# Senate Calendar

TUESDAY, APRIL 07, 2015

**SENATE CONVENES AT: 9:30 A.M.**

## TABLE OF CONTENTS

## ORDERS OF THE DAY

### ACTION CALENDAR

### NEW BUSINESS

### Third Reading

### S. 62.

An act relating to surrogate decision making for do-not-resuscitate orders and clinician orders for life-sustaining treatment.

### Committee Bill for Second Reading

### Favorable with Recommendation of Amendment

### S. 138.

An act relating to promoting economic development.

**By the Committee on Economic Development, Housing and General Affairs. (Senator Mullin for the Committee.)**

**Reported favorably with recommendation of amendment by Senator Snelling for the Committee on Natural Resources and Energy.**

The Committee recommends that the bill be amended as follows:

First: By striking out Secs. 30–34 in their entirety and inserting in lieu thereof new Secs. 30–37 to read as follows:

Sec. 30. [Deleted.]

Sec. 31. [Deleted.]

Sec. 32. [Deleted.]

Sec. 33. ACT 250; IMPLEMENTATION OF SETTLEMENT PATTERNS CRITERION

(a) The General Assembly finds that:

(1) 2014 Acts and Resolves No. 147, Sec. 2 amended 10 V.S.A. § 6086(a)(9)(L) (Criterion 9L) to become a settlement patterns criterion.

(2) Effective on October 17, 2014, the Board adopted a procedure to implement Criterion 9L (the Criterion 9L Procedure).

(b) The General Assembly determines that additional opportunity for public comment on the Criterion 9L Procedure, as well as additional education and improved guidance, would be beneficial in implementing the criterion.

(1) The Board shall review the Criterion 9L Procedure in full collaboration with ACCD and ANR.

(A) Prior to proposing any revisions, the Board shall solicit input from affected parties and the public, including planners, developers, municipalities, environmental advocacy organizations, regional planning commissions, regional development corporations, and business advocacy organizations such as State and regional chambers of commerce.

(B) If the Board makes revisions, it shall adopt them in the form of a procedure under 3 V.S.A. chapter 25.

(2) ACCD shall work with the NRB and ANR to develop outreach material on Criterion 9L, including illustrative examples of appropriate development design, and implement a training plan on the criterion for local elected officials, municipal boards, State and regional organizations and associations, environmental groups, consultants, and developers.

Sec. 34. [Deleted.]

Sec. 35. 24 V.S.A. § 4471(e) is amended to read:

(e) ~~Vermont neighborhood~~ Neighborhood development area. Notwithstanding subsection (a) of this section, a determination by an appropriate municipal panel shall not be subject to appeal if the determination is that a proposed residential development within a designated downtown development district, designated growth center, ~~or~~ designated Vermont neighborhood, or designated neighborhood development area seeking conditional use approval will not result in an undue adverse effect on the character of the area affected~~, as provided in~~ under subdivision 4414(3)~~(A)(ii)~~ of this title.

Sec. 36. 10 V.S.A. § 6086(a)(9)(B) is amended to read:

(B) Primary agricultural soils. A permit will be granted for the development or subdivision of primary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not result in any reduction in the agricultural potential of the primary agricultural soils; or:

(i) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential; ~~and~~

(ii) except in the case of an application for a project located in a designated ~~growth center~~ area listed in subdivision 6093(a)(1) of this title, there are no lands other than primary agricultural soils owned or controlled by

the applicant which are reasonably suited to the purpose of the development or subdivision; ~~and~~

(iii) except in the case of an application for a project located in a designated ~~growth center~~ area listed in subdivision 6093(a)(1) of this title, the subdivision or development has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in compact development patterns, so that the remaining primary agricultural soils on the project tract are capable of supporting or contributing to an economic or commercial agricultural operation; and

(iv) suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision, in accordance with section 6093 of this title and rules adopted by the Natural Resources Board.

Sec. 37. 10 V.S.A. § 6310 is added to read:

§ 6310. CONSERVATION EASEMENT HOLDER; NONMERGER

If a holder of a conservation easement is or becomes the owner in fee simple of property subject to the easement, the easement shall continue in effect and shall not be extinguished.

Second: After Sec. 37, by striking out "Sec. 35–39. [Reserved]" and inserting in lieu thereof the following: Secs. 38–39. [Reserved]

(Committee vote: 4-0-1)

**Reported favorably with recommendation of amendment by Senator Ashe for the Committee on Finance.**

The Committee recommends that the bill be amended as follows:

First: By striking out Secs. 1–4 (Vermont employment growth incentive); 20 (angel investor tax credit; millennial enterprise zone tax credit); and 21 (down payment assistance program) in their entirety

Second: By striking out Secs. 50–57 (fortified wines) in their entirety and inserting in lieu thereof new Secs. 50–61 to read as follows:

Sec. 50. 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:

* * *

(15) "Manufacturer's or rectifier's license": a license granted by the Liquor Control Board that permits the holder to manufacture or rectify ~~spirituous liquors~~ spirits or fortified wines for export and sale to the Liquor Control Board, or malt beverages and vinous beverages 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~~ 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 a first-class restaurant or cabaret license or first- and 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 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 premises of the licensee or the vineyard property, spirits and vinous 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.

* * *

(19) "Second-class license": a license granted by the control commissioners permitting the licensee to export malt or vinous beverages and to sell malt or vinous beverages to the public for consumption off the premises for which the license is granted. The Liquor Control Board may grant a second-class licensee a fortified wine permit that permits the licensee to export and to sell fortified wines to the public for consumption off the licensed premises.

(20) "Spirits" or "spirituous liquors": beverages that contain more than one percent of alcohol obtained by distillation, by chemical synthesis, or

through concentration by freezing; ~~and~~ vinous beverages containing more than ~~16~~ 23 percent of alcohol; and ~~all vermouths of any alcohol content;~~ malt beverages containing more than 16 percent of alcohol or more than six percent of alcohol if the terminal specific gravity thereof is less than 1.009; in each case measured by volume at 60 degrees Fahrenheit.

* * *

(22) "Third-class license": a license granted by the Liquor Control Board permitting the licensee to sell ~~spirituous liquors~~ spirits and fortified wines for consumption only on the premises for which the license is granted.

(23) "Vinous beverages": all fermented beverages of any name or description manufactured or obtained for sale from the natural sugar content of fruits~~,~~ or other agricultural product, containing sugar, the alcoholic content of which is not less than one percent nor more than 16 percent by volume at 60 degrees Fahrenheit~~, except that all vermouths shall be purchased and retailed by and through the Liquor Control Board as authorized in chapters 5 and 7 of this title~~.

* * *

(28) "Fourth-class license" or "farmers' market license": the license granted by the Liquor Control Board permitting a manufacturer or rectifier of malt ~~or~~ beverages, vinous beverages, fortified wines, or spirits 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 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 or vinous beverage 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 farmers' market license is valid for all dates of operation for a specific farmers' market location.

* * *

(38) "Fortified wines": vinous beverages, including those to which spirits have been added during manufacture, containing at least 16 percent alcohol but no more than 23 percent alcohol by volume at 60 degrees Fahrenheit, and all vermouths containing no more than 23 percent alcohol by volume at 60 degrees Fahrenheit.

Sec. 51. 7 V.S.A. § 104 us amended to read:

§ 104. DUTIES; AUTHORITY TO RESOLVE ALLEGED VIOLATIONS

The Board shall have supervision and management of the sale of ~~spirituous liquors~~ spirits and fortified wines within the State in accordance with the provisions of this title, and through the Commissioner of Liquor Control shall:

* * *

Sec. 52. 7 V.S.A. § 107 is amended to read:

§ 107. DUTIES OF COMMISSIONER OF LIQUOR CONTROL

The ~~commissioner of liquor control~~ Commissioner of Liquor Control shall:

* * *

(2) Make regulations subject to the approval of the ~~board~~ Board governing the hours during which such agencies shall be open for the sale of ~~spirituous liquors,~~ spirits and fortified wines and governing the qualifications ~~and~~, deportment, and salaries of the agencies' employees ~~therein and the salaries thereof~~.

(3) Make regulations subject to the approval of the ~~board~~ Board governing:

(A) the prices at which ~~spirituous liquors~~ spirits shall be sold ~~in such~~ by local agencies, ~~and~~ the method ~~of~~ for their delivery ~~thereof~~, and the quantities of ~~spirituous liquors to~~ 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 ~~spirituous liquor~~ spirits and fortified wines to be kept as stock in ~~such~~ local ~~agency~~ agencies and make regulations subject to the approval of the ~~board~~ Board regarding the filling of requisitions therefor on the ~~commissioner of liquor control~~ Commissioner of Liquor Control.

(5) Purchase through the ~~commissioner of buildings and general services spirituous liquors~~ Commissioner of Buildings and General Services spirits and fortified wines for and in behalf of the ~~liquor control board~~ Liquor Control Board, supervise the storage thereof and the distribution to local agencies, druggists ~~and~~, licensees of the third class, and holders of fortified wine permits, and make regulations subject to the approval of the ~~board~~ Board regarding the sale and delivery from ~~such~~ the central storage plant.

* * *

Sec. 53. 7 V.S.A. § 110 is amended to read:

§ 110. SPECIAL BRANDS; PURCHASE BY COMMISSIONER OF LIQUOR CONTROL

If any person shall desire to purchase any class, variety, or brand of ~~spirituous liquor~~ spirits or fortified wine which any local agency or fortified wine permit holder does not have in stock, the ~~commissioner of liquor control~~ Commissioner of Liquor Control shall order the same through the ~~commissioner of buildings and general services~~ Commissioner of Buildings and General Services upon the payment of a reasonable deposit by the purchaser in such proportion of the approximate cost of the order as shall be prescribed by the regulations of the ~~liquor control board~~ Liquor Control Board.

Sec. 54. 7 V.S.A. § 112 is amended to read:

§ 112. LIQUOR CONTROL FUND

The ~~liquor control fund~~ Liquor Control Fund is hereby established. It shall consist of all receipts from the sale of spirits, fortified wines, and other items by the ~~department of liquor control~~ Department of Liquor Control; fees paid to the ~~department of liquor control~~ Department of Liquor Control for the benefit of the ~~department~~ Department; all other amounts received by the ~~department of liquor control~~ Department of Liquor Control for its benefit; and all amounts ~~which~~ that are from time to time appropriated to the ~~department of liquor control~~ Department of Liquor Control.

Sec. 55. 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 ~~the following~~:

* * *

(2) Upon making application ~~and~~, paying the license fee provided in section 231 of this title, and upon satisfying the Board that such premises are leased, rented, or owned by the retail dealer and are a safe, sanitary, and proper place from which to sell malt and vinous beverages, a second-class license ~~for the premises where such dealer shall carry on the business~~, which shall authorize such dealer to export malt and vinous beverages, and to sell malt and vinous beverages to the public from such premises for consumption off the premises ~~and upon satisfying the Board that such premises are leased, rented, or owned by such retail dealers and are safe, sanitary, and a proper place from which to sell malt and vinous beverages~~. A retail dealer carrying on business in more than one place shall be required to acquire a second-class license for each place where ~~he or she shall so sell~~ the retail dealer sells malt and vinous beverages. No malt or vinous beverages shall be sold by a second-class licensee to a minor.

* * *

(5)(A) The holder of a first-class license may serve a sampler flight of up to 32 ounces in the aggregate of malt beverages to a single customer at one time.

(B) The holder of a first-class license may serve a sampler flight of up to 12 ounces in the aggregate of vinous beverages to a single customer at one time.

(C) The holder of a third-class license may serve a sampler flight of up to four ounces in the aggregate of ~~spirituous liquors~~ spirits or fortified wines to a single customer at one time.

(6) The Liquor Control Board may grant a fortified wine permit to a second-class licensee if the licensee files an application accompanied by the license fee as provided in section 231 of this title. The holder of a fortified wine permit may sell fortified wines to the public from the licensed premises for consumption off the premises. The Liquor Control Board shall issue no more than 150 fortified wine permits in any single year. The holder of a fortified wine permit shall purchase all fortified wines to be offered for sale to the public pursuant to the permit through the Liquor Control Board at a price equal to no more than 75 percent of the current retail price for the fortified wine established by the Commissioner pursuant to subdivision 107(3)(B) of this title.

Sec. 56. 7 V.S.A. § 224 is amended to read:

§ 224. ~~THIRD CLASS~~ THIRD-CLASS LICENSES; OPEN CONTAINERS

(a) The ~~liquor control board~~ 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~~ third-class license may sell ~~spirituous liquors~~ spirits and fortified wines for consumption only on the premises covered by the license. The applicant for a ~~third class~~ third-class license shall satisfy the ~~liquor control board~~ 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.

* * *

(c) A person who holds a ~~third class~~ third-class license shall purchase from the ~~liquor control board~~ Liquor Control Board all ~~spirituous liquors~~ spirits and fortified wines dispensed in accordance with the provisions of the ~~third class~~ third-class license and this title.

Sec. 57. 7 V.S.A. § 225 is amended to read:

§ 225. EDUCATIONAL SAMPLING EVENT PERMIT

(a) The ~~liquor control board~~ Liquor Control Board may grant an educational sampling event permit to a person to conduct an event that is open to the public and at which malt beverages, vinous beverages, fortified wines, or ~~spirituous liquors~~ spirits, or all ~~three~~ four are served only for the purposes of marketing and educational sampling, provided the event is also approved by the local licensing authority. At least 15 days prior to the event, an applicant shall submit an application to the ~~department~~ Department in a form required by the ~~department~~ Department. The application shall include a list of the alcoholic beverages to be acquired for sampling at the event, and the application shall be accompanied by a fee in the amount required pursuant to section 231 of this title. No more than four educational sampling event permits shall be issued annually to the same person. An educational sampling event permit shall be valid for no more than four consecutive days. The permit holder shall ~~assure~~ ensure all the following:

* * *

(b) An educational sampling event permit holder:

* * *

(2) May transport malt beverages, vinous beverages, fortified wines, and ~~spirituous liquors~~ spirits to the event site, and those beverages may be served at the event by the permit holder or the holder's employees, volunteers, or representatives of a manufacturer, bottler, or importer participating in the

event, provided they meet the server age and training requirements under this chapter.

(3) ~~[Deleted.]~~ [Repealed.]

* * *

(d) Taxes for the alcoholic beverages served at the event shall be paid as follows:

* * *

(3) Spirituous liquors: $19.80 per gallon served.

(4) Fortified wines: $19.80 per gallon served.

Sec. 58. 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:

* * *

(23) For a fortified wine permit, $100.00.

* * *

Sec. 59. 7 V.S.A. § 422 is amended to read:

§ 422. TAX ON SPIRITUOUS LIQUOR

(a) A tax is assessed on the gross revenue ~~on~~ from the ~~retail~~ sale of ~~spirituous liquor~~ spirits and fortified wines in the State of Vermont~~, including fortified wine, sold~~ by the Liquor Control Board~~,~~ or ~~sold by~~ the retail sale of spirits and fortified wines in Vermont by a manufacturer or rectifier of ~~spirituous liquor~~ spirits or fortified wines, in accordance with the provisions of this title. The tax shall be at the following rates based on the gross revenue of the retail sales by the seller in the current year:

(1) if the gross revenue of the seller is $500,000.00 or lower, the rate of tax is five percent;

(2) if the gross revenue of the seller is between $500,000.00 and $750,000.00, the rate of tax is $25,000.00 plus 10 percent of the gross revenues over $500,000.00;

(3) if the gross revenue of the seller is ~~over~~ $750,000.00 or more, the rate of tax is 25 percent.

* * *

Sec. 60. STATUTORY REVISION

The Legislative Council, in its statutory revision capacity pursuant to 2 V.S.A. § 424, is authorized to correct instances of the words "spirituous liquors" and "spirits" appearing in Title 7 of the Vermont Statutes Annotated to "spirits and fortified wines" as necessary to implement the intent of the revisions to 7 V.S.A. § 2 in this act.

* * *

Sec. 61. STUDY; REPORT

(a) On or before January 15, 2018, the Commissioner of Liquor Control, in consultation with the holders of second-class licenses and fortified wine permits, shall evaluate whether the number of fortified wine permits issued pursuant to 7 V.S.A. § 222 is sufficient, and how the issuance of fortified wine permits has affected the sales of fortified wines in Vermont and the variety of fortified wines available to Vermont consumers.

(b) The Commissioner of Liquor Control shall report to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding his or her findings on or before January 15, 2018. The Commissioner's report shall include a recommendation regarding the appropriate number of fortified wine permits to be issued pursuant to 7 V.S.A. § 222.

Third: By striking out Sec. 100 (effective dates) in its entirety and inserting in lieu thereof a new Sec. 100 to read as follows:

Sec. 100. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

And by renumbering the remaining sections and any internal cross-references to be numerically correct.

(Committee vote: 6-0-1)

**Reported favorably with recommendation of amendment by Senator McCormack for the Committee on Appropriations.**

The Committee recommends that the bill be amended by striking out Sec. 40 (tourism and marketing initiative) in its entirety.

(Committee vote: 6-0-1)

**Amendment to the recommendation of amendment of the Committee on Natural Resources & Energy to S. 138 to be offered by Senators Snelling, Balint, Baruth, Bray, Campion, Cummings, MacDonald, Mullin, and Rodgers**

Senators Snelling, Balint, Baruth, Bray, Campion, Cummings, MacDonald, Mullin, and Rodgers, move to amend the recommendation of amendment of the Committee on Natural Resources & Energy by striking out Sec. 33 in its entirety and inserting in lieu thereof a new Sec. 33 to read as follows:

Sec. 33. ACT 250; IMPLEMENTATION OF SETTLEMENT PATTERNS CRITERION

(a) The General Assembly finds that:

(1) 2014 Acts and Resolves No. 147, Sec. 2 amended 10 V.S.A. § 6086(a)(9)(L) (Criterion 9L) to become a settlement patterns criterion. The purpose of the amendment was to guide and accomplish coordinated, efficient, and economic development in the State that is consistent with Vermont's historic settlement pattern of compact centers separated by rural countryside.

(2) Effective on October 17, 2014, the Natural Resources Board (NRB) adopted a procedure to implement Criterion 9L (the Criterion 9L Procedure).

(b) The General Assembly determines that additional opportunity for public comment on the Criterion 9L Procedure, as well as additional education and improved guidance, would be beneficial in implementing the criterion.

(1) The NRB shall review the Criterion 9L Procedure in full collaboration with the Agency of Commerce and Community Development (ACCD) and the Agency of Natural Resources (ANR).

(A) As part of this review, the NRB shall solicit input from affected parties and the public, including planners, developers, municipalities, environmental advocacy organizations, regional planning commissions, regional development corporations, and business advocacy organizations such as State and regional chambers of commerce.

(B) Based on this review, the NRB shall adopt revisions in the form of a procedure under 3 V.S.A. chapter 25.

(2) ACCD shall work with the NRB and ANR to develop outreach material on Criterion 9L, including illustrative examples of appropriate development design, and implement a training plan on the criterion for local elected officials, municipal boards, State and regional organizations and associations, environmental groups, consultants, and developers.

**Second Reading**

**Favorable**

**H. 23.**

An act relating to the Uniform Transfers to Minors Act.

**Reported favorably by Senator Benning for the Committee on Judiciary.**

(Committee vote: 5-0-0)

(For House amendments, see House Journal of February 3, 2015, page 104)

**House Proposal of Amendment**

**S. 98.**

An act relating to captive insurance companies.

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

First: In Sec. 2, 8 V.S.A. § 6004, subsection (c), after the first sentence, by inserting the following: The Commissioner shall issue a bulletin defining "marketable securities" for the purpose of this subsection.

Second: By adding Sec. 6 to read as follows:

Sec. 6. 8 V.S.A. § 6036(d) is amended to read:

(d) A participant shall ~~insure only its own risks through a sponsored captive insurance company~~ not insure any risks other than its own and the risks of affiliated entities or of controlled unaffiliated entities.

Third: By striking out Sec. 8 in its entirety and by inserting in lieu thereof a new Sec. 8 (to be renumbered as Sec. 9) to read as follows:

Sec. 9. 8 V.S.A. § 6052(g) is added to read:

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

(1) As used in this subsection:

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

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

(C) "Independent director" means a director who does not have a material relationship with the risk retention group. A person that is a direct or indirect owner of or subscriber in the risk retention group – or is an officer, director, or employee of such an owner and insured, unless some other position of such officer, director, or employee constitutes a "material relationship" – as contemplated under subdivision 3901(a)(4)(E)(ii) of the federal Liability Risk Retention Act, is considered to be "independent." A director has a material relationship with a risk retention group if he or she, or a member of his or her immediate family:

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

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

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

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

(2) The board of directors shall determine whether a director is independent; review such determinations annually; and maintain a record of the determinations, which shall be provided to the Commissioner promptly, upon request. The board shall have a majority of independent directors. If the risk retention group is reciprocal, then the attorney-in-fact is required to adhere to the same standards regarding independence as imposed on the risk retention group's board of directors.

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

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

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

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

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

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

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

(E) at least annually, review and approve:

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

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

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

(6) A risk retention group shall have an audit committee composed of at least three independent board members. A nonindependent board member may

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

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

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

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

(D) reviewing risk assessment and risk management policies;

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

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

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

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

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

(J) reporting regularly to the board of directors.

(7) The board of directors shall adopt governance standards, which shall be available to risk retention group members through electronic or other means, and provided to risk retention group members, upon request. The governance standards shall include:

(A) a process by which risk retention group members elect directors.

(B) director qualifications, responsibilities, and compensation;

(C) director orientation and continuing education requirements;

(D) a process allowing the board access to management and, as necessary and appropriate, independent advisors;

(E) policies and procedures for management succession; and

(F) policies and procedures providing for an annual performance evaluation of the board.

(8) The board of directors shall adopt a code of business conduct and ethics applicable to directors, officers, and employees of the risk retention group and criteria for waivers of code provisions, which shall be available to risk retention group members through electronic or other means, and provided to risk retention group members, upon request. Provisions of the code shall address:

(A) conflicts of interest;

(B) matters covered under the Vermont corporate opportunities doctrine;

(C) confidentiality;

(D) fair dealing;

(E) protection and proper use of risk retention group assets;

(F) standards for complying with applicable laws, rules, and regulations; and

(G) mandatory reporting of illegal or unethical behavior affecting operation of the risk retention group.

(9) The president or chief executive officer of a risk retention group shall promptly notify the Commissioner in writing of any known material noncompliance with the governance standards established in this subsection.

Fourth: By striking out Sec. 9 (effective date) in its entirety and by inserting in lieu thereof a new Sec. 9 (renumbered as Sec. 10) to read as follows:

Sec. 10. EFFECTIVE DATE; APPLICATION

This act shall take effect on passage. Sec. 9 (governance standards applicable to risk retention groups) shall apply to risk retention groups first licensed on or after the effective date of this act, and shall apply to all other risk retention groups one year after the effective date of this act.

And by renumbering the remaining sections to be numerically correct.

And that after passage the title of the bill be amended to read:

An act relating to captive insurance companies and risk retention groups.

## NOTICE CALENDAR

### House Proposal of Amendment

### S. 13.

An act relating to the Vermont Sex Offender Registry.

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. § 5401(10)(B)(viii) is amended to read:

(viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in ~~13 V.S.A. § 2635a~~ 13 V.S.A. § 2652;

Sec. 2. 13 V.S.A. § 5403 is amended to read:

§ 5403. REPORTING ~~UPON CONVICTION~~ TO DEPARTMENT OF PUBLIC SAFETY

(a) Upon conviction and prior to sentencing, the ~~court~~ Court shall order the sex offender to provide the ~~court~~ Court with the following information, which the ~~court~~ Court shall forward to the ~~department~~ Department forthwith:

(1) name;

(2) date of birth;

(3) ~~general physical description;~~

~~(4)~~ current address;

~~(5)~~(4) Social Security number;

~~(6) fingerprints;~~

~~(7) current photograph;~~

~~(8)~~(5) current employment; and

~~(9)~~(6) name and address of any postsecondary educational institution at which the sex offender is enrolled as a student.

(b) Within 10 days after sentencing, the ~~court~~ Court shall forward to the ~~department~~ Department:

(1) the sex offender's conviction record, including offense, date of conviction, sentence and any conditions of release or probation;

(2) an order issued pursuant to section 5405a of this title, on a form developed by the Court Administrator, that the defendant comply with Sex Offender Registry requirements.

(c) The Departments of Corrections and of Public Safety shall jointly develop a process for the Department of Corrections to notify the Department of Public Safety when an offender who is under Department of Corrections supervision is required to be placed on the Sex Offender Registry because of a conviction that occurred in another jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court. The report shall include the offense of which the defendant was convicted that requires the placement of his or her name on the Registry.

Sec. 3. 13 V.S.A. § 5405a is added to read:

§ 5405a. COURT DETERMINATION OF SEX OFFENDER REGISTRY REQUIREMENTS

(a)(1) The Court shall determine at sentencing whether Sex Offender Registry requirements apply to the defendant.

(2) If the State and the defendant do not agree as to the applicability of Sex Offender Registry requirements to the defendant, the State shall file a motion setting forth the Sex Offender Registry requirements applicable to the defendant within 10 days of the entry of a guilty plea. To the extent the defendant opposes the motion, the State and the defendant shall present evidence at the sentencing as to the applicability of Sex Offender Registry requirements to the defendant.

(b) The Court shall consider the following when determining under this section whether Sex Offender Registry requirements apply to the defendant:

(1) the report issued pursuant to subsection 5403(c) of this title;

(2) the presentence investigation report regarding the offense for which the defendant is being sentenced;

(3) the Court's own judgment of conviction and any evidence that was presented at trial; and

(4) any other evidence admitted at sentencing and deemed relevant by the Court to the defendant's registry status.

(c) The State shall bear the burden of proving by a preponderance of the evidence the applicability of Sex Offender Registry requirements to the defendant under this section.

(d) Within 10 days after the sentencing or the presentation of evidence pursuant to subdivision (a)(2) of this section, the Court shall issue an order determining whether Sex Offender Registry requirements apply to the defendant. The order shall include:

(1) the offense of which the defendant was convicted that requires the placement of his or her name on the Sex Offender Registry;

(2) any prior convictions that affect:

(A) the defendant's Sex Offender Registry Status;

(B) the length of time that the defendant is required to register as a sex offender; or

(C) whether information regarding the defendant is required to be electronically posted on the Internet under section 5411a of this title;

(3) the length of time that the defendant is required to register as a sex offender;

(4) whether the defendant is designated as a sexually violent predator under section 5405 of this title;

(5) whether the defendant was immediately released or remanded to the custody of the Department of Corrections; and

(6) whether information regarding the defendant is required to be electronically posted on the Internet under section 5411a of this title.

Sec. 4. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

* * *

(f) A person required to register as a sex offender under this subchapter shall continue to comply with this section for the life of that person, except during periods of incarceration, if that person:

* * *

(2) has been convicted of a sexual assault as defined in section 3252 of this title or aggravated sexual assault as defined in section 3253 of this title, or a comparable offense in another jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court; however, if a person convicted under section 3252 is not more than six years older than the victim of the assault and if the victim is 14 years of age or older, then the offender shall not be required to register for life if the age of the victim was the basis for the conviction;

* * *

Sec. 5. 13 V.S.A. § 5416 is added to read:

§ 5416. PERSONS SUBJECT TO ERRONEOUS SEX OFFENDER REGISTRY REQUIREMENTS; PETITION TO CORRECT

(a) A person may petition the Court for an order declaring that the person has been inadvertently subject to erroneous Sex Offender Registry requirements and directing the Department of Public Safety to correct the error. The petitioner shall provide notice of the petition to the State's Attorney or the Attorney General, who shall be the respondent in the matter.

(b) A petition filed under this section shall include:

(1) the Court's order issued under subdivision 5403(b)(2) of this title to comply with Sex Offender Registry requirements, if available; and

(2) the factual basis for the petitioner's allegation that he or she was subject to an erroneous sex offender registry requirement.

(c) The Court shall grant a petition filed under this section if it finds that the petitioner has demonstrated by a preponderance of the evidence that he or she was by Court order subject to an erroneous sex offender registry requirement. As used in this subsection, "erroneous sex offender registry requirement" includes the person's name being erroneously placed on the Sex Offender Registry or the Internet Sex Offender Registry, or the person being erroneously subject to lifetime registration under subsection 5407(f) of this title.

(d) If a petition filed under this section is granted, the Court shall enter an order declaring that the person had been inadvertently subject to erroneous Sex Offender Registry requirements. The Court shall provide the order to the Department of Public Safety and direct the Department to take any action necessary to correct the error, including, if appropriate, removing the person's name from the Sex Offender Registry and the Internet Sex Offender Registry.

(e)(1) If the Court denies a petition filed under this section, no further petition shall be filed by the person with respect to the alleged error.

(2) This subsection shall not apply if the petition is based on:

(A) newly discovered evidence;

(B) an expungement order issued under chapter 230 of this title;

(C) a successful petition under chapter 182 of this title (innocence protection); or

(D) a successful petition for postconviction relief.

Sec. 6. 2009 Acts and Resolves No. 58, Sec. 28 is amended to read:

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except ~~as follows:~~

~~(1)~~ that Secs. 22 and 26 of this act shall take effect on July 2, 2009.

~~(2) Sec. 14 of this act shall take effect July 1, 2010, provided that Sec. 14 shall not take effect until the state auditor, in consultation with the department of public safety and the department of information and innovation technology, has provided a favorable performance audit regarding the Internet sex offender registry to the senate and house committees on judiciary, the house committee on corrections and institutions, and the joint committee on corrections oversight.~~

Sec. 7. REPEAL

2009 Acts and Resolves No. 58, Sec. 14 (electronic posting of offender addresses on Sex Offender Registry) is repealed.

Sec. 8. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

* * *

(b) The Department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

(1) the offender's name and any known aliases;

(2) the offender's date of birth;

(3) a general physical description of the offender;

(4) a digital photograph of the offender;

(5) the offender's town of residence;

(6) the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the Department determines that all the information to be electronically posted about the offender is correct; and

(B)(i) the offender has been designated as high-risk by the department of corrections pursuant to section 5411b of this title;

(ii) the offender has not complied with sex offender treatment;

(iii) there is an outstanding warrant for the offender's arrest;

(iv) the offender is subject to the registry for a conviction of a sex offense against a child under 13 years of age; or

(v) the offender's name has been electronically posted for an offense committed in another jurisdiction which required the person's address to be electronically posted in that jurisdiction;

~~(6)~~(7) the date and nature of the offender's conviction;

~~(7)~~(8) if the offender is under the supervision of the Department of Corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

~~(8)~~(9) whether the offender complied with treatment recommended by the department of corrections;

~~(9)~~(10) a statement that there is an outstanding warrant for the offender's arrest, if applicable; and

~~(10)~~(11) the reason for which the offender information is accessible under this section.

* * *

(d) ~~An offender's street address shall not be posted electronically.~~ The identity of a victim of an offense that requires registration shall not be released.

* * *

Sec. 9. EFFECTIVE DATES

(a) This act shall take effect on July 1, 2015, except as provided in subsection (b) of this section.

(b) Sec. 8 of this act shall take effect on the later of the following dates:

(1) The date that the Department of Public Safety and the Department of Corrections certify to the House and Senate Committees on Judiciary that they have fully implemented the recommendations of the Vermont State Auditor's Report dated July 14, 2014.

(2)(A) The date that the Department of Public Safety reports to the General Assembly that it has employed an attribute sampling plan that uses a 95 percent confidence level (five percent risk of over-reliance), five percent tolerable deviation rate, and an expected error rate of zero to demonstrate that the Sex Offender Registry has:

(i) no critical errors; and

(ii) an error rate of ten percent or less for errors that are not critical errors.

(B) As used in this subsection, "critical error" means one of the following errors:

(i) An offender's name should be on the Sex Offender Registry or the Internet Sex Offender Registry but it is not.

(ii) An offender's name should not be on the Sex Offender Registry or the Internet Sex Offender Registry but it is.

(iii) There is an error in the offender's address.

(iv) An offender's name is scheduled to be posted on the Sex Offender Registry or the Internet Sex Offender Registry for an incorrect length of time.

(3) The date that the State Auditor provides a report to the House and Senate Committees on Judiciary finding that the Department of Public Safety has complied with subdivision (b)(2) of this section.

**ORDERED TO LIE**

**S. 137.**

An act relating to penalties for selling and dispensing marijuana.

**PENDING ACTION:** Committee Bill for Second Reading

**S. 139.**

An act relating to pharmacy benefit managers, hospital observation status, and chemicals of high concern to children.

**PENDING ACTION:** Committee Bill for Second Reading

**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.

Megan Smith of Mendon – Commissioner, Department of Tourism and Marketing – By Sen. Mullin for the Committee on Econ. Dev., Housing and General Affairs. (3/24/15)

Steven Costantino of Providence, RI – Commissioner of the Department of Health Access – By Sen. Pollina for the Committee on Health and Welfare. (3/25/15)

Justin Johnson of Barre – Secretary, Agency of Administration – By Sen. Pollina for the Committee on Government Operations. (3/31/15)

## PUBLIC HEARINGS

### SENATE APPROPRIATIONS COMMITTEE
### H. 490 (FY 2016 Budget)
### ADVOCATES TESTIMONY

On **Tuesday**, **April 7, 2015** beginning at **1:30 pm**, the Senate Appropriations Committee will be taking testimony from advocates regarding the Fiscal Year 2016 Budget (H.490) in Room 10 of the State House. To schedule time before the Committee contact Becky Buck at the Legislative Joint Fiscal Office located at 1 Baldwin Street; phone: 828-5969 or via email at:. rbuck@leg.state.vt.us

## 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)