license from the Department.

(b) All licenses shall expire at midnight, April 30, of each year beginning no earlier than 10 months after the original license was issued to the marijuana establishment.

(c) Applications for licenses and renewals shall be submitted on forms provided by the Department and shall be accompanied by the fees provided for in section 4528 of this section.

(d)(1) Except as provided in subdivision (2) of this subsection (d), an applicant and its affiliates may obtain only one license, either a cultivator license, a retailer license, or a testing laboratory license under this chapter.

(2) A dispensary or a subsidiary of a dispensary may obtain one of each type of license under this chapter, provided that a dispensary or its subsidiary obtains no more than one cultivator license, one retailer license, and one testing laboratory license total.

(e) Each license shall permit only one location of the establishment.

(f) A dispensary that obtains a retailer license pursuant to this chapter shall maintain the dispensary and retail operations in a manner that protects patient and caregiver privacy in accordance with rules adopted by the Department. If the dispensary and retail establishment are located on the same premises, the dispensary and retail establishment shall provide separate entrances and common areas designed to serve patients and caregivers and customers.

(g) Each licensee shall obtain and maintain commercial general liability insurance in accordance with rules adopted by the Department. Failure to provide proof of insurance to the Department, as required, may result in revocation of the license.

(h) All records relating to security, transportation, public safety, and trade secrets in an application for a license under this chapter shall be exempt from public inspection and copying under the Public Records Act.

(i) This subchapter shall not apply to possession regulated by section 4230a of this title.

§ 4522. LICENSE QUALIFICATIONS AND APPLICATION PROCESS

(a) To be eligible for a marijuana establishment license:

(1) An applicant shall be a resident of Vermont.

(2) A principal of an applicant, and a person who owns or controls an applicant, shall have been a resident of Vermont for two or more years immediately preceding the date of application.

(3) An applicant, principal of an applicant, or person who owns or controls an applicant, who is a natural person:

(A) shall be 21 years of age or older; and

(B) shall consent to the release of his or her criminal and administrative history records.

(b) A financier of an applicant shall have been a resident of Vermont for two or more years immediately preceding the date of application.

(c) As part of the application process, each applicant shall submit, in a format proscribed by the Department, an operating plan. The plan shall include a floor plan or site plan drawn to scale that illustrates the entire operation being proposed. The plan shall also include the following:

(1) For a cultivator license, information concerning:

(A) security;

(B) traceability;

(C) employee qualifications and training;

(D) transportation of product;

(E) destruction of waste product;

(F) description of growing operation, including growing media, size of grow space allocated for plant production, space allowed for any other business activity, description of all equipment to be used in the cultivation process, and a list of soil amendments, fertilizers, or other crop production aids, or pesticides, utilized in the production process;

(G) how the applicant will meet its operation's need for energy services at the lowest present value life-cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on energy efficiency and energy supply;

(H) testing procedures and protocols;

(I) description of packaging and labeling of products transported to retailers; and

(J) any additional requirements contained in rules adopted by the Department in accordance with this chapter.

(2) For a retailer license, information concerning:

(A) security;

(B) traceability;

(C) employee qualifications and training;

(D) destruction of waste product;

(E) description of packaging and labeling of products sold to customers;

(F) the products to be sold and how they will be displayed to customers; and

(G) any additional requirements contained in rules adopted by the Department in accordance with this chapter.

(3) For a testing laboratory license, information concerning:

(A) security;

(B) traceability;

(C) employee qualifications and training;

(D) destruction of waste product; and

(E) the types of testing to be offered.

(d) The Department shall obtain a Vermont criminal history record, an out-of-state criminal history record, a criminal history record from the Federal Bureau of Investigation, and any regulatory records relating to the operation of a business in this State or any other jurisdiction for each of the following who is a natural person:

(1) an applicant or financier;

(2) a principal of an applicant or financier; and

(3) a person who owns or controls an applicant or financier.

(e) When considering applications for a marijuana establishment license, the Department shall:

(1) give priority to a qualified applicant that is a dispensary or subsidiary of a dispensary;

(2) strive for geographic distribution of marijuana establishments based on population.

§ 4523. EDUCATION

(a) An applicant for a marijuana establishment license shall meet with a Department designee for the purpose of reviewing Vermont laws and rules pertaining to the possession, purchase, storage, and sale of marijuana prior to receiving a license.

(b) A licensee shall complete an enforcement seminar every three years conducted by the Department. A license shall not be renewed unless the records of the Department show that the licensee has complied with the terms of this subsection.

(c) A licensee shall ensure that each employee involved in the sale of marijuana completes a training program approved by the Department prior to selling marijuana and at least once every 24 months thereafter. A licensee

shall keep a written record of the type and date of training for each employee, which shall be signed by each employee. A licensee may comply with this requirement by conducting its own training program on its premises, using information and materials furnished by the Department. A licensee who fails to comply with the requirements of this section shall be subject to a suspension of no less than one day of the license issued under this chapter.

§ 4524. IDENTIFICATION CARD; CRIMINAL BACKGROUND CHECK

(a) The Department shall issue each employee an identification card or renewal card within 30 days of receipt of the person's name, address, and date of birth and a fee of $50.00. The fee shall be paid by the marijuana establishment and shall not be passed on to an employee. A person shall not work as an employee until that person has received an identification card issued under this section. Each card shall contain the following:

(1) the name, address, and date of birth of the person;

(2) the legal name of the marijuana establishment with which the person is affiliated;

(3) a random identification number that is unique to the person;

(4) the date of issuance and the expiration date of the identification card; and

(5) a photograph of the person.

(b) Prior to acting on an application for an identification card, the Department shall obtain the person's Vermont criminal history record, out-of-state criminal history record, and criminal history record from the Federal Bureau of Investigation. Each person shall consent to the release of criminal history records to the Department on forms developed by the Vermont Crime Information Center.

(c) When the Department obtains a criminal history record, the Department shall promptly provide a copy of the record to the person and the marijuana establishment. The Department shall inform the person of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Department.

(d) The Department shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. No person shall confirm the existence or nonexistence of criminal history record information to any person who would not be eligible to receive the information pursuant to this chapter.

(e) The Department shall not issue an identification card to any person who has been convicted of a drug-related criminal offense or a violent felony or who has a pending charge for such an offense. As used in this subchapter, "violent felony" means a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

(f) The Department shall adopt rules for the issuance of an identification card and shall set forth standards for determining whether a person should be denied a registry identification card because his or her criminal history record indicates that the person's association with a marijuana establishment would pose a demonstrable threat to public safety. The rules shall consider whether a person who has a conviction for an offense not listed in subsection (e) of this section has been rehabilitated. A conviction for an offense not listed in subsection (e) of this section shall not automatically disqualify a person for a registry identification card. A marijuana establishment may deny a person the opportunity to serve as an employee based on his or her criminal history record. A person who is denied an identification card may appeal the Department's determination in Superior Court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

(g) An identification card shall expire one year after its issuance or upon the expiration of the marijuana establishment's license, whichever occurs first.

§ 4525. CULTIVATOR LICENSE

(a) A cultivator licensed under this chapter may cultivate, package, label, transport, test, and sell marijuana to a licensed retailer.

(b) Cultivation of marijuana shall occur only in an enclosed, locked facility.

(c) An applicant shall designate on their operating plan the size of the premises and the amount of actual square footage that will be dedicated to plant canopy.

(d) Representative samples of each lot or batch of marijuana intended for human consumption shall be tested for safety and potency in accordance with rules adopted by the Department and the Agency of Agriculture, Food and Markets.

(e) Each cultivator shall create packaging for its marijuana.

(1) Packaging shall include:

(A) The name and registration number of the cultivator.

(B) The strain of marijuana contained. Marijuana strains shall be either pure breeds or hybrid varieties of marijuana and shall reflect properties of the plant.

(C) The potency of the marijuana represented by the percentage of tetrahydrocannabinol and cannabidiol by mass.

(D) A "produced on" date reflecting the date that the cultivator finished producing marijuana.

(E) Warnings, in substantially the following form, stating, "Consumption of marijuana impairs your ability to drive a car and operate machinery," "Keep away from children," and "Possession of marijuana is illegal under federal law."

(F) Any additional requirements contained in rules adopted by the Department in accordance with this chapter.

(2) Packaging shall not be designed to appeal to persons under 21 years of age.

(f)(1) Only unadulterated marijuana shall be offered for sale. If, upon inspection, the Agency of Agriculture, Food and Markets finds any violative pesticide residue or other contaminants of concern, the Agency shall order the marijuana, either individually or in blocks, to be:

(A) put on stop-sale;

(B) treated in a particular manner; or

(C) destroyed according to the Agency's instructions.

(2) Marijuana ordered destroyed or placed on stop-sale shall be clearly separable from salable marijuana. Any order shall be confirmed in writing within seven days. The order shall include the reason for action, a description of the marijuana affected, and any recommended treatment.

(3) A person may appeal an order issued pursuant to this section within 15 days of receiving the order. The appeal shall be made in writing to the Secretary of Agriculture, Food and Markets and shall clearly identify the marijuana affected and the basis for the appeal.

§ 4526. RETAILER LICENSE

(a) A retailer licensed under this chapter may:

(1) transport, possess, and sell marijuana to the public for consumption off the registered premises; and

(2) purchase marijuana from a licensed cultivator.

(b)(1) In a single transaction, a retailer may provide:

(A) one-half ounce of marijuana to a person 21 years of age or older upon verification of a valid government-issued photograph identification card that indicates the person is domiciled in Vermont; or

(B) one-quarter of an ounce of marijuana to a person 21 years of age or older upon verification of a valid government-issued photograph identification card that indicates the person is domiciled outside Vermont.

(2) A retailer shall not knowingly and willfully sell an amount of marijuana to a person that causes the person to exceed the possession limit.

(c) A retailer shall only sell "useable marijuana" which means the dried flowers of marijuana, and does not include the seeds, stalks, leaves, and roots of the plant, and shall not package marijuana with other items, such as paraphernalia, for sale to customers.

(d)(1) Packaging shall include:

(A) The name and registration number of the retailer.

(B) The strain of marijuana contained. Marijuana strains shall be either pure breeds or hybrid varieties of marijuana and shall reflect properties of the plant.

(C) The potency of the marijuana represented by the percentage of tetrahydrocannabinol and cannabidiol by mass.

(D) A "produced on" date reflecting the date that the cultivator finished producing marijuana.

(E) Warnings, in substantially the following form, stating, "Consumption of marijuana impairs your ability to drive a car and operate machinery," "Keep away from children," and "Possession of marijuana is illegal under federal law."

(F) Any additional requirements contained in rules adopted by the Department in accordance with this chapter.

(2) Packaging shall not be designed to appeal to persons under 21 years of age.

(e) A retailer shall display a safety information flyer developed or approved by the Board and supplied to the retailer free of charge. The flyer shall contain information concerning the methods for administering marijuana, the potential dangers of marijuana use, the symptoms of problematic usage, and how to receive help for marijuana abuse.

(f) Internet sales and delivery of marijuana to customers are prohibited.

§ 4527. MARIJUANA TESTING LABORATORY

(a) A testing laboratory licensed under this chapter may acquire, possess, analyze, test, and transport marijuana samples obtained from a licensed marijuana establishment.

(b) Testing may address the following:

(1) residual solvents;

(2) poisons or toxins;

(3) harmful chemicals;

(4) dangerous molds, mildew, or filth;

(5) harmful microbials, such as E.coli or salmonella;

(6) pesticides; and

(7) tetrahydrocannabinol and cannabidiol potency.

(c) A testing laboratory shall have a written procedural manual made available to employees to follow meeting the minimum standards set forth in rules detailing the performance of all methods employed by the facility used to test the analytes it reports.

(d) In accordance with rules adopted pursuant to this chapter, a testing laboratory shall establish a protocol for recording the chain of custody of all marijuana samples.

(e) A testing laboratory shall establish, monitor, and document the ongoing review of a quality assurance program that is sufficient to identify problems in the laboratory systems when they occur.

§ 4528. FEES

(a) The Department of Public Safety shall charge and collect initial license application fees and annual license renewal fees for each type of marijuana license under this chapter. Fees shall be due and payable at the time of license application or renewal.

(b)(1) The nonrefundable fee accompanying an application for a cultivator license pursuant to section 4525 of this chapter shall be determined as follows:

(A) For a cultivator license that permits a cultivation space of not more than 1,000 square feet, the application fee shall be $3,000.00.

(B) For a cultivator license that permits a cultivation space of 1,001–2,500 square feet, the application fee shall be $7,500.00.

(C) For a cultivator license that permits a cultivation space of 2,501–5,000 square feet, the application fee shall be $15,000.00.

(D) For a cultivator license that permits a cultivation space of 5,001–10,000 square feet, the application fee shall be $30,000.00.

(2) The nonrefundable fee accompanying an application for a retailer license pursuant to section 4526 of this chapter shall be $15,000.00.

(3) The nonrefundable fee accompanying an application for a marijuana testing laboratory license pursuant to section 4527 of this chapter shall be $500.00.

(4) If a person submits a qualifying application for a marijuana establishment license during an open application, pays the nonrefundable application fee, but is not selected to receive a license due to the limited number of licenses available, the person may reapply, based on availability, for such a license within two years by resubmitting the application with any necessary updated information, and shall be charged a fee that is:

(A) fifty percent of the application fees set forth in subdivision (1)–(3) of this subsection if the original application was submitted prior to July 1, 2018; or

(B) twenty-five percent of the application fees set forth in subdivisions (1)–(3) of this subsection if the original application was submitted on or after July 1, 2018 and before July 1, 2019.

(c)(1) The initial annual license fee and subsequent annual renewal fee for a cultivator license pursuant to section 4525 of this chapter shall be determined as follows:

(A) For a cultivator license that permits a cultivation space of not more than 1,000 square feet, the initial annual license and subsequent renewal fee shall be $3,000.00.

(B) For a cultivator license that permits a cultivation space of 1,001–2,500 square feet, the initial annual license and subsequent renewal fee shall be $7,500.00.

(C) For a cultivator license that permits a cultivation space of 2,501–5,000 square feet, the initial annual license and subsequent renewal fee shall be $15,000.00.

(D) For a cultivator license that permits a cultivation space of 5,001–10,000 square feet, the initial annual license and subsequent renewal fee shall be $30,000.00.

(2) The initial annual license fee and subsequent annual renewal fee for a retailer license pursuant to section 4526 of this chapter shall be $15,000.00.

(3) The initial annual license fee and subsequent annual renewal fee for a marijuana testing laboratory license pursuant to section 4527 of this chapter shall be $2,500.00.

(d) The following administrative fees shall apply:

(1) Change of corporate structure fee (per person) shall be $1,000.00.

(2) Change of name fee shall be $1,000.00.

(3) Change of location fee shall be $1,000.00.

(4) Modification of license premises fee shall be $250.00.

(5) Addition of financier fee shall be $250.00.

(6) Duplicate license fee shall be $100.00.

§ 4529. MARIJUANA REGULATION AND RESOURCE FUND

(a) The Marijuana Regulation and Resource Fund is hereby created. The Fund shall be maintained by the Agency of Administration.

(b) The Fund shall be composed of:

(1) all application fees, license fees, renewal fees, and civil penalties collected by Departments pursuant to this chapter; and

(2) all taxes collected by the Commissioner of Taxes pursuant to this chapter.

(c)(1) Funds shall be appropriated as follows:

(A) For the purpose of implementation, administration, and enforcement of this chapter.

(B) Proportionately for the prevention of substance abuse, treatment of substance abuse, and criminal justice efforts by State and local law enforcement to combat the illegal drug trade and impaired driving. As used in this subdivision, "criminal justice efforts" shall include efforts by both State and local criminal justice agencies, including law enforcement, prosecutors, public defenders, and the courts.

(2) Appropriations made pursuant to subdivision (1) of this subsection shall be in addition to current funding of the identified priorities and shall not be used in place of existing State funding.

(d) All balances in the Fund at the end of any fiscal year shall be carried forward and remain part of the Fund. Interest earned by the Fund shall be deposited into the Fund.

(e) This Fund is established in the State Treasury pursuant to 32 V.S.A. chapter 7, subchapter 5. The Commissioner of Finance and Management shall anticipate receipts in accordance with 32 V.S.A. § 588(4)(C).

(f) The Secretary of Administration shall report annually to the Joint Fiscal Committee on receipts and expenditures through the prior fiscal year on or before the Committee's regularly scheduled November meeting.

Subchapter 4. Marijuana Program Review Commission

§ 4546. PURPOSE; MEMBERS

(a) Creation. There is created a temporary Marijuana Program Review Commission for the purpose of facilitating efficient and lawful implementation of this act and examination of issues important to the future of marijuana regulation in Vermont.

(b) Membership. The Commission shall be composed of the following members:

(1) four members of the public appointed by the Governor, one of whom shall have experience in public health;

(2) one member of the House of Representatives, appointed by the Speaker of the House;

(3) one member of the Senate, appointed by the Committee on Committees; and

(4) the Attorney General or designee.

(c) Legislative members shall serve only while in office.

(d) The Governor shall appoint one member for a one-year term, two members for two-year terms, and one member for a three-year term who shall serve as Chair. The Governor may reappoint members at his or her discretion.

§ 4547. POWERS; DUTIES

(a) The Commission shall:

(1) collect information about the implementation, operation, and effect of this act from members of the public, State agencies, and private and public sector businesses and organizations;

(2) communicate with other states that have legalized marijuana and monitor those states regarding their implementation of regulation, policies, and strategies that have been successful and problems that have arisen;

(3) consider the issue of personal cultivation of a small number of marijuana plants and whether Vermont could permit home grow in a manner that would not create diversion or enforcement issues that hinder efforts to divert the marijuana economy from the illegal to the regulated market;

(4) examine the issue of marijuana concentrates and edible marijuana products and whether Vermont safely can allow and regulate their manufacture and sale and, if so, how;

(5) keep updated on the latest information in Vermont and other jurisdictions regarding the prevention and detection of impaired driving as it relates to marijuana;

(6) study the opportunity for a cooperative agriculture business model and licensure and community supported agriculture;

(7) examine whether Vermont should allow additional types of marijuana establishment licenses, including a processor license and product manufacturer license;

(8) review the statutes and rules for the therapeutic marijuana program and dispensaries and determine whether additional amendments are necessary to maintain patient access to marijuana and viability of the dispensaries;

(9) monitor supply and demand of marijuana cultivated and sold pursuant to this act for the purpose of assisting the Department and policymakers with determining appropriate numbers of licenses and limitations on the amount of marijuana cultivated and offered for retail sale in Vermont so that the adult market is served without unnecessary surplus marijuana;

(10) monitor the extent to which marijuana is accessed through both the legal and illegal market by persons under 21 years of age;

(11) identify strategies for preventing youth from using marijuana;

(12) identify academic and scientific research, including longitudinal research questions, that when completed may assist policymakers in developing marijuana policy in accordance with this act;

(13) consider whether to create a local revenue stream which may include a local option excise tax on marijuana sales or municipally assessed fees;

(14) recommend the appropriate maximum amount of marijuana sold by a retailer in a single transaction and whether there should be differing amounts for Vermonters and nonresidents; and

(15) report any recommendations to the General Assembly and the Governor, as needed.

(b)(1) On or before October 15, 2017, the Commission shall issue a report to the General Assembly and the Governor regarding allowing personal cultivation of marijuana as provided in subdivision (a)(3) of this section.

(2) On or before January 15, 2019, the Commission shall issue a final report to the General Assembly and the Governor regarding its findings and any recommendations for legislative or administrative action.

§ 4548. ADMINISTRATION

(a) Assistance. The Commission shall have the administrative, technical, and legal assistance of the Administration.

(b) Meetings.

(1) The Administration shall call the first meeting of the Commission to occur on or before August 1, 2016.

(2) A majority of the membership shall constitute a quorum.

(3) The Commission shall cease meeting regularly after the issuance of its final report, but members shall be available to meet with Administration officials and the General Assembly until July 1, 2019 at which time the Commission shall cease to exist.

(c) Reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, legislative members of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for as many meetings as the Chair deems necessary.

(2) Other members of the Commission who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.

Sec. 17. 32 V.S.A. chapter 207 is added to read:

CHAPTER 207. MARIJUANA TAXES

§ 7901. TAX IMPOSED

(a) There is imposed a marijuana excise tax equal to 25 percent of the sales price, as that term is defined in subdivision 9701(4) of this title, on each retail sale of marijuana in this State. The tax imposed by this section shall be paid by the buyer to the retailer. Each retailer shall collect from the buyer the full amount of the tax payable on each taxable sale.

(b) The tax imposed by this section is separate from the general sales and use tax imposed by chapter 233 of this title. The tax imposed under this section shall be separately itemized from any State and local retail sales tax on the sales receipt provided to the buyer.

(c) The following sales shall be exempt from the tax imposed under this section:

(1) sales under any circumstances in which the State is without power to impose the tax; and

(2) sales made by any dispensary, provided the marijuana will be provided only to registered qualifying patients directly or through their registered caregivers.

§ 7902. LIABILITY FOR TAX AND PENALTIES

(a) Any tax collected under this chapter shall be deemed to be held by the retailer in trust for the State of Vermont. Any tax collected under this chapter shall be accounted for separately so as to clearly indicate the amount of tax collected, and that the tax receipts are the property of the State of Vermont.

(b) Every retailer required to collect the tax imposed by this chapter shall be personally and individually liable for the amount of tax together with such interest and penalty as has accrued under this title. If the retailer is a corporation or other entity, the personal liability shall extend to any officer or agent of the corporation or entity who as an officer or agent of the same has the authority to collect the tax and transmit it to the Commissioner of Taxes as required in this chapter.

(c) A retailer shall have the same rights in collecting the tax from his or her purchaser or regarding nonpayment of the tax by the purchaser as if the tax were a part of the purchase price of the marijuana and payable at the same time; provided, however, if the retailer required to collect the tax has failed to remit any portion of the tax to the Commissioner of Taxes, the Commissioner of Taxes shall be notified of any action or proceeding brought by the retailer to

collect the tax and shall have the right to intervene in such action or proceeding.

(d) A retailer required to collect the tax may also refund or credit to the purchaser any tax erroneously, illegally, or unconstitutionally collected. No cause of action that may exist under State law shall accrue against the retailer for the tax collected unless the purchaser has provided written notice to a retailer, and the retailer has had 60 days to respond.

(e) To the extent not inconsistent with this chapter, the provisions for the assessment, collection, enforcement, and appeals of the sales and use taxes in chapter 233 of this title shall apply to the tax imposed by this chapter.

§ 7903. BUNDLED TRANSACTIONS

(a) Except as provided in subsection (b) of this section, a retail sale of a bundled transaction that includes marijuana is subject to the tax imposed by this chapter on the entire selling price of the bundled transaction.

(b) If the selling price is attributable to products that are taxable and products that are not taxable under this chapter, the portion of the price attributable to the nontaxable products are subject to the tax imposed by this chapter unless the retailer can identify by reasonable and verifiable standards the portion that is not subject to tax from its books and records that are kept in the regular course of business.

(c) As used in this section, "bundled transaction" means:

(1) the retail sale of two or more products where the products are otherwise distinct and identifiable, are sold for one nonitemized price, and at least one of the products includes marijuana subject to the tax under this chapter; or

(2) marijuana provided free of charge with the required purchase of another product.

§ 7904. RETURNS

(a) Any retailer required to collect the tax imposed by this chapter shall, on or before the 15th day of every month, return to the Department of Taxes, under oath of a person with legal authority to bind the retailer, a statement containing its name and place of business, the amount of marijuana sales subject to the excise tax imposed by this subchapter sold in the preceding month, and any other information required by the Department of Taxes, along with the tax due.

(b) Every retailer shall maintain, for not less than three years, accurate records showing all transactions subject to tax liability under this chapter.

These records are subject to inspection by the Department of Taxes at all reasonable times during normal business hours.

§ 7905. LICENSES

(a) Every retailer required to collect the tax imposed by this chapter shall apply for a marijuana excise tax license in the manner prescribed by the Commissioner of Taxes. The Commissioner shall issue, without charge, to each registrant a license empowering him or her to collect the marijuana excise tax. Each license shall state the place of business to which it is applicable. The license shall be prominently displayed in the place of business of the registrant. The licenses shall be nonassignable and nontransferable and shall be surrendered to the Commissioner immediately upon the registrant's ceasing to do business at the place named. A license to collect marijuana excise tax shall be in addition to the licenses required by sections 9271 (meals and rooms tax) and 9707 (sales and use tax) of this title and any license required by the Department of Public Safety.

(b) The Department of Public Safety may require the Commissioner of Taxes to suspend or revoke the tax license of any person for failure to comply with any provision of this chapter.

Sec. 18. 32 V.S.A. § 5811 is amended to read:

§ 5811. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context requires otherwise:

* * *

(18) "Vermont net income" means, for any taxable year and for any corporate taxpayer:

(A) the taxable income of the taxpayer for that taxable year under the laws of the United States, without regard to 26 U.S.C. § 168(k) of the Internal Revenue Code, and excluding income which under the laws of the United States is exempt from taxation by the states:

(i) increased by:

(I) the amount of any deduction for State and local taxes on or measured by income, franchise taxes measured by net income, franchise taxes for the privilege of doing business and capital stock taxes; and

(II) to the extent such income is exempted from taxation under the laws of the United States by the amount received by the taxpayer on and after January 1, 1986 as interest income from State and local obligations, other than obligations of Vermont and its political subdivisions, and any dividends

or other distributions from any fund to the extent such dividend or distribution is attributable to such Vermont State or local obligations;

(III) the amount of any deduction for a federal net operating loss; and

(ii) decreased by:

(I) the "gross-up of dividends" required by the federal Internal Revenue Code to be taken into taxable income in connection with the taxpayer's election of the foreign tax credit; ~~and~~

(II) the amount of income which results from the required reduction in salaries and wages expense for corporations claiming the Targeted Job or WIN credits; and

(III) any federal deduction that the taxpayer would have been allowed for the cultivation, testing, processing, or sale of marijuana, as authorized under 18 V.S.A. chapter 86 or 87, but for 26 U.S.C. § 280E.

* * *

(21) "Taxable income" means federal taxable income determined without regard to 26 U.S.C. § 168(k) and:

(A) Increased by the following items of income (to the extent such income is excluded from federal adjusted gross income):

(i) interest income from non-Vermont state and local obligations;

(ii) dividends or other distributions from any fund to the extent they are attributable to non-Vermont state or local obligations;

(iii) the amount of State and local income taxes deducted from federal adjusted gross income for the taxable year, but in no case in an amount that will reduce total itemized deductions below the standard deduction allowable to the taxpayer; and

(iv) the amount of total itemized deductions, other than deductions for State and local income taxes, medical and dental expenses, or charitable contributions, deducted from federal adjusted gross income for the taxable year, that is in excess of two and one-half times the standard deduction allowable to the taxpayer; and

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations;

(ii) with respect to adjusted net capital gain income as defined in 26 U.S.C. § 1(h) reduced by the total amount of any qualified dividend income: either the first $5,000.00 of such adjusted net capital gain income; or 40 percent of adjusted net capital gain income from the sale of assets held by the taxpayer for more than three years, except not adjusted net capital gain income from:

(I) the sale of any real estate or portion of real estate used by the taxpayer as a primary or nonprimary residence; or

(II) the sale of depreciable personal property other than farm property and standing timber; or stocks or bonds publicly traded or traded on an exchange, or any other financial instruments; regardless of whether sold by an individual or business;

and provided that the total amount of decrease under this subdivision (21)(B)(ii) shall not exceed 40 percent of federal taxable income; ~~and~~

(iii) recapture of State and local income tax deductions not taken against Vermont income tax; and

(iv) any federal deduction that the taxpayer would have been allowed for the cultivation, testing, processing, or sale of marijuana, as authorized under 18 V.S.A. chapter 86 or 87, but for 26 U.S.C. § 280E.

* * *

Sec. 19. 32 V.S.A. § 9741(51) is added to read:

(51) Marijuana sold by a dispensary as authorized under 18 V.S.A. chapter 86 or by a retailer as authorized under 18 V.S.A. chapter 87.

* * * Impaired Driving * * *

Sec. 20. 23 V.S.A. § 1134 is amended to read:

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

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

(b) A person operating a motor vehicle on a public highway shall not possess any open container which contains alcoholic beverages or marijuana in the passenger area of the motor vehicle.

(c) As used in this section, "passenger area" shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(d) A person who violates subsection (a) of this section shall be assessed a civil penalty of not more than $500.00. A person who violates subsection (b) of this section shall be assessed a civil penalty of not more than ~~$25.00~~ $50.00. A person adjudicated and assessed a civil penalty for an offense under subsection (a) of this section shall not be subject to a civil violation for the same actions under subsection (b) of this section.

Sec. 21. 23 V.S.A. § 1134a is amended to read:

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

(a) Except as provided in subsection (c) of this section, a passenger in a motor vehicle shall not consume alcoholic beverages or marijuana or possess any open container which contains alcoholic beverages or marijuana in the passenger area of any motor vehicle on a public highway. As used in this section, "alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.

(b) As used in this section, "passenger area" shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(c) A person, other than the operator, may possess an open container which contains alcoholic beverages or marijuana in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation or in the living quarters of a motor home or trailer coach.

(d) A person who violates this section shall be fined not more than $25.00.

Sec. 22. 23 V.S.A. § 1219 is amended to read:

§ 1219. COMMERCIAL MOTOR VEHICLE; DETECTABLE AMOUNT; OUT-OF-SERVICE

A person who is operating, attempting to operate, or in actual physical control of a commercial motor vehicle with any measurable or detectable amount of alcohol or marijuana in his or her system shall immediately be placed out-of-service for 24 hours by an enforcement officer. A law enforcement officer who has reasonable grounds to believe that a person has a measurable or detectable amount of alcohol or marijuana in his or her system on the basis of the person's general appearance, conduct, or other substantiating evidence, may request the person to submit to a test, which may be administered with a preliminary screening device. The law enforcement officer shall inform the person at the time the test is requested that refusal to submit will result in disqualification. If the person refuses to submit to the test, the person shall immediately be placed out-of-service for 24 hours and shall be disqualified from driving a commercial motor vehicle as provided in section 4116 of this title.

Sec. 23. 23 V.S.A. § 4116 is amended to read:

§ 4116. DISQUALIFICATION

(a) A person shall be disqualified from driving a commercial motor vehicle for a period of one year if convicted of a first violation of:

* * *

(4) refusal to submit to a test to determine the operator's alcohol or marijuana concentration, as provided in section 1205, 1218, or 1219 of this title;

* * *

Sec. 24. VERMONT GOVERNOR'S HIGHWAY SAFETY PROGRAM

(a) Impaired driving, operating a motor vehicle while under the influence of alcohol or drugs, is a significant concern for the General Assembly. While Vermont has made a meaningful effort to educate the public about the dangers of drinking alcohol and driving, the public seems to be less aware of the inherent risks of driving while under the influence of drugs, whether it is marijuana, a validly prescribed medication, or other drugs. It is the intent of the General Assembly that the State reframe the issue of drunk driving as impaired driving in an effort to address comprehensively the risks of such behavior through prevention, education, and enforcement.

(b)(1) The Agency of Transportation, through its Vermont Governor's Highway Safety Program, shall expand its public education and prevention campaign on drunk driving to impaired driving, which shall include drugged driving.

(2) The Agency shall report to the Senate and House Committees on Judiciary and on Transportation on or before January 15, 2017 regarding implementation of this section.

Sec. 25. REPORTING IMPAIRED DRIVING DATA

The Commissioner of Public Safety and the Secretary of Transportation, in collaboration, shall report to the Senate and House Committees on Judiciary and on Transportation on or before January 15 each year regarding the following issues concerning impaired driving:

(1) the previous year's data in Vermont;

(2) the latest information regarding best practices on prevention and enforcement; and

(3) their recommendations for legislative action.

* * *

* * * Medical Marijuana Dispensaries * * *

Sec. 26. LEGISLATIVE INTENT; DISPENSARIES

The continued viability of medical marijuana dispensaries in a regulated retail market is critical to ensure appropriate services and products to Vermonters with qualifying debilitating medical conditions.

Sec. 27. 18 V.S.A. § 4472 is amended to read:

§ 4472. DEFINITIONS

* * *

(6)(A) "Health care professional" means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33, an individual licensed as a naturopathic physician under 26 V.S.A. chapter 81 ~~who has a special license endorsement authorizing the individual to prescribe, dispense, and administer prescription medicines to the extent that a diagnosis provided by a naturopath under this chapter is within the scope of his or her practice~~, an individual certified as a physician assistant under 26 V.S.A. chapter 31, or an individual licensed as an advanced practice registered nurse under 26 V.S.A. chapter 28.

(B) ~~Except for naturopaths, this~~ This definition includes individuals who are professionally licensed under substantially equivalent provisions in New Hampshire, Massachusetts, or New York.

* * *

(11) "Registered caregiver" means a person who is ~~at least 21 years old who has never been convicted of a drug-related crime~~ 21 years of age or older,

has met eligibility requirements as determined by the Department in accordance with this chapter, and who has agreed to undertake responsibility for managing the well-being of a registered patient with respect to the use of marijuana for symptom relief.

* * *

(17) "Enclosed, locked facility" shall be either indoors or outdoors, not visible to the public, and may include a building, room, greenhouse, fully enclosed fenced-in area, or other location enclosed on all sides and equipped with locks or other security devices that permit access only by:

(A) Employees, agents, or owners of the dispensary, all of whom shall be 21 years of age or older.

(B) Government employees performing their official duties.

(C) Contractors performing labor that does not include marijuana cultivation, packaging, or processing. Contractors shall be accompanied by an employee, agent, or owner of the dispensary when they are in areas where marijuana is being grown, processed, or stored.

(D) Registered employees of another dispensary, members of the media, elected officials, and other individuals 21 years of age or older visiting the facility, provided they are accompanied by an employee, agent, or owner of the dispensary.

Sec. 28. 18 V.S.A. § 4473 is amended to read:

§ 4473. REGISTERED PATIENTS; QUALIFICATION STANDARDS AND PROCEDURES

* * *

(b) The Department of Public Safety shall review applications to become a registered patient using the following procedures:

* * *

(5)(A) A Review Board is established. ~~The Medical Practice Board shall appoint three physicians licensed in Vermont to constitute the Review Board. If an application under subdivision (1) of this subsection is denied, within seven days the patient may appeal the denial to the Board. Review shall be limited to information submitted by the patient under subdivision (1) of this subsection, and consultation with the patient's treating health care professional. All records relating to the appeal shall be kept confidential. An appeal shall be decided by majority vote of the members of the Board~~ The Review Board shall comprise three members:

(i) a physician appointed by the Medical Practice Board;

(ii) a naturopathic physician appointed by the Office of Professional Regulation; and

(iii) an advanced practice registered nurse appointed by the Office of Professional Regulation.

(B) The Board shall meet periodically to review studies, data, and any other information relevant to the use of marijuana for symptom relief. The Board may make recommendations to the General Assembly for adjustments and changes to this chapter.

(C) Members of the Board shall serve for three-year terms, beginning February 1 of the year in which the appointment is made, except that the first members appointed shall serve as follows: one for a term of two years, one for a term of three years, and one for a term of four years. Members shall be entitled to per diem compensation authorized under 32 V.S.A. § 1010. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term vacated.

(D) If an application under subdivision (1) of this subsection (b) is denied, within seven days the patient may appeal the denial to the Board. Review shall be limited to information submitted by the patient under subdivision (1) of this subsection, and consultation with the patient's treating health care professional. All records relating to the appeal shall be kept confidential. An appeal shall be decided by majority vote of the members of the Board.

Sec. 29. 18 V.S.A. § 4474 is amended to read:

§ 4474. REGISTERED CAREGIVERS; QUALIFICATION STANDARDS AND PROCEDURES

* * *

(d) A registered caregiver of a patient who is under 18 years of age and suffers from seizures may cultivate hemp upon notifying the Department and shall not be required to comply with the provisions of 6 V.S.A. chapter 34.

Sec. 30. 18 V.S.A. § 4474e is amended to read:

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

(a) A dispensary registered under this section may:

(1) Acquire, possess, cultivate, manufacture, transfer, transport, supply, sell, and dispense marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered

patient who has designated it as his or her dispensary and to his or her registered caregiver for the registered patient's use for symptom relief.

(A) Marijuana-infused products shall include tinctures, oils, solvents, and edible or potable goods. Only the portion of any marijuana-infused product that is attributable to marijuana shall count toward the possession limits of the dispensary and the patient. The Department of Public Safety shall establish by rule the appropriate method to establish the weight of marijuana that is attributable to marijuana-infused products. A dispensary shall dispense marijuana-infused products in child-resistant packaging as defined in 7 V.S.A. § 1012.

* * *

(2)(A) Acquire marijuana seeds or parts of the marijuana plant capable of regeneration from or dispense them to registered patients or their caregivers or acquire them from another registered Vermont dispensary, provided that records are kept concerning the amount and the recipient.

(B) Acquire, purchase, or borrow marijuana, marijuana-infused products, or services from another registered Vermont dispensary or give, sell, or lend marijuana, marijuana-infused products, or services to another registered Vermont dispensary, provided that records are kept concerning the product, the amount, and the recipient. Each Vermont dispensary is required to adhere to all possession limits pertaining to cultivation as determined by the number of patients designating that dispensary and may not transfer eligibility to another dispensary.

(3)(A) Cultivate and possess at any one time up to 28 mature marijuana plants, 98 immature marijuana plants, and 28 ounces of usable marijuana. However, if a dispensary is designated by more than 14 registered patients, the dispensary may cultivate and possess at any one time two mature marijuana plants, seven immature plants, and four ounces of usable marijuana for every registered patient for which the dispensary serves as the designated dispensary.

(B) Notwithstanding subdivision (A) of this subdivision (3), if a dispensary is designated by a registered patient under 18 years of age who qualifies for the registry because of seizures, the dispensary may apply to the Department for a waiver of the limits in subdivision (A) of this subdivision (3) if additional capacity is necessary to develop and provide an adequate supply of a product for symptom relief for the patient. The Department shall have discretion whether to grant a waiver and limit the possession amounts in excess of subdivision (A) of this subdivision (3) in accordance with rules adopted pursuant to section 4474d of this title.

(C) The plant limitations in subdivision (A) of this subdivision (3) shall not be construed to restrict a dispensary's cultivation of marijuana pursuant to a cultivation license issued under chapter 87 of this title.

(4) With approval from the Department, transport and transfer marijuana to a Vermont academic institution for the purpose of research.

(b)~~(1) A dispensary shall be operated on a nonprofit basis for the mutual benefit of its patients but need not be recognized as a tax-exempt organization by the Internal Revenue Service.~~

~~(2)~~ A dispensary shall have a sliding-scale fee system that takes into account a registered patient's ability to pay.

* * *

(d)(1) A dispensary shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana and shall ensure that each location has an operational security alarm system. All cultivation of marijuana shall take place in an enclosed, locked facility ~~which is either indoors or otherwise not visible to the public and which can only be accessed by principal officers and employees of the dispensary who have valid registry identification cards~~. The Department of Public Safety shall perform an annual on-site assessment of each dispensary and may perform on-site assessments of a dispensary without limitation for the purpose of determining compliance with this subchapter and any rules adopted pursuant to this subchapter and may enter a dispensary at any time for such purpose. During an inspection, the Department may review the dispensary's confidential records, including its dispensing records, which shall track transactions according to registered patients' registry identification numbers to protect their confidentiality.

* * *

(h) A dispensary shall include a label on the packaging of all marijuana that is dispensed. The label shall:

(1) identify the particular strain of marijuana ~~contained therein~~. Cannabis strains shall be either pure breeds or hybrid varieties of cannabis and shall reflect properties of the plant~~. The label also shall~~;

(2) identify the amount of tetrahydrocannabinol in each single dose marijuana-infused edible or potable product; and

(3) contain a statement to the effect that the State of Vermont does not attest to the medicinal value of cannabis.

* * *

(o) Notwithstanding any provision of law or any provision of its articles or bylaws to the contrary, a dispensary formed as a nonprofit may convert to any other type of business entity authorized by the laws of this State by:

(1) a majority vote of the directors and a majority vote of the members, if any; and

(2) filing with the Secretary of State a statement that the dispensary is converting to another type of entity and the documents required by law to form the type of entity.

Sec. 31. 18 V.S.A. § 4474g is amended to read:

§ 4474g. DISPENSARY REGISTRY IDENTIFICATION CARD; CRIMINAL BACKGROUND CHECK

(a) Except as provided in subsection (b) of this section, the Department of Public Safety shall issue each principal officer, Board member, and employee of a dispensary a registry identification card or renewal card within 30 days of receipt of the person's name, address, and date of birth and a fee of $50.00. The fee shall be paid by the dispensary and the cost shall not be passed on to a principal officer, Board member, or employee. A person shall not serve as principal officer, Board member, or employee of a dispensary until that person has received a registry identification card issued under this section. Each card shall specify whether the cardholder is a principal officer, Board member, or employee of a dispensary and shall contain the following:

(1) the name, address, and date of birth of the person;

(2) the legal name of the dispensary with which the person is affiliated;

(3) a random identification number that is unique to the person.;

(4) the date of issuance and the expiration date of the registry identification card; and

(5) a photograph of the person.

(b) Prior to acting on an application for a registry identification card, the Department of Public Safety shall obtain with respect to the applicant a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation. Each applicant shall consent to the release of criminal history records to the Department on forms developed by the Vermont Crime Information Center. A fingerprint-supported, out-of-state criminal history record and a criminal history record from the Federal Bureau of Investigation shall be required only every three years for renewal of a card for a dispensary principal or Board member.

* * *

(e) The Department of Public Safety shall not issue a registry identification card to any applicant who has been convicted of a drug-related criminal offense or a violent felony or who has a pending charge for such an offense. ~~For purposes of~~ As used in this subchapter, "violent felony" means a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

* * *

Sec. 32. 18 V.S.A. § 4474h is amended to read:

§ 4474h. PATIENT DESIGNATION OF DISPENSARY

(a) A registered patient may obtain marijuana only from the patient's designated dispensary and may designate only one dispensary. If a registered patient designates a dispensary, the patient and his or her caregiver may not grow marijuana or obtain marijuana or marijuana-infused products for symptom relief from any source other than the designated dispensary. A registered patient who wishes to change his or her dispensary shall notify the ~~department of public safety~~ Department of Public Safety in writing on a form issued by the ~~department~~ Department and shall submit with the form a fee of $25.00. The ~~department~~ Department shall issue a new identification card to the registered patient within 30 days of receiving the notification of change in dispensary. The registered patient's previous identification card shall expire at the time the new identification card takes effect. A registered patient shall submit his or her expired identification card to the ~~department~~ Department within 30 days of expiration. A registered patient shall not change his or her designated dispensary more than once in any ~~90-day~~ 30-day period.

(b) The ~~department of public safety~~ Department of Public Safety shall track the number of registered patients who have designated each dispensary. The ~~department~~ Department shall issue a monthly written statement to the dispensary identifying the number of registered patients who have designated that dispensary and the registry identification numbers of each patient and each patient's designated caregiver, if any.

(c) In addition to the monthly reports, the ~~department of public safety~~ Department of Public Safety shall provide written notice to a dispensary whenever any of the following events occurs:

(1) ~~A~~ a qualifying patient designates the dispensary to serve his or her needs under this subchapter~~.~~;

(2) ~~An~~ an existing registered patient revokes the designation of the dispensary because he or she has designated a different dispensary~~.~~; or

(3) ~~A~~ a registered patient who has designated the dispensary loses his or her status as a registered patient under this subchapter.

* * * Appropriations and Positions * * *

Sec. 33. FISCAL YEAR 2017 APPROPRIATIONS FROM THE MARIJUANA REGULATION AND RESOURCE FUND

In fiscal year 2017, the following amounts are appropriated from the Marijuana Regulation and Resource Fund:

(1) Department of Health: $350,000.00 for initial prevention, education, and counter-marketing programs.

(2) Department of Taxes: $660,000.00 for the acquisition of an excise tax module and staffing expenses to administer the excise tax established in this act.

(3) Department of Public Safety:

(A) $160,000.00 for staffing expenses related to rulemaking, program administration, and processing of applications.

(B) $124,000.00 for laboratory equipment, supplies, training, testing, and contractual expenses required by this act.

(C) $63,500.00 for matching funds needed for Drug Recognition Expert training for the Department and other State law enforcement agencies in FY17 after other available matching funds are applied.

(4) Agency of Agriculture, Food and Markets:

(A) $112,500.00 for the Vermont Agriculture and Environmental Lab.

(B) $112,500.00 for staffing expenses related to rulemaking and program administration.

(5) Agency of Administration: $150,000.00 for expenses and staffing of the Marijuana Program Review Commission established in this act.

Sec. 34. EXECUTIVE BRANCH POSITION AUTHORIZATIONS

The establishment of the following new permanent classified positions is authorized in fiscal year 2017 as follows:

(1) In the Department of Health—one (1) Substance Abuse Program Manager.

(2) In the Department of Taxes—one (1) Business Analyst AC: Tax and one (1) Tax Policy Analyst.

(3) In the Department of Public Safety—one (1) Program Administrator and one (1) Administrative Assistant.

(4) In the Agency of Agriculture, Food and Markets—one (1) Agriculture Chemist and one (1) Program Administrator.

(5) In the Marijuana Program Review Commission—one (1) exempt Commission Director.

Sec. 35. MARIJUANA REGULATION AND RESOURCE FUND BUDGET AND REPORT

Annually, through 2018, the Secretary of Administration shall report to the Joint Fiscal Committee on receipts and expenditures through the prior fiscal year on or before the Committee's regularly scheduled November meeting on the following:

(1) an update of the administration's efforts concerning implementation, administration, and enforcement of this act;

(2) any changes or updates to revenue expectations from fees and taxes based on changes in competitive pricing or other information;

(3) projected budget adjustment needs for current year appropriations from the Marijuana Regulation and Resource Fund; and

(4) a comprehensive spending plan with recommended appropriations from the Fund for the next the fiscal year, by department, including an explanation and justification for the expenditures and how each recommendation meets the intent of this act.

* * * Miscellaneous * * *

Sec. 36. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(29) To prohibit or regulate, by means of a civil ordinance adopted pursuant to chapter 59 of this title, the number, time, place, manner, or operation of a marijuana establishment, or any class of marijuana establishments, located in the municipality; provided, however, that amendments to such an ordinance shall not apply to restrict further a marijuana establishment in operation within the municipality at the time of the

amendment. As used in this subdivision, "marijuana establishment" is as defined in 18 V.S.A. chapter 87.

Sec. 37. 24 V.S.A. § 4414 is amended to read:

§ 4414. ZONING; PERMISSIBLE TYPES OF REGULATIONS

Any of the following types of regulations may be adopted by a municipality in its bylaws in conformance with the plan and for the purposes established in section 4302 of this title.

* * *

(16) Marijuana establishments. A municipality may adopt bylaws for the purpose of regulating marijuana establishments as defined in 18 V.S.A. chapter 87.

Sec. 38. 6 V.S.A. chapter 5 is amended to read:

CHAPTER 5. CENTRAL TESTING LABORATORY

§ 121. CREATION AND PURPOSE

There is created within the Agency of Agriculture, Food and Markets a central testing laboratory for the purpose of providing agricultural ~~and~~, environmental, and other necessary testing services.

§ 122. FEES

Notwithstanding 32 V.S.A. § 603, the Agency shall establish fees for providing agricultural ~~and~~, environmental, and other necessary testing services at the request of private individuals and State agencies. The fees shall be reasonably related to the cost of providing the services. Fees collected under this chapter shall be credited to a special fund which shall be established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and which shall be available to the Agency to offset the cost of providing the services.

§ 123. REGULATED DRUGS

(a) Except as provided in subsection (b) of this section, the provisions of 18 V.S.A. chapter 84 shall not apply to the Secretary or designee in the otherwise lawful performance of his or her official duties requiring the possession or control of regulated drugs.

(b) The central testing laboratory shall obtain a certificate of approval from the Department of Health pursuant to 18 V.S.A. § 4207.

(c) As used in this section, "regulated drug" shall have the same meaning as in 18 V.S.A. § 4201.

Sec. 39. WORKFORCE STUDY COMMITTEE

(a) Creation. There is created a Workforce Study Committee to examine the potential impacts of alcohol and drug use on the workplace.

(b) Membership. The Committee shall be composed of the following five members:

(1) the Secretary of Commerce and Community Development or designee;

(2) the Commissioner of Labor or designee;

(3) the Commissioner of Health or designee;

(4) one person representing the interests of employees appointed by the Governor; and

(5) one person representing the interests of employers appointed by the Governor.

(c) Powers and duties. The Committee shall study:

(1) whether Vermont's workers' compensation and unemployment insurance systems are adversely impacted by alcohol and drug use and identify regulatory or legislative measures to mitigate any adverse impacts;

(2) the issue of alcohol and drugs in the workplace and determine whether Vermont's workplace drug testing laws should be amended to provide employers with broader authority to conduct drug testing, including by permitting drug testing based on a reasonable suspicion of drug use, or by authorizing employers to conduct post-accident, employerwide, or post-rehabilitation follow-up testing of employees; and

(3) the impact of alcohol and drug use on workplace safety and identify regulatory or legislative measures to address adverse impacts and enhance workplace safety.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Agency of Commerce and Community Development, the Department of Labor, and the Department of Health.

(e) Report. On or before December 1, 2016, the Committee shall submit a written report with findings and recommendations to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs with its findings and any recommendations for legislative action.

(f) Meetings.

(1) The Secretary of Commerce or designee shall call the first meeting of the Committee to occur on or before September 15, 2016.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Committee shall cease to exist on December 31, 2016.

Sec. 40. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) A Judicial Bureau is created within the Judicial Branch under the supervision of the Supreme Court.

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

* * *

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

Sec. 41. EFFECTIVE DATES

(a) This section, Secs. 1 (human trafficking), 2 (co-payment and reimbursement orders), 3 (listed crime definition), 4 (sex offender registry), 5 and 6 (innocence protection), 7 (marijuana criminal penalties), 12 (Justice Oversight Committee), 13 (legislative intent), 14 (marijuana youth education and prevention), 15–17 and 19 (regulation of commercial marijuana) shall take effect on passage.

(c) Sec. 18 (related to marijuana taxes) shall take effect on January 1, 2017 and shall apply to taxable year 2017 and after.

(d) Secs. 8–11 (relating to marijuana civil and criminal penalties) shall take effect on January 2, 2018.

(e) Secs. 20–25 (impaired driving), 26–32 (marijuana dispensaries), 33–35 (appropriations and positions), and 36–40 (miscellaneous) shall take effect on July 1, 2016.

(For text see House Journal March 10, 2016)

Consent Calendar

Concurrent Resolutions for Adoption Under Joint Rule 16a

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 today's adjournment.

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 of April 28, 2016.

H.C.R. 363

House concurrent resolution in memory of former Representative and Senator John C. Page of Bennington and his wife, Marjorie Page

H.C.R. 364

House concurrent resolution congratulating the Windsor High School team on winning the 2016 3D Vermont architecture competition

H.C.R. 365

House concurrent resolution congratulating Windsor public schools' student winners of the 2016 State Science Fair

H.C.R. 366

House concurrent resolution honoring Nancy Remsen, on the conclusion of her journalism career, as a fair, perceptive, and thoughtful reporter and editor

H.C.R. 367

House concurrent expressing sincere appreciation for the presence of General Electric's Aviation and Healthcare units in Vermont and for their major contribution to the State's economy

H.C.R. 368

House concurrent resolution congratulating the 2016 Mt. Anthony Union High School Patriots State championship wrestling team

H.C.R. 369

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

H.C.R. 370

House concurrent resolution welcoming Shen Yun Performing Arts to Vermont

H.C.R. 371

House concurrent resolution congratulating Dismas of Vermont on its 30th anniversary

H.C.R. 372

House concurrent resolution congratulating the Montshire Museum in Norwich on the 40th anniversary of its opening

H.C.R. 373

House concurrent resolution congratulating the Southwestern Vermont Medical Center for its award-winning renal care services

H.C.R. 374

House concurrent resolution congratulating the Southwestern Vermont Medical Center on its receipt of a fourth Magnet recognition

H.C.R. 375

House concurrent resolution honoring James Harrison of Chittenden for his exemplary leadership of the Vermont Retail & Grocers Association

H.C.R. 376

House concurrent resolution honoring Gary Rutkowski for his 40 years of outstanding editorial leadership at the *St. Albans Messenger*

H.C.R. 377

House concurrent resolution recognizing the economic vibrancy of the Northeast Kingdom

H.C.R. 378

House concurrent resolution congratulating Rutland's United Neighborhoods Community Justice Center on its 15th anniversary

S.C.R. 43

Senate concurrent resolution congratulating the Green Mountain United Way on its 40th anniversary

For Informational Purposes

The end of session is fast approaching. If you want to be assured your House Concurrent Resolution will be adopted before the the final adjournment, please touch base with Michael Chernick by Monday, May 2nd, to be sure Michael has time to put it together before we adjourn.