

Senate Calendar

WEDNESDAY, MARCH 11, 2015

SENATE CONVENES AT: 1:00 P.M.

TABLE OF CONTENTS

Page No.

ACTION CALENDAR

CONSIDERATION POSTPONED UNTIL MARCH 11, 2015

Committee Bill for Second Reading

S. 108 An act relating to repealing the sunset on provisions pertaining to patient choice at end of life	198
By the Committee on Health and Welfare (Sen. Ayer for the Committee)	
Amendment - Sen. McAllister	198
Amendment - Sens. Flory and Starr	198

UNFINISHED BUSINESS OF MARCH 10, 2015

Second Reading

Favorable with Recommendation of Amendment

S. 105 An act relating to home improvement contracts	
Econ. Dev., Housing and General Affairs Report - Sen. Cummings	199

House Proposal of Amendment

S. 6 An act relating to technical corrections to civil and criminal procedure statutes	202
---	-----

NOTICE CALENDAR

Second Reading

Favorable with Recommendation of Amendment

S. 58 An act relating to requiring that the Defender General receive the same early retirement benefit as a State's Attorney	
Government Operations Report - Sen. White	204
S. 73 An act relating to State regulation of rent-to-own agreements for merchandise	
Econ. Dev., Housing and General Affairs Report - Sen. Balint	207
S. 115 An act relating to expungement of convictions based on conduct that is no longer criminal	
Judiciary Report - Sen. Benning	215

ORDERS OF THE DAY

ACTION CALENDAR

CONSIDERATION POSTPONED UNTIL MARCH 11, 2015

Committee Bill for Second Reading

S. 108.

An act relating to repealing the sunset on provisions pertaining to patient choice at end of life.

By the Committee on Health and Welfare. (Sen. Ayer for the Committee)

PENDING ACTION: Second Reading.

Amendment to S. 108 to be offered by Senator McAllister

Senator McAllister moves to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. REPEAL

18 V.S.A. chapter 113 (patient choice at end of life) is repealed.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

Amendment to S. 108 to be offered by Senators Flory and Starr

Senators Flory and Starr move to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 112 is added to read:

CHAPTER 112. TERMINALLY ILL PATIENTS

§ 5271. TERMINALLY ILL PATIENTS; IMMUNITY FOR PRESCRIBING
OR BEING PRESENT WHEN MEDICATION IS TAKEN

(a) As used in this section:

(1) “Bona fide health care professional-patient relationship” means a treating or consulting relationship in the course of which a health care professional has completed a full assessment of the patient’s medical history and current medical condition, including a personal physical examination.

(2) “Health care professional” means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33.

(3) “Terminal condition” means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

(b) A health care professional who has a bona fide health care professional-patient relationship with a patient with a terminal condition and who prescribes medication to that patient for the relief of symptoms associated with or caused by the terminal condition shall not be subject to criminal or civil liability or professional disciplinary action if the patient self-administers more than a prescribed dosage of the medication and dies as a result.

(c) A person shall not be subject to criminal or civil liability solely for being present when a patient self-administers a lethal dose of a medication that has been prescribed for that patient by a health care professional.

Sec. 2. REPEAL

18 V.S.A. chapter 113 (patient choice at end of life) is repealed.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

UNFINISHED BUSINESS OF TUESDAY, MARCH 10, 2015

Second Reading

Favorable with Recommendation of Amendment

S. 105.

An act relating to home improvement contracts.

Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Economic Development, Housing & General Affairs.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. chapter 102 is amended to read:

CHAPTER 102. CONSTRUCTION CONTRACTS

§ 4001. DEFINITIONS

As used in this chapter:

(1) “Contractor” means a person or entity which contracts with an owner to perform work, or provide materials or machinery necessary to perform work on real property.

(2) “Work” means:

(A) to build, alter, repair, or demolish any improvement on, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill, or landscape any real property or to construct driveways, private roadways, highways and bridges, drilled wells, septic, sewage systems, utilities, including trees and shrubbery, or to furnish materials, for any of such purposes, or to perform any labor upon real property; and. ~~Work~~ also includes

(B) to provide any design or other professional or skilled services rendered by architects, engineers, land surveyors, landscape architects, and construction managers.

(3) "Owner" means a person or entity having an interest in real property on which work is performed, if the person or entity has agreed to or requested such work. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority. "Owner" shall also include the State of Vermont and instrumentalities and subdivisions of the State of Vermont including municipalities and school districts having an interest in such real property.

(4) "Real property" means real estate, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.

(5) "Construction contract" means any agreement, whether written or oral, to perform work on any real property located within the State of Vermont.

(6) "Subcontractor" means any person or entity which has contracted to perform work, or provide materials or machinery necessary to perform work for a contractor or another subcontractor in connection with a construction contract.

(7) "Delivery" means receipt by addressee, including first class, registered, or certified mail, hand delivered or transmitted by facsimile machine. Mail, properly addressed, shall be deemed delivered three days from the day it was sent.

(8) "Billing period" means the period agreed to by the parties or, in the absence of an agreement, the calendar month within which work is performed.

(9) "Residential home improvement contract" means a contract between a contractor and an owner for work on residential real estate where the estimated value of the work and materials exceeds \$5,000.00.

(10) "Residential real estate" means a residential structure with one to four dwelling units and the real property on which it is constructed.

* * *

§ 4010. RESIDENTIAL HOME IMPROVEMENT CONTRACTS

(a) Writing required. A residential home improvement contract, and any amendment to the contract, shall be in writing.

(b) Required provisions. A residential home improvement contract shall include the following:

(1) Contract price. One of the following provisions for the price of the contract:

(A) a maximum price for all work and materials;

(B) a statement that billing and payment will be made on a time and materials basis, not to exceed a maximum price; or

(C) a statement that billing and payment will be made on a time and materials basis and that there is no maximum price.

(2) Work dates. A start date and a completion date for work.

(3) Scope of work. A description of the work to be performed and a description of the materials to be used.

(4) Warranty. A provision that reads: "In addition to any additional warranties agreed to by the parties, the contractor warrants that his or her work is free from faulty materials and is performed in a skillful manner according to the standards of the building code applicable for this location."

(5) Change order.

(A) Unless a residential home improvement contract specifies that billing and payment will be made on a time and materials basis and that there is no maximum price, subject to subdivision (5)(B) of this subsection, a provision that the contractor shall not perform any work or procure materials in excess of the maximum price of the contract without prior written approval of the owner.

(B) The contract may provide that an owner can approve a change order verbally or by electronic communication, provided that the owner and contractor shall memorialize the approval in a signed writing within three days of the approval.

(c) Down payment. Unless a residential home improvement contract specifies that billing and payment will be made on a time and materials basis and that there is no maximum price, the contract may require a down payment of up to one-third of the maximum price of the contract, or the price of materials, whichever is greater.

(d) Enforcement and remedies.

(1) A residential home improvement contract shall not include a binding arbitration requirement or any other provision under which an owner waives his or her right to pursue civil remedies to enforce the contract or resolve a dispute with the contractor.

(2) A contract that does not comply with the provisions of this section shall be unenforceable against an owner.

Sec. 2. EFFECTIVE DATE

This act shall take effect on January 1, 2016.

(Committee vote: 5-0-0)

House Proposal of Amendment

S. 6.

An act relating to technical corrections to civil and criminal procedure statutes.

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

Sec. 1. 13 V.S.A. § 1501 is amended to read:

§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE

* * *

(b)(1) A person ~~who~~ shall not, while in lawful custody:

~~(1) fails (A) fail~~ to return from work release to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with 28 V.S.A. § 753;

~~(2) fails (B) fail~~ to return from furlough to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with 28 V.S.A. § 808, 808a, 808b, or 808c;

~~(3) escapes or attempts (C) escape or attempt~~ to escape while on release from a correctional facility to do work in the service of such facility or of the Department of Corrections in accordance with 28 V.S.A. § 758; or

~~(4) escapes or attempts (D) escape elope or attempt to escape elope~~ from the Vermont State Hospital, or its successor in interest Psychiatric Care Hospital or a participating hospital, when confined by court order pursuant to chapter 157 of this title, or when transferred there pursuant to 28 V.S.A. § 703 and while still serving a sentence, ~~shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.~~

(2) A person who violates this subsection shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

* * *

(d) As used in this section:

* * *

(3) ~~“Successor in interest” shall mean the mental health hospital owned and operated by the State that provides acute inpatient care and replaces the Vermont State Hospital. [Repealed.]~~

Sec. 2. 13 V.S.A. § 5321 is amended to read:

§ 5321. APPEARANCE BY VICTIM

* * *

(c) In accordance with ~~court~~ Court rules, at the sentencing hearing, the ~~court~~ Court shall ask if the victim is present and, if so, whether the victim would like to be heard regarding sentencing. ~~in~~ In imposing sentence, the ~~court~~ Court shall consider any views offered at the hearing by the victim. ~~if~~ If the victim is not present, the ~~court~~ Court shall ask whether the victim has expressed, either orally or in writing, views regarding sentencing and shall take those views into consideration in imposing sentence.

(d) At or before the sentencing hearing, the prosecutor’s office shall instruct the victim of a listed crime, in all cases where the ~~court~~ Court imposes a sentence which includes a period of incarceration, that a sentence of incarceration is to the custody of the ~~commissioner of corrections~~ Commissioner of Corrections and that the ~~commissioner of corrections~~ Commissioner of Corrections has the authority to affect the actual time the defendant shall serve in incarceration through good time credit, furlough, work-release, and other early release programs. ~~in~~ In addition, the prosecutor’s office shall explain the significance of a minimum and maximum sentence to the victim and shall also explain the function of parole and how it may affect the actual amount of time the defendant may be incarcerated.

* * *

Sec. 3. 13 V.S.A. § 5574 is amended to read:

§ 5574. BURDEN OF PROOF; JUDGMENT; DAMAGES

(a) A claimant shall be entitled to judgment in an action under this subchapter if the claimant establishes each of the following by clear and convincing evidence:

* * *

(2)(A) ~~The~~ the complainant's conviction was reversed or vacated, the complainant's information or indictment was dismissed, or the complainant was acquitted after a second or subsequent trial; or

(B) ~~The~~ the complainant was pardoned for the crime for which he or she was sentenced.

* * *

Sec. 4. 33 V.S.A. § 5308(a)(4) is amended to read:

(4) The custodial parent, guardian, or ~~guardian~~ custodian has abandoned the child.

Sec. 5. 2014 Acts and Resolves No. 126, Sec. 7 is amended to read:

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2014, and shall apply to restitution orders issued after that date; provided, however, that notwithstanding 1 V.S.A. § 214, Secs. 1, 3, 4, 5, and 6 shall also apply retroactively to restitution orders issued on or before July 1, 2014.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

NOTICE CALENDAR

Second Reading

Favorable with Recommendation of Amendment

S. 58.

An act relating to requiring that the Defender General receive the same early retirement benefit as a State's Attorney.

Reported favorably with recommendation of amendment by Senator White for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 5254 is amended to read:

§ 5254. PERSONNEL DESIGNATION AND EXPENDITURES

(a) The ~~defender general~~ Defender General, ~~deputy defender general~~ Deputy Defender General, public defenders and deputy public defenders shall be exempt from the classified ~~state~~ State service.

(b) Clerical and office staff in the ~~office of the defender general~~ Office of the Defender General and in all local offices shall be hired by the ~~defender general~~ Defender General. Clerical and office staff shall be ~~state~~ State employees paid by the ~~state~~ State, and shall receive those benefits and compensation available to classified ~~state~~ State employees who are similarly situated, unless otherwise covered by the provisions of a collective bargaining agreement setting forth the terms and conditions of employment, negotiated pursuant to the provisions of 3 V.S.A. chapter 27 ~~of Title 3~~. Clerical and office staff employed by the ~~office of the defender general~~ Office of the Defender General shall not be part of the classified service as set forth in 3 V.S.A. chapter 13 ~~of Title 3~~.

(c) The ~~deputy defender general~~ Deputy Defender General shall be entitled to compensation at an annual rate that does not exceed an amount \$500.00 less than the salary of the ~~defender general~~ Defender General. The public defenders and deputy public defenders shall be entitled to compensation at annual rates not to exceed an amount \$1,000.00 less than the salary of the ~~defender general~~ Defender General.

(d) The ~~defender general~~ Defender General is responsible for assuming expenses for his or her office and all local offices. The entirety of expenditures shall not exceed those set in the annual budget of the ~~office of the defender general~~ Office of the Defender General and such expenditures shall be subject to the provisions of ~~section 32 V.S.A. § 702 of Title 32~~.

(e) The Defender General shall receive an early retirement allowance equal to that of a State's Attorney or sheriff.

Sec. 2. 3 V.S.A. § 455 is amended to read:

§ 455. DEFINITIONS

(a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this subchapter shall have the following meanings:

* * *

(4) "Average final compensation" shall mean:

* * *

(C) For purposes of determining average final compensation for group A or group C members, a member who has accumulated unused sick leave at retirement shall be deemed to have worked the full normal working time for his or her position for 50 percent of such leave, at his or her full rate of compensation in effect at the date of his or her retirement. For purposes of determining average final compensation for group F members, unused annual

or sick leave, termination bonuses and any other compensation for service not actually performed shall be excluded. The average final compensation for a State's Attorney and the Defender General shall be determined by the State's Attorney's or the Defender General's highest annual compensation earned during his or her creditable service.

* * *

(9) "Employee" shall mean:

* * *

(B) any regular officer or employee of the Department of Public Safety assigned to police and law enforcement duties, including the Commissioner of Public Safety appointed before July 1, 2001; but, irrespective of the member's classification, shall not include any member of the General Assembly as such, any person who is covered by the Vermont Teachers' Retirement System, any person engaged under retainer or special agreement or C beneficiary employed by the Department of Public Safety for not more than 208 hours per year, or any person whose principal source of income is other than State employment. In all cases of doubt, the Retirement Board shall determine whether any person is an employee as defined in this subchapter. Also included under this subdivision are employees of the Department of Liquor Control who exercise law enforcement powers, employees of the Department of Fish and Wildlife assigned to law enforcement duties, motor vehicle inspectors, full-time deputy sheriffs employed by the State of Vermont, full-time members of the Capitol Police force, investigators employed by the Criminal Division of the Office of the Attorney General, Department of State's Attorneys, Department of Health, or Office of the Secretary of State, who have attained full-time certification from the Vermont Criminal Justice Training Council, who are required to perform law enforcement duties as the primary function of their employment, and who may be subject to mandatory retirement permissible under 29 U.S.C. § 623(j), who are first included in membership of the system on or after July 1, 2000. Also included under this subdivision are full-time firefighters employed by the State of Vermont and the Defender General.

* * *

Sec. 3. 3 V.S.A. § 459 is amended to read:

§ 459. NORMAL AND EARLY RETIREMENT

* * *

(d) Early retirement allowance.

* * *

(5) Notwithstanding subdivisions (1) and (2) of this subsection, a State's Attorney, the Defender General, or sheriff who has completed 20 years of creditable service, of which 15 years has been as a State's Attorney, the Defender General, or sheriff, shall receive an early retirement allowance equal to the normal retirement allowance, at age 55, without reductions.

* * *

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

(Committee vote: 5-0-0)

S. 73.

An act relating to State regulation of rent-to-own agreements for merchandise.

Reported favorably with recommendation of amendment by Senator Balint for the Committee on Economic Development, Housing & General Affairs.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 41b is amended to read:

§ 41b. RENT-TO-OWN AGREEMENTS; DISCLOSURE OF TERMS

~~(a) The attorney general shall adopt by rule standards for the full and conspicuous disclosure to consumers of the terms of rent to own agreements. For purposes of this section a rent to own agreement means an agreement for the use of merchandise by a consumer for personal, family, or household purposes, for an initial period of four months or less, that is renewable with each payment after the initial period and that permits the lessee to become the owner of the property. An agreement that complies with this article is not a retail installment sales contract, agreement or obligation as defined in this chapter or a security interest as defined in section 1-201(37) of Title 9A.~~

~~(b) The attorney general, or an aggrieved person, may enforce a violation of the rules adopted pursuant to this section as an unfair or deceptive act or practice in commerce under section 2453 of this title.~~

(a) Definitions. In this section:

(1) "Advertisement" means a commercial message that solicits a consumer to enter into a rent-to-own agreement for a specific item of merchandise that is conveyed:

(A) at a merchant's place of business;

(B) on a merchant's website;

(C) on television or radio.

(2) "Cash price" means the price of merchandise available under a rent-to-own agreement that the consumer may pay in cash to the merchant at the inception of the agreement to acquire ownership of the merchandise.

(3) "Clear and conspicuous" means that the statement or term being disclosed is of such size, color, contrast, or audibility, as applicable, so that the nature, content, and significance of the statement or term is reasonably apparent to the person to whom it is disclosed.

(4) "Consumer" has the same meaning as in subsection 2451a(a) of this title.

(5) "Merchandise" means an item of a merchant's property that is available for use under a rent-to-own agreement. The term does not include:

(A) real property;

(B) a mobile home, as defined in section 2601 of this title;

(C) a motor vehicle, as defined in 23 V.S.A. § 4;

(D) an assistive device, as defined in section 41c of this title; or

(E) a musical instrument intended to be used primarily in an elementary or secondary school.

(6) "Merchant" means a person who offers, or contracts for, the use of merchandise under a rent-to-own agreement.

(7) "Merchant's cost" means the documented actual cost, including actual freight charges, of merchandise to the merchant from a wholesaler, distributor, supplier, or manufacturer and net of any discounts, rebates, and incentives that are vested and calculable as to a specific item of merchandise at the time the merchant accepts delivery of the merchandise.

(8)(A) "Rent-to-own agreement" means a contract under which a consumer agrees to pay a merchant for the right to use merchandise until:

(i) the consumer returns the merchandise to the merchant;

(ii) the merchant retakes possession of the merchandise; or

(iii) the consumer pays the total cost and acquires ownership of the merchandise.

(B) A “rent-to-own agreement” as defined in subdivision (7)(A) of this subsection is not:

(i) a sale subject to 9A V.S.A. Article 2;

(ii) a lease subject to 9A V.S.A. Article 2A;

(iii) a security interest as defined in section 9A V.S.A. § 1-201(a)(35); or

(iv) a retail installment contract or retail charge agreement as defined in chapter 61 of this title.

(9) “Rent-to-own charge” means the difference between the total cost and the cash price of an item of merchandise.

(10) “Total cost” means the sum of all payments, charges, fees, and taxes that a consumer must pay to acquire ownership of merchandise under a rent-to-own agreement. The term does not include charges for optional services or charges due only upon the occurrence of a contingency specified in the agreement.

(b) General requirements.

(1) Prior to execution, a merchant shall give a consumer the opportunity to review a written copy of a rent-to-own agreement that includes all of the information required by this section for each item of merchandise covered by the agreement and shall not refuse a consumer’s reasonable request to review the agreement with a third party, either inside the merchant’s place of business or at another location.

(2) A disclosure required by this section shall be clear and conspicuous.

(3) In an advertisement or rent-to-own agreement, a merchant shall state a numerical amount or percentage as a figure and shall print or legibly handwrite the figure in the equivalent of 12-point type or greater.

(4) A merchant may supply information not required by this section with the disclosures required by this section, but shall not state or place additional information in such a way as to cause the required disclosures to be misleading or confusing, or to contradict, obscure, or detract attention from the required disclosures.

(5) A merchant shall preserve an advertisement, or a digital copy of the advertisement, for not less than two years after the date the advertisement appeared. In the case of a radio, television, or Internet advertisement, a merchant may preserve a copy of the script or storyboard.

(6) A merchant shall make merchandise available to all consumers on

the terms and conditions that appear in the advertisement.

(7) A rent-to-own agreement that is substantially modified, including a change that increases the consumer's payments or other obligations or diminishes the consumer's rights, shall be considered a new agreement subject to the requirements of this chapter.

(8) For each item of merchandise available under a rent-to-own agreement, a merchant shall keep an electronic or hard copy for a period of six years following the date the merchant ceases to own the merchandise:

(A) each rent-to-own agreement covering the item; and

(B) a record that establishes the merchant's cost for the item.

(9) A rent-to-own agreement executed by a merchant doing business in Vermont and a resident of Vermont shall be governed by Vermont law.

(10) If a rent-to-own agreement includes a provision requiring mediation or arbitration in the event of a dispute, the mediation or arbitration shall occur within Vermont.

(c) Cash price; total cost; maximum limits.

(1) The maximum cash price for an item of merchandise shall not exceed:

(A) for an appliance, 1.75 times the merchant's cost;

(B) for an item of electronics that has a merchant's cost of less than \$150.00, 1.75 times the merchant's cost;

(C) for an item of electronics that has a merchant's cost of \$150.00 or more, 2.00 times the merchant's cost;

(D) for an item of furniture or jewelry, 2.50 times the merchant's cost; and

(E) for any other item, 2.00 times the merchant's cost.

(2) The total cost for an item of merchandise shall not exceed two times the maximum cash price for the item.

(d) Disclosures in advertising. An advertisement shall state:

(1) the cash price of the item;

(2) that the merchandise is available under a rent-to-own agreement;

(3) the amount, frequency, and total number of payments required for ownership;

(4) the total cost for the item;

(5) the rent-to-own charge for the item; and

(6) that the consumer will not own the merchandise until the consumer pays the total cost for ownership.

(e) Disclosures on site. In addition to the information required in subsection (d) of this section, an advertisement at a merchant's place of business shall include:

(1) whether the item is new or used;

(2) when the merchant acquired the item; and

(3) the number of times a consumer has taken possession of the item under a rent-to-own agreement.

(f) Disclosures in rent-to-own agreement.

(1) The first page of a rent-to-own agreement shall include:

(A) a heading in bold-face type that reads: "IMPORTANT INFORMATION ABOUT THIS RENT-TO-OWN AGREEMENT. Do Not Sign this Agreement Before You Read It or If It Contains any Blank Spaces"; and

(B) the following information in the following order:

(i) the name, address, and contact information of the merchant;

(ii) the name, address, and contact information of the consumer;

(iii) the date of the transaction;

(iv) a description of the merchandise sufficient to identify the merchandise to the consumer and the merchant, including any applicable model and identification numbers;

(v) a statement whether the merchandise is new or used, and in the case of used merchandise, a description of the condition of, and any damage to, the merchandise.

(2) A rent-to-own agreement shall include the following cost disclosures, printed and grouped as indicated below, immediately preceding the signature lines:

(1) Cash Price: _____ \$

(2) Payments required to become owner:

\$ /((weekly)(biweekly)(monthly) × (# of payments) = \$ _____

(3) Mandatory charges, fees, and taxes required to become owner (itemize):

	\$
	\$
	\$
<u>Total required taxes, fees, and charges:</u>	\$
(4) Total cost:	(2) + (3) = \$
(5) Rent-to-Own Charge:	(4) - (1) = \$

(g) Required provisions of rent-to-own agreement. A rent-to-own agreement shall provide:

- (1) a statement of payment due dates;
- (2) a line-item list of any other charges or fees the consumer could be charged or have the option of paying in the course of acquiring ownership or during or after the term of the agreement;
- (3) that the consumer will not own the merchandise until he or she makes all of the required payments for ownership;
- (4) that the consumer has the right to receive a receipt for a payment and, upon reasonable notice, a written statement of account;
- (5) who is responsible for service, maintenance, and repair of an item of merchandise;
- (6) that, except in the case of the consumer's negligence or abuse, if the merchant must retake possession of the merchandise for maintenance, repair, or service, or the item cannot be repaired, the merchant is responsible for providing the consumer with a replacement item of equal quality and comparable design;
- (7) the maximum amount of the consumer's liability for damage or loss to the merchandise in the case of the consumer's negligence or abuse;
- (8) a description of a manufacturer's warranty or other warranty on the merchandise, which may be in a separate document furnished to the consumer;
- (9) a description of any insurance required of the consumer, or a statement that the consumer is not required to purchase insurance and a description of any insurance purchased by the consumer;
- (10) an explanation of the consumer's options to purchase the merchandise;
- (11) an explanation of the merchant's right to repossess the merchandise; and

(12) an explanation of the parties' respective rights to terminate the agreement, and to reinstate the agreement.

(h) Prohibited provisions of rent-to-own agreement. A rent-to-own agreement shall not contain a provision:

(1) requiring a confession of judgment;

(2) requiring a garnishment of wages;

(3) authorizing a merchant or its agent to enter unlawfully upon the consumer's premises or to commit any breach of the peace in the repossession of property;

(4) requiring the consumer to waive any defense, counterclaim, or right of action against the merchant or its agent in collection of payment under the agreement or in the repossession of property; or

(5) requiring the consumer to purchase insurance from the merchant to cover the property.

(i) Option to purchase. Notwithstanding any other provision of this section, at any time after the first payment a consumer who is not in violation of a rent-to-own agreement may acquire ownership of the merchandise covered by the agreement by paying an amount equal to the cash price of the merchandise minus 50 percent of the value of the consumer's previous payments.

(j) Collections; repossession of merchandise; prohibited acts. When attempting to collect a debt or enforce an obligation under a rent-to-own agreement, a merchant shall not:

(1) call or visit a consumer's workplace after a request by the consumer or his or her employer not to do so;

(2) use profanity or any language to abuse, ridicule, or degrade a consumer;

(3) repeatedly call, leave messages, knock on doors, or ring doorbells;

(4) ask someone, other than a spouse, to make a payment on behalf of a consumer;

(5) obtain payment through a consumer's bank, credit card, or other account without authorization;

(6) speak with a consumer more than six times per week to discuss an overdue account;

(7) engage in violence;

(8) trespass;

(9) call or visit a consumer at home or work after receiving legal notice that the consumer has filed for bankruptcy;

(10) impersonate others;

(11) discuss a consumer's account with anyone other than a spouse of the consumer;

(12) threaten unwarranted legal action; or

(13) leave a recorded message for a consumer that includes anything other than the caller's name, contact information, and a courteous request that the consumer return the call.

(k) Reinstatement of agreement.

(1) A consumer who fails to make a timely payment may reinstate a rent-to-own agreement without losing any rights or options that exist under the agreement by paying all past-due charges, the reasonable costs of pickup, redelivery, and any refurbishing, and any applicable late fee:

(A) within five business days of the renewal date of the agreement if the consumer pays monthly; or

(B) within three business days of the renewal date of the agreement if the consumer pays more frequently than monthly.

(2) If a consumer promptly returns or voluntarily surrenders merchandise upon a merchant's request, the consumer may reinstate a rent-to-own agreement during a period of not less than 180 days after the date the merchant retakes possession of the merchandise.

(3) In the case of a rent-to-own agreement that is reinstated pursuant to this subsection, the merchant is not required to provide the consumer with the identical item of merchandise and may provide the consumer with a replacement item of equal quality and comparable design.

(l) Reasonable charges and fees. Any charge or fee assessed under a rent-to-own agreement shall be reasonably related to the actual cost to the merchant of the service or hardship for which it is charged.

(m) Prohibition on rent-to-own businesses and licensed lenders. A person engaged in the business of selling merchandise under a rent-to-own agreement subject to this section shall not engage in any conduct or business at the same physical location that would require a license under 8 V.S.A. chapter 73 (licensed lenders).

(n) Enforcement; remedies; damages. A person who violates this section commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

(Committee vote: 5-0-0)

S. 115.

An act relating to expungement of convictions based on conduct that is no longer criminal.

Reported favorably with recommendation of amendment by Senator Benning for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 7601 is amended to read:

§ 7601. DEFINITIONS

As used in this chapter:

* * *

(4) "Qualifying crime" means:

(A) a misdemeanor offense which is not a listed crime as defined in subdivision 5301(7) of this title, an offense involving sexual exploitation of children in violation of chapter 64 of this title, an offense involving violation of a protection order in violation of section 1030 of this title, a prohibited act as defined in section 2632 of this title, or a predicate offense;

(B) a violation of subsection 3701(a) of this title related to criminal mischief; ~~or~~

(C) a violation of section 2501 of this title related to grand larceny; or

(D) a violation of section 1201 of this title related to burglary, excluding any burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title.

Sec. 2. 13 V.S.A. § 7602 is amended to read:

§ 7602. EXPUNGEMENT AND SEALING OF RECORD,
POSTCONVICTION; PROCEDURE

(a)(1) A person ~~who was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence~~ may file a petition with

the Court requesting expungement or sealing of the criminal history record related to the conviction. ~~The State's Attorney or Attorney General shall be the respondent in the matter.~~ if:

(A) the person was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence; or

(B)(i) the person was convicted of:

(I) an offense for which the underlying conduct is no longer prohibited by law or the criminal sanctions have been repealed; or

(II) possession of a regulated drug under 18 V.S.A. chapter 84, subchapter 1 in an amount that is no longer prohibited by law or for which criminal sanctions have been repealed; and

(ii) at least one year has elapsed since the completion of any sentence or supervision for the offense, whichever is later.

(2) The State's Attorney or Attorney General shall be the respondent in the matter.

(3) The Court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the Court, and the Court shall issue the petitioner a certificate and provide notice of the order in accordance with this section.

(b)(1) The Court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or if the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 10 years previously.

(B) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted for the qualifying crime.

(C) Any restitution ordered by the Court has been paid in full.

(D) The Court finds that expungement of the criminal history record serves the interest of justice.

(E) For petitions filed pursuant to subdivision 7601(4)(D) of this title, the Court finds that the conduct underlying the conviction under section 1201 of this title did not constitute a burglary into an occupied dwelling, as defined

in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of establishing this fact.

(2) The Court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B), ~~and (C)~~, and (E) of this subsection are met and the Court finds that:

(A) sealing the criminal history record better serves the interest of justice than expungement; and

(B) the person committed the qualifying crime after reaching 19 years of age.

(c)(1) The Court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) At least 20 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.

(B) The person has not been convicted of a felony arising out of a new incident or occurrence since the person was convicted of the qualifying crime.

(C) The person has not been convicted of a misdemeanor during the past 15 years.

(D) Any restitution ordered by the Court for any crime of which the person has been convicted has been paid in full.

(E) After considering the particular nature of any subsequent offense, the Court finds that expungement of the criminal history record for the qualifying crime serves the interest of justice.

(F) For petitions filed pursuant to subdivision 7601(4)(D) of this title, the Court finds that the conduct underlying the conviction under section 1201 of this title did not constitute a burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of establishing this fact.

(2) The Court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B), (C), ~~and (D)~~, and (F) of this subsection are met and the Court finds that:

(A) sealing the criminal history record better serves the interest of justice than expungement; and

(B) the person committed the qualifying crime after reaching 19 years of age.

(d) For petitions filed pursuant to subdivision (a)(1)(B) of this section, the Court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(1) At least one year has elapsed since the completion of any sentence or supervision for the offense, whichever is later.

(2) Any restitution ordered by the Court has been paid in full.

(3) The Court finds that expungement of the criminal history record serves the interest of justice.

(e) For petitions filed pursuant to subdivision (a)(1)(B)(i)(II) of this section:

(1) The petitioner shall bear the burden of establishing that his or her conviction was based on possessing a quantity of regulated drug that is no longer prohibited by law or for which criminal sanctions have been repealed.

(2) There shall be a rebuttable presumption that the weight of the regulated drug specified in the affidavit of probable cause associated with the petitioner's conviction was the amount possessed by the petitioner.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-0-1)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Robert Ide of Peacham – Commissioner, Department of Motor Vehicles – By Sen. Kitchel for the Committee on Transportation. (3/12/15)

PUBLIC HEARINGS

Thursday, March 12, 2015 – Room 11 – 1:00 P.M. – 3:00 P.M. – Re: Further Reductions to the Governor’s Proposed FY2016 Budget - House Committee on Appropriations.

REPORTS ON FILE

Reports 2015

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following report is on file in the office of the Secretary of the Senate. Effective January 2010, pursuant to Act No. 192, Adj. Sess. (2008) §5.005(g) some reports will automatically be sent by electronic copy only and can be found on the State of Vermont Legislative webpage.

1. Working Lands Enterprise Initiative Annual Report: Fiscal Year 2014. (Vermont Agency of Agriculture, Food and Markets) (March 2015)

FOR INFORMATION ONLY

CROSSOVER DEADLINES

The Senate Rules Committee established the following Crossover deadlines:

(1) All **Senate** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 13, 2015**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate** bills referred pursuant to Senate Rule 31 to the Committees on Appropriations and Finance must be reported out by the last of those committees on or before **Friday, March 20, 2015**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

These deadlines may be waived for any bill or committee only with the consent of the Committee on Rules.

Note: Pursuant to Senate Rule 44A, the Senate will not act on House bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (Appropriations “Big Bill”, Transportation Spending Bill, Capital Construction Bill, and Miscellaneous Tax Bill).