

Senate Calendar

WEDNESDAY, MAY 13, 2015

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ACTION CALENDAR
CONSIDERATION POSTPONED
House Proposal of Amendment

S. 73

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

PENDING QUESTION: Shall the Senate concur in the House proposal of amendment, with further proposal of amendment as moved by Senator Balint?

Text of proposal of amendment by Senator Balint:

First: In Sec. 1, in 9 V.S.A. § 41b(c)(2), by striking out “(A)” and by striking out subdivision (B) in its entirety

Second: In Sec. 1, in 9 V.S.A. § 41b(e), by striking out subdivisions (1)–(2) in their entirety and inserting in lieu thereof subdivisions (1)–(3) to read as follows:

- (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.

Third In Sec. 3, in 9 V.S.A. § 6002(b), by striking out subdivision (6) in its entirety (three representatives focused on collegiate financial literacy issues) and inserting in lieu thereof a new subdivision (6) to read as follows:

- (6) two representatives focused on collegiate financial literacy issues:
 - (A) the President of the Vermont Student Assistance Corporation or designee; and
 - (B) one representative appointed by the Governor from the Vermont State Colleges, the University of Vermont, or an independent college in Vermont;

Fourth: In Sec. 3, in 9 V.S.A. § 6002(b), by striking out subdivision (7) in its entirety (two representatives from non-profit entities) and inserting in lieu thereof a new subdivision (7) to read as follows:

- (7) a representative from a nonprofit entity that provides financial literacy and related services to persons with low income;

Text of House proposal of amendment:

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:

* * * Consumer Rent-to-Own Agreements * * *

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; or

(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 and acquire ownership, which is renewable with each payment after the initial period, and which remains in effect 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 subdivision 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, and fees that a consumer must pay to acquire ownership of merchandise under a rent-to-own agreement. The term does not include charges or fees for optional services or charges or fees 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 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 a 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) Except for price cards on site, 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) Subject to availability, a merchant shall make merchandise that is advertised 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 rent-to-own agreement, a merchant shall keep the following information in an electronic or hard copy for a period of four years following the date the agreement ends:

(A) the 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.

(c) Cash price; reduction for used merchandise; maximum limits.

(1) Except as otherwise provided in subdivision (2) of this subsection, 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)(A) The cash price for an item of merchandise that has been previously used by a consumer shall be at least 10 percent less than the cash price calculated under subdivision (1) of this subsection.

(B) The merchant shall reduce the amount of the periodic payment in a rent-to-own agreement by the percentage of the cash price reduction for previously used merchandise established by the merchant.

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

(d) Disclosures in advertising; prohibited disclosures.

(1) An advertisement that refers to or states the dollar amount of any payment for merchandise shall state:

(A) the cash price of the item;

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

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

(D) the total cost for the item;

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

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

(2) A merchant shall not advertise that no credit check is required or performed, or that all consumers are approved for transactions, if the merchant subjects the consumer to a credit check.

(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; and
- (2) when the merchant acquired the item.

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

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

(A) a heading and clause 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. You have a Right to Review this Agreement or Compare Costs Away from the Store Before You Sign."; 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 statement that the merchandise is in good working order, is clean, and is free of any infestation.

(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 and fees required to become owner (itemize):

_____ \$ _____
_____ \$ _____

| | |
|---|----------------|
| | \$ |
| Total required taxes, fees and charges: | \$ |
| (4) Total cost: | (2) + (3) = \$ |
| (5) Rent-to-Own Charge: | (4) - (1) = \$ |
| (6) Tax | = \$ |
| (7) DO NOT SIGN BEFORE READING THIS AGREEMENT CAREFULLY | |

(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, during the term of the agreement, 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) that the maximum amount of the consumer's liability for damage or loss to the merchandise is limited to an amount equal to the cash price multiplied by the ratio of:

(A) the number of payments remaining to acquire ownership under the agreement; to

(B) the total number of payments necessary to acquire ownership under the agreement.

(8) a statement that if any part of a manufacturer's express warranty covers the merchandise at the time the consumer acquires ownership the merchant shall transfer the warranty to the consumer if allowed by the terms of the warranty;

(9) a description of any damage waiver or insurance purchased by the consumer, or a statement that the consumer is not required to purchase any damage waiver or insurance;

(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) Warranties.

(1) Upon transfer of ownership of merchandise to a consumer, a merchant shall transfer to the consumer any manufacturer's or other warranty on the merchandise.

(2) A merchant creates an implied warranty to a consumer, which may not be waived, in the following circumstances:

(A) an affirmation of fact or promise made by the merchant to the consumer which relates to merchandise creates an implied warranty that the merchandise will substantially conform to the affirmation or promise;

(B) a description of the merchandise by the merchant creates an implied warranty that the merchandise will substantially conform to the description; and

(C) a sample or model exhibited to the consumer by the merchant creates an implied warranty that the merchandise actually delivered to the consumer will substantially conform to the sample or model.

(i) Maintenance and repairs.

(1) During the term of a rent-to-own agreement, the merchant shall maintain the merchandise in good working condition.

(2) If a repair cannot be completed within three days, the merchant shall provide a replacement to the consumer to use until the original merchandise is repaired. Replacement merchandise shall be at least comparable in quality, age, condition, and warranty coverage to the replaced original merchandise.

(3) A merchant is not required to repair or replace merchandise that has been damaged as a result of negligence or an intentional act by the consumer.

(j) Prohibited provisions of rent-to-own agreement. A rent-to-own agreement shall not include any of the following provisions, which shall be void and unenforceable:

(1) a provision requiring a confession of judgment;

(2) a provision requiring a garnishment of wages;

(3) a provision requiring arbitration or mediation of a claim that otherwise meets the jurisdictional requirements of a small claims proceeding under 12 V.S.A. chapter 187;

(4) a provision 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;

(5) a provision 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

(6) a provision requiring the consumer to purchase a damage waiver or insurance from the merchant to cover the property.

(k) 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.

(l) Payment; notice of default. If a consumer fails to make a timely payment required in a rent-to-own agreement, the merchant shall deliver to the consumer a notice of default and right to reinstate the agreement at least 14 days before the merchant commences a civil action to collect amounts the consumer owes under the agreement.

(m) 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.

(n) 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.

(o) Reasonable charges and fees; late fees.

(1) A 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.

(2) A merchant may assess only one late fee for each payment regardless of how long the payment remains due.

(p) 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).

(q) 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.

* * * Financial Literacy * * *

Sec. 2. FINDINGS

The General Assembly finds:

(1) Many Vermonters are not learning the basics of personal finance in school or in life and their lack of knowledge and skill can have severe and negative consequences to themselves and Vermont's economy. Financial illiteracy affects everyone—men and women, young and old, and crosses all racial and socio-economic boundaries.

(2) Financial literacy is an essential 21st century life skill that young people need to succeed, yet recent studies and surveys show that our youth have not mastered these topics. For example, a 2013 report by Vermont Works for Women indicated that young women believe that a lack of personal finance training was a major deficiency in their education. Without improved financial literacy, the next generation of Vermont leaders, job creators, entrepreneurs, and taxpayers will lack skills they need to survive and to thrive in this increasingly complex financial world.

(3) The following are some facts about the lack of financial literacy in Vermont's k-12 schools:

(A) Vermont received a "D" grade in a national report card on State efforts to improve financial literacy in high schools, but more than one-half of the states received a grade of A, B, or C;

(B) in an Organisation for Economic Co-operation and Development (OECD) Programme for International Student Assessment (PISA) international financial literacy test of 15-year-olds, the United States ranked 9th out of 13 countries participating in the exam—statistically tied with the Russian Federation and behind China, Estonia, Czech Republic, Poland, and Latvia;

(C) only 10 percent of high schools in Vermont (7 out of 65) have a financial literacy graduation requirement;

(D) a 2011 survey shows that as many as 30 percent of Vermont high schools may not even offer a personal finance elective course for their students to take; and

(E) the same survey indicates that Vermont high school administrators estimate that more than two-thirds of the students graduate without achieving competence in financial literacy topics.

(4) Most students are not financially literate when they enter college and we know that many students leave college for “financial reasons.” Too few Vermont college students have received personal finance education in k–12 school or at home. In fact, a Schwab survey indicated that parents are nearly as uncomfortable talking to their children about money as they are discussing sex. Except in some targeted programs and occasional courses, most college students in Vermont are not offered much in the way of financial literacy education. Personal finance education often consists of brief mandatory entrance and exit counseling for students with federal loans, along with reminders to Vermont students to repay their loans. Today’s college graduates need to be financially sophisticated because they face greater challenges than previous generations experienced. As a result of the recent recession, many are worse off than their parents were at the same age, with more debt and stagnant or lower incomes. They have higher unemployment rates than older citizens, more live at home with their parents, while fewer own a home, have children or are married. A lack of financial skills is clearly a factor in the failure of many in this generation to launch, and is having a substantial impact on our overall economy.

(5) A more financially sophisticated collegiate student body can be expected to yield a corresponding increase in retention and persistence rates, fewer student loans, and lower student loan default rates and greater alumni giving.

(6) Several studies show that financially sophisticated college students have better outcomes. For example, three University of Arizona longitudinal studies that followed students through college and into the workforce clearly demonstrated that achieving financial self-sufficiency, a key developmental challenge of young adulthood, appears to be driven by financial behaviors practiced during emerging adulthood. The study indicated that college students who exhibited responsible early financial practices experienced smoother transitions to adulthood than students who had poor behaviors. The studies also found that those students who were most successful with this

transition to adulthood had more financial education through personal finance or economics classes.

(7) Some troubling facts about college students lack of financial literacy include:

(A) 63 percent of Vermont four-year college students that graduated in 2012 had student loan debt that averaged \$28,299.00;

(B) nationally, nearly 11 percent of all student loan borrowers were delinquent in their payments by more than 90 days as of June 2014; and

(C) only 27 percent of parents in Vermont have set aside funds for their child's college education.

(8) Many of Vermont's adults struggle financially. The recent recession demonstrated that our citizens have trouble making complex financial decisions that are critical to their well-being. Nearly one-half of Vermont adults have subprime credit ratings, and thus pay more interest on auto and home loans and credit card debt; nearly two-thirds have not planned for retirement; and less than one-half of Vermont adults participate in an employment-based retirement plan.

(9) Personal economic stress results in lost productivity, increased absenteeism, employee turnover, and increased medical, legal, and insurance costs. Employers in Vermont and our overall economy will benefit from a decrease in personal economic stress that can result from more adult financial education.

(10) Some troubling facts about Vermont adults' lack of financial literacy:

(A) in a 2014 survey, 41 percent of U.S. adults gave themselves a grade of C, D, or F on their personal finance knowledge;

(B) nationally, 34 percent of adults indicated that they have no retirement savings;

(C) as of the third quarter of 2014, among those Vermonters owing money in revolving debt, including credit cards, private label cards, and lines of credit, the average balance was \$9,822.00 per borrower;

(D) 62 percent of Vermont adults do not have a rainy-day fund, a liquid emergency fund that would cover three months of life's necessities;

(E) nearly 20 percent of adult Vermonters are unbanked or underbanked; and

(F) 22 percent of Vermont adults used one or more nonbank borrowing methods in the past five years, including an auto title loan, payday loan, advance on tax refund, pawn shop, and rent-to-own.

(11) Vermonters need the skills and tools to take control of their financial lives. Studies have shown that financial literacy is linked to positive outcomes like wealth accumulation, stock market participation, retirement planning, and avoidance of high cost alternative financial products.

(12) When they graduate, Vermont high school students should, at a minimum, understand how credit works, how to budget, and how to save and invest. College graduates should understand those concepts in addition to the connection between income and careers, and how student loans work. Vermont adults need to understand the critical importance of rainy-day and retirement funds, and the amounts they will need in those funds.

(13) All Vermonters should have access to content and training that will help them increase their personal finance knowledge. Vermont students and adults need a clear path to building their personal finance knowledge and skills. Vermont needs to increase its focus on helping Vermonters become wiser consumers, savers, and investors. Financial literacy education is a helping hand that gives individuals knowledge and skills that can lift them out of a financial problem, or prevent difficulties from occurring.

(14) A more financially sophisticated and capable citizenry will help improve Vermont's economy and overall prosperity.

(15) In 2014, a Vermont Financial Literacy Task Force convened by the Center for Financial Literacy at Champlain College, recommended as one of its 13 action items that a Vermont Financial Literacy Commission be created to help improve the financial literacy and capability of all Vermonters.

Sec. 3. 9 V.S.A. chapter 151 is added to read:

CHAPTER 151. VERMONT FINANCIAL LITERACY COMMISSION

§ 6001. DEFINITIONS

In this chapter:

(1) "Financial capability" means:

(A) financial literacy and access to appropriate financial products; and

(B)(i) the ability to act, including knowledge, skills, confidence, and motivation; and

(ii) the opportunity to act, through access to beneficial financial products and institutions.

(2) “Financial literacy” means the ability to use knowledge and skills to manage financial resources effectively for a lifetime of financial well-being.

§ 6002. VERMONT FINANCIAL LITERACY COMMISSION

(a) There is created a Vermont Financial Literacy Commission to measurably improve the financial literacy and financial capability of Vermont’s citizens.

(b) The Commission shall be composed of the following members:

(1) the Vermont State Treasurer or designee;

(2) the Secretary of Education or designee;

(3) one representative of the Executive Branch, appointed by the Governor, who is an employee of an agency or department that conducts financial literacy education outreach efforts in Vermont, including the Department of Children and Families, Agency of Commerce and Community Development, Department of Financial Regulation, Department of Labor, Department of Libraries, or the Commission on Women, but not including the Agency of Education;

(4) a k–12 public school financial literacy educator appointed by the Vermont-NEA;

(5) one representative of k–12 public school administration, currently serving as a school board member, superintendent, or principal, appointed by the Governor based on nominees submitted by the Vermont School Board Association, the Vermont Superintendents Association, and the Vermont Principals Association;

(6) three representatives focused on collegiate financial literacy issues:

(A) the President of the Vermont Student Assistance Corporation or designee;

(B) one representative appointed by the Governor from either Vermont State Colleges or the University of Vermont; and

(C) one representative appointed by the Governor from an independent college in Vermont;

(8) two representatives from nonprofit entities engaged in providing financial literacy education to Vermont adults appointed by the Governor, one of which entities shall be a nonprofit that provides financial literacy and related services to persons with low income;

(9) one representative from Vermont's banking industry appointed by the Vermont Bankers Association, and one representative from Vermont's credit union industry appointed by the Association of Vermont Credit Unions; and

(10) one member of the public, appointed by the Governor.

(c) The Treasurer or designee and another member of the Commission, appointed by the Governor, who is not an employee of the State of Vermont, shall serve as co-chairs of the Commission.

(d)(1) Each member shall serve for a three-year term, provided that the Treasurer shall have the authority to designate whether an initial term for each appointee shall be for a one, two, or three-year initial term in order to ensure that no more than one-third of the terms expire in any given year.

(2) A vacancy shall be filled by the appointing authority as provided in subsection (a) of this section for the remainder of the term.

(3) A member of the Commission who is not an employee of the State of Vermont and who is not otherwise compensated or reimbursed for his or her attendance at a meeting of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.

(e) The Commission may request from any branch, division, department, board, commission, or other agency of the State or any entity that receives State funds, such information as will enable the Commission to perform its duties as required in this chapter.

§ 6003. POWERS AND DUTIES

The Vermont Financial Literacy Commission established by section 6002 of this title shall have the following powers and duties necessary and appropriate to achieve the purposes of this chapter:

(1) collaborate with relevant State agencies and departments, private enterprise, and nonprofit organizations;

(2) incentivize Vermont's k-16 educational system, businesses, community organizations, and governmental agencies to implement financial literacy and capability programs;

(3) advise the administration, governmental agencies and departments, and the General Assembly on the current status of our citizens' financial literacy and capability;

(4) create and maintain a current inventory of all financial literacy and capability initiatives available in the State, and in particular identify trusted options that will benefit our citizens;

(5) identify ways to equip Vermonters with the training, information, skills, and tools they need to make sound financial decisions throughout their lives and ways to help individuals with low income get access to needed financial products and services;

(6) identify ways to help Vermonters with low income save and build assets;

(7) identify ways to help increase the percentage of Vermont employees saving for retirement;

(8) recommend actions that can be taken by the public and private sector to achieve the goal of increasing the financial literacy and capability of all Vermonters;

(9) promote and raise the awareness in our State about the importance of financial literacy and capability;

(10) identify key indicators to be tracked regarding financial literacy and capability in Vermont;

(11) analyze data to monitor the progress in achieving an increase in the financial literacy and capability of Vermont's citizens;

(12) pursue and accept funding for, and direct the administration of, the Financial Literacy Commission Fund created in section 6004 of this title;

(13) consider and implement research and policy initiatives that provide effective and meaningful results; and

(14) issue a report during the first month of each legislative biennium on the Commission's progress and recommendations for increasing the financial literacy and capability of Vermont's citizens, including an accounting of receipts, disbursements, and earnings of the Financial Literacy Commission Fund, and whether the Commission should be reconfigured, to:

(A) the Governor;

(B) the House Committees on Commerce and Economic Development, on Education, on Government Operations, and on Human Services; and

(C) the Senate Committees on Economic Development, Housing and General Affairs, on Education, on Government Operations, and on Health and Welfare.

§ 6004. FINANCIAL LITERACY COMMISSION FUND

(a) There is created within the Office of the State Treasurer the Financial Literacy Commission Fund, a special fund created pursuant to 32 V.S.A.

chapter 7, subchapter 5 that shall be administered by the Treasurer under the direction of the Financial Literacy Commission.

(b) The Fund shall consist of sums appropriated to the Fund and monies from any source accepted for the benefit of the Fund and interest earned from the investment of Fund balances. Any interest earned and any remaining balance at the end of the fiscal year shall be carried forward in the Fund and shall not revert to the General Fund.

(c) The purpose of the Fund shall be to enable the Commission to pursue and accept funding from diverse sources outside of State government in the form of gifts, grants, federal funding, or from any other sources public or private, consistent with this chapter, in order to support financial literacy projects.

(d) The Treasurer, under the supervision of the Commission, shall have the authority:

(1) to expend monies from the Fund for financial literacy projects in accordance with 32 V.S.A. § 462; and

(2) to invest monies in the Fund in accordance with 32 V.S.A. § 434.

Sec. 3A. REPEAL

9 V.S.A. chapter 151 (Vermont Financial Literacy Commission) shall be repealed on July 1, 2018.

* * * Fees for Automatic Dialing Service * * *

Sec. 4. 9 V.S.A. § 2466b is added to read:

§ 2466b. DISCLOSURE OF FEE FOR AUTOMATIC DIALING SERVICE

(a) In this section:

(1) “Automatic dialing service” means a service of a home or business security, monitoring, alarm, or similar system, by which the system automatically initiates a call or connection to an emergency service provider, either directly or through a third person, upon the occurrence of an action specified within the system to initiate a call or connection.

(2) “Emergency functions” include services provided by the department of public safety, firefighting services, police services, sheriff’s department services, medical and health services, rescue, engineering, emergency warning services, communications, evacuation of persons, emergency welfare services, protection of critical infrastructure, emergency transportation, temporary restoration of public utility services, other functions related to civilian

protection and all other activities necessary or incidental to the preparation for and carrying out of these functions.

(3) “Emergency service provider” means a person that performs emergency functions.

(b) Before executing a contract for the sale or lease of a security, monitoring, alarm, or similar system that includes an automatic dialing service, the seller or lessor of the system shall disclose in writing:

(1) any fee or charge the seller or lessor charges to the buyer or lessee for the service; and

(2) that the buyer or lessor may be subject to additional fees or charges imposed by another person for use of the service.

(c) A person who fails to provide the disclosure required by subsection (b) of this section commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

* * * Consumer Litigation Funding * * *

Sec. 5. 8 V.S.A. § 2246 is added to read:

§ 2246. CONSUMER LITIGATION FUNDING

(a) Findings. The General Assembly finds that the relatively new business of consumer litigation funding, as defined in subsection (b) of this section, raises concerns about whether and, if so, to what extent such transactions should be regulated by the Commissioner of Financial Regulation. Concerns include: finance charges and fees; terms and conditions of contracts; rescission rights; licensure or registration; disclosure requirements; enforcement and penalties; and any other standards and practices the Commissioner deems relevant.

(b) Definition. As used in this section, “consumer litigation funding” means a nonrecourse transaction in which a person provides personal expense funds to a consumer to cover personal expenses while the consumer is a party to a civil action or legal claim and, in return, the consumer assigns to such person a contingent right to receive an amount of the proceeds of a settlement or judgment obtained from the consumer’s action or claim. If no such proceeds are obtained, the consumer is not required to repay the person the funded amount, any fees or charges, or any other sums.

(c) Recommendation. On or before December 1, 2015, the Commissioner of Financial Regulation and the Attorney General shall submit a recommendation or draft legislation to the General Assembly reflecting an appropriate balance between:

(1) providing a consumer access to funds for personal expenses while the consumer is a party to a civil action or legal claim; and

(2) protecting the consumer from any predatory practices by a person who provides consumer litigation funding.

(d) Moratorium. A person shall not offer or enter into a consumer litigation funding contract on or after July 1, 2015 unless authorized to do so by further enactment of the General Assembly.

(e) Enforcement. A person who violates subsection (d) of this section shall be subject to the powers and penalties of the Commissioner of Financial Regulation under sections 13 (subpoenas and examinations) and 2215 (licensed lender penalties) of this title.

* * * Internet Dating Services * * *

Sec. 6. 9 V.S.A. chapter 63, subchapter 8 is added to read:

Subchapter 8. Internet Dating Services

§ 2482a. DEFINITIONS

In this chapter:

(1) “Account change” means a change to the password, e-mail address, age, identified gender, gender of members seeking to meet, primary photo unless it has previously been approved by the Internet dating service, or other conspicuous change to a member’s account or profile with or on an Internet dating service.

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

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

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

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

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

§ 2482b. REQUIREMENTS FOR INTERNET DATING SERVICES

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

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

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

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

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

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

(1) clear and conspicuous;

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

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

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

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

(2) a brief description of the change; and

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

§ 2482c. IMMUNITY

(a) An Internet dating service shall not be liable to any person, other than the State of Vermont, or any agency, department, or subdivision of the State,

for disclosing to any member that it has banned a member, the user name or identifying information of the banned member, or the reasons for the Internet dating service's decision to ban such member.

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

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

§ 2482d. VIOLATIONS

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

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

* * * Discount Membership Programs * * *

Sec. 7. 9 V.S.A. § 2470hh is amended to read:

§ 2470hh. VIOLATIONS

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

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

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

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

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

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

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

* * * Security Breach Notice Act * * *

Sec. 8. 9 V.S.A. § 2435(b)(6) is amended to read:

~~(6) For purposes of this subsection, notice to consumers may be provided~~ A data collector may provide notice of a security breach to a consumer by one or more of the following methods:

(A) Direct notice ~~to consumers~~, which may be by one of the following methods:

(i) ~~Written~~ written notice mailed to the consumer's residence;

(ii) ~~Electronic~~ electronic notice, for those consumers for whom the data collector has a valid e-mail address if:

~~(I) the data collector does not have contact information set forth in subdivisions (i) and (iii) of this subdivision (6)(A);~~ the data collector's primary method of communication with the consumer is by electronic means, the electronic notice does not request or contain a hypertext link to a request that the consumer provide personal information, and the electronic notice conspicuously warns consumers not to provide personal information in response to electronic communications regarding security breaches; or

(II) the notice ~~provided~~ is consistent with the provisions regarding electronic records and signatures for notices ~~as set forth~~ in 15 U.S.C. § 7001; or

(iii) ~~Telephonic~~ telephonic notice, provided that telephonic contact is made directly with each affected consumer; and ~~the telephonic contact is not~~ through a prerecorded message.

(B)(i) Substitute notice, if:

~~(I) the data collector demonstrates that the cost of providing written or telephonic notice, pursuant to subdivision (A)(i) or (iii) of this subdivision (6), to affected consumers would exceed \$5,000.00; or that~~

~~(II) the affected class of affected consumers to be provided written or telephonic notice, pursuant to subdivision (A)(i) or (iii) of this subdivision (6), exceeds 5,000; or~~

(III) the data collector does not have sufficient contact information.

~~(ii) Substitute notice shall consist of all of the following~~ A data collector shall provide substitute notice by:

~~(i)(I) conspicuous~~ conspicuously posting of the notice on the data collector's website page if the data collector maintains one; and

~~(ii)(II) notification to~~ notifying major statewide and regional media.

* * * Limitation of Liability for Advertisers * * *

Sec. 9. 9 V.S.A. § 2452 is amended to read:

§ 2452. LIMITATION

(a) Nothing in this chapter shall apply to the owner or publisher of a newspaper, magazine, publication, or printed matter, or to a provider of an interactive computer service, wherein an advertisement or offer to sell appears, or to the owner or operator of a radio or television station which disseminates an advertisement or offer to sell, when the owner, publisher or operator, or provider has no knowledge of the fraudulent intent, design, or purpose of the advertiser or operator offeror, and is not responsible, in whole or in part, for the creation or development of the advertisement or offer to sell.

(b) In this section, "interactive computer service" has the same meaning as in 47 U.S.C. § 230(f)(2).

* * * Effective Dates * * *

Sec. 10. EFFECTIVE DATES

(a) This section, Secs. 2-5, and 7-9 shall take effect on July 1, 2015.

(b) Sec. 1 shall take effect on September 1, 2015.

(c) In Sec. 6:

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

(2) 9 V.S.A. § 2482b shall take effect on January 1, 2016.

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

An act relating to consumer protection laws.

NEW BUSINESS

Third Reading

H. 117.

An act relating to creating a Division for Telecommunications and Connectivity within the Department of Public Service.

Amendment to Senate proposal of amendment to H. 117 to be offered by Senator MacDonald before Third Reading

Senator MacDonald moves that the Senate proposal of amendment be amended as follows

First: In Sec. 20, 30 V.S.A. § 3051(d)(3) (concerning the definition of “district member”), after the words “to form” by adding the words or join

Second: In Sec. 20, 30 V.S.A. § 3054(a) (concerning the powers of a communications union district), by striking out subdivision (8) in its entirety and inserting in lieu thereof a new subdivision (8) to read as follows:

(8) provide communications services for its district members, including the residential and business locations located therein; and also provide communications services for such other residential and business locations as its facilities and obligations may allow, provided such other locations are in a municipality that is contiguous with the town limits of a district member, and further provided such other locations do not have access to Internet service capable of speeds that meet or exceed the current speed requirements for funding eligibility under the Connectivity Initiative, 30 V.S.A. § 7515b.

Third: In Sec. 20, 30 V.S.A. § 3056(c) (concerning the bonding authority of a communications union district), by striking out the words “general obligations of the district”

H. 269.

An act relating to the transportation and disposal of excavated development soils legally categorized as solid waste.

H. 484.

An act relating to miscellaneous agricultural subjects.

Amendment to Senate proposal of amendment to H. 484 to be offered by Senator Rodgers before Third Reading

Senator Rodgers moves that the Senate proposal of amendment be amended as follows:

By adding a new section to be numbered Sec. 26a to read as follows:

Sec. 26a. 32 V.S.A. § 9741(25) is amended to read:

(25)(A) Sales of agricultural machinery and equipment for use and consumption directly and exclusively, except for isolated or occasional uses, in:

(i) the production for sale of tangible personal property on farms (including stock, dairy, poultry, fruit, and truck farms), orchards, nurseries, or in greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities for sale;

(ii) the transportation of farm equipment and farm products; or

(iii) the maintenance of farm roads and farm infrastructure.

(B) It shall be rebuttably presumed that uses are not isolated or occasional if they total more than ~~four~~ 25 percent of the time the machinery or equipment is operated.

Second Reading

Favorable with Proposal of Amendment

H. 40.

An act relating to establishing a renewable energy standard and energy transformation program.

Reported favorably with recommendation of proposal of amendment by Senator Bray for the Committee on Natural Resources & Energy.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 30 V.S.A. § 8004(a), by striking out the last sentence in its entirety and inserting in lieu thereof the following: A retail electricity provider may meet ~~this requirement~~ the required amounts of renewable energy through eligible ~~new~~ tradeable renewable energy credits that it owns and retires, ~~new~~ eligible renewable energy resources with ~~renewable energy credits~~ environmental attributes still attached, or a combination of those credits and resources.

Second: In Sec. 2, 30 V.S.A. § 8004, by striking out subsection (b) in its entirety and inserting in lieu thereof to read as follows:

~~(d)~~(b) Rules. The Board shall ~~provide, by order or rule,~~ adopt the ~~regulations and procedures~~ rules that are necessary to allow the Board and the Department to implement and supervise further the implementation and maintenance of ~~a renewable portfolio standard~~ the RESET program.

Third: In Sec. 3, 30 V.S.A. § 8005(a)(3), in subdivision (D), in the first sentence, by striking out “or procedures” and in subdivision (F), by striking out each occurrence of “or procedures”

Fourth: In Sec. 3, 30 V.S.A. by inserting a new § 8005(a)(3)(E)(iii) to read as follows:

(iii) To meet the requirements of this subdivision (3), one or more retail electricity providers may jointly propose with an energy efficiency entity appointed under subdivision 209(d)(2) of this title an energy transformation project or group of such projects. The proposal shall include standards of measuring performance and methods to allocate savings and reductions in fossil fuel consumption and greenhouse gas emissions among each participating provider and efficiency entity.

Fifth: In Sec. 3, 30 V.S.A. by striking out § 8005 (a)(3)(F)(viii) in its entirety and inserting in lieu thereof to read as follows:

(viii) To ensure that, if an energy transformation project will increase the use of electric energy, the project incorporates best practices for demand management, uses technologies appropriate for Vermont, and encourages the installation of the technologies in buildings that meet minimum energy performance standards.

Sixth: In Sec. 3, 30 V.S.A. § 8005, (a)(3)(G)(i), by striking out the word “strict”

Seventh: In Sec. 3, 30 V.S.A. § 8005(d)(1), by striking out the following: “of Portland, Maine”

Eighth: In Sec. 4, 30 V.S.A. § 8005a(k)(3), in the last sentence, after “purchasing power” by striking out the word “from” and inserting in lieu thereof the words generated by

Ninth: In Sec. 6, 30 V.S.A. § 8005b, by striking out subsection (b) in its entirety and inserting in lieu thereof to read as follows:

(b) The annual report under this section shall include at least each of the following:

(1) An assessment of the costs and benefits of the RESET Program based on the most current available data, including rate and economic impacts, customer savings, technology deployment, greenhouse gas emission reductions actually achieved, fuel price stability, and effect on transmission and distribution upgrade costs, and any recommended changes based on this assessment.

(2) Projections, looking at least 10 years ahead, of the impacts of the RESET Program. The Department shall employ an economic model to make these projections and shall consider at least three scenarios based on high, mid-range, and low energy price forecasts. The Department shall project, for the State, the RESET Program's impact in each of the following areas: electric utility rates; total energy consumption; electric energy consumption; fossil fuel consumption; and greenhouse gas emissions. The report shall compare the amount or level in each of these areas with and without the Program.

(3) An assessment of whether the requirements of the RESET Program have been met to date, and any recommended changes needed to achieve those requirements.

Tenth: In Sec. 6, 30 V.S.A. § 8005b, in subsection (c), by striking out subdivision (8) and by renumbering the remaining subdivision to be numerically correct.

Eleventh: By striking out Sec. 8 (Public Service Board rulemaking) and inserting in lieu thereof to read as follows:

Sec. 8. PUBLIC SERVICE BOARD IMPLEMENTATION

(a) Commencement. On or before August 31, 2015, the Public Service Board (the Board) shall commence a proceeding to implement Secs. 2 (sales of electric energy; RESET Program), 3 (RESET Program categories), and 7 (tradeable renewable energy credits) of this act.

(b) Notice; comment; workshop. The proceeding shall include one or more workshops to solicit the input of potentially affected parties and the public. The Board shall provide notice of the workshops on its website and directly to the Department, Vermont's retail electricity providers, Renewable Energy Vermont, business organizations such as Associated Industries of Vermont, environmental and consumer advocacy organizations such as the Vermont Natural Resources Council and the Vermont Public Interest Research Group, and to any other person that requests direct notice or to whom the Board may consider direct notice appropriate. The Board also shall provide an opportunity for submission of written comments, which the notice shall include.

(c) Procedures; order. On or before July 1, 2016, the Board shall by order adopt initial procedures to implement Secs. 2, 3, and 7 of this act to take effect on January 1, 2017.

(d) On or before July 1, 2017, the Board shall commence rulemaking to implement Secs. 2, 3, and 7 of this act. The Board shall finally adopt these rules within eight months of commencing rulemaking, unless this period is

extended by the Legislative Committee on Administrative Rules under 3 V.S.A. § 843.

(e) Assistance. The Board and the Department of Public Service may retain experts and other personnel to assist them with the proceedings and rulemaking under this section and allocate the costs of these personnel to the electric distribution utilities in accordance with the process under 30 V.S.A. § 21.

Twelfth: In Sec. 12, 30 V.S.A. § 8010(c)(2)(F), by striking out the third sentence and inserting in lieu thereof to read as follows:

For example, a monthly credit amount may be higher if taken over 10 years and lower if taken over 20 years.

Thirteenth: By striking out Sec. 14a in its entirety and inserting in lieu thereof to read as follows:

[Deleted.]

Fourteenth: By striking out Sec. 14b in its entirety and inserting in lieu thereof to read as follows:

Sec. 14b. JOINT ENERGY COMMITTEE; RECOMMENDATION

(a) On or before February 15, 2016, the Joint Energy Committee under 2 V.S.A. chapter 17 shall submit a recommendation to the House Committee on Commerce and Economic Development, Senate Committee on Finance, House Committee on Ways and Means, and House and Senate Committees on Natural Resources and Energy on:

(1) what revisions, if any, the Committee recommends that the General Assembly enact with respect to the statutes applicable to energy efficiency entities appointed and charges imposed under 30 V.S.A. § 209(d);

(2) what legislation, if any, the Committee recommends that the General Assembly enact to clarify or alter the relationship of energy efficiency entities and charges under 30 V.S.A. § 209(d) with the energy transformation category adopted under Sec. 3 of this act, 30 V.S.A. § 8005(a); and

(3) what legislation, if any, the Committee recommends that the General Assembly enact regarding the adoption by municipalities of setback and screening requirements for solar electric generation.

(b) Prior to submitting its recommendation under this section, the Joint Energy Committee shall offer an opportunity for comment by affected State agencies; utilities; appointed energy efficiency entities; advocates for business, consumer, and environmental interests; and members of the public.

(c) For the purpose of this section, the Joint Energy Committee:

(1) may meet no more than four times during adjournment without prior approval of the Speaker of the House and the President Pro Tempore of the Senate; and

(2) shall have the administrative, technical, and professional assistance of the Office of Legislative Council and the Joint Fiscal Office.

(d) A bill or amendment during the 2016 session to adopt legislation regarding the issues to be addressed by the Joint Energy Committee under this section this act shall be in order.

Fifteenth: In Sec. 19, 30 V.S.A. § 248(b), by striking out subdivision (9) in its entirety and inserting in lieu thereof to read as follows:

(9) with respect to a waste to energy facility;

(A) is included in a solid waste management plan adopted pursuant to 24 V.S.A. § 2202a, which is consistent with the State Solid Waste Management Plan; and

(B) is included in a solid waste management plan adopted pursuant to 24 V.S.A. § 2202a for the municipality and solid waste district from which 1,000 tons or more per year of the waste is to originate, if that municipality or district owns an operating facility that already beneficially uses a portion of the waste;

Sixteenth: In Sec. 21, 30 V.S.A. § 8001(b), by striking out “and procedures” and inserting in lieu thereof ~~and procedures~~.

Seventeenth: After Sec. 26, by inserting new sections to be numbered Secs. 26a and 26b to read as follows:

* * * Solar Plants; Municipal Setback and Screening Requirements * * *

Sec. 26a. 24 V.S.A. § 4414(15) is added to read:

(15) Solar plants; setbacks; screening. Notwithstanding any contrary provision of section 4413 of this title or 30 V.S.A. chapter 5 or 89, a municipality may adopt bylaws that require a plant that generates electricity from solar energy to comply with setback and screening requirements. These requirements shall not prohibit or have the effect of prohibiting the installation of such a plant and shall not have the effect of interfering with its intended functional use. In this section, “plant” shall have the same meaning as in 30 V.S.A. § 8002 and “screening” includes landscaping, vegetation, fencing, and topographic features.

Sec. 26b. REPORT; TOWN ADOPTION OF SOLAR SETBACKS,
SCREENING

(a) On or before January 15, 2018, the Commissioner of Housing and Community Development (the Commissioner) shall submit a report to the House and Senate Committees on Natural Resources and Energy that:

(1) identifies the municipalities that have adopted setback or screening requirements, or both, pursuant to Sec. 26a of this act, 24 V.S.A § 4414(15);

(2) summarizes these adopted setback and screening requirements; and

(3) provides the number of applications made under 24 V.S.A. § 4414(15) and itemizes their disposition and status.

(b) Each municipality adopting a bylaw under 24 V.S.A. § 4414(15) shall provide the Commissioner, on request, with information needed to complete the report required by this section.

Eighteenth: By striking out Sec. 28 (effective dates), and inserting in lieu thereof to read as follows:

Sec. 28. EFFECTIVE DATES

(a) This section and Secs. 8 (Public Service Board rulemaking), 10 (Forests, Parks and Recreation rulemaking), 14b (joint energy committee; recommendation), 18 (net metering pilot project), and 27 (severability) shall take effect on passage. Notwithstanding 1 V.S.A. § 214, Sec. 18 shall apply to facilities for which an application for a certificate of public good is pending as of its effective date.

(b) Secs. 1 through 7, 9, 11, 13, 14, 15 through 17, 19, 20, and 21 through 26 shall take effect on July 1, 2015. Sec. 11 (net metering systems; environmental attributes) shall not apply to complete applications filed prior to its effective date.

(c) Secs. 26a (solar setbacks and screening) and 26b (report) shall take effect on July 1, 2016.

(d) Sec. 12 (net metering systems; environmental attributes) shall amend 30 V.S.A. § 8010 as added effective January 1, 2017 by 2014 Acts and Resolves No. 99, Sec. 4. Sec. 12 shall take effect on January 2, 2017, except that, notwithstanding 1 V.S.A. § 214, the section shall apply to the Public Service Board process under 2014 Acts and Resolves No. 99, Sec. 5. Sec. 12 shall not affect a net metering system for which a complete application was filed before January 1, 2017.

(Committee vote: 4-1-0)

(For House amendments, see House Journal for February 27, 2015, pages 267-301 and March 10, 2015 page 336)

Reported favorably with recommendation of proposal of amendment by Senator MacDonald for the Committee on Finance.

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Natural Resources & Energy with the following amendments thereto:

First: In the ninth instance of amendment, in Sec. 6, 30 V.S.A. § 8005b(b), by striking out each occurrence of “RESET Program” and inserting in lieu thereof RES and in subdivision (b)(2), by striking out “RESET Program’s impact” and inserting in lieu thereof impact of the RES

Second: In the eleventh instance of amendment, in Sec. 8 (Public Service Board implementation), by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Order. On or before July 1, 2016, the Board shall issue an order to take effect on January 1, 2017 that initially implements Secs. 2, 3, and 7 of this act.

Third: In Sec. 1, by striking out the reader assistance heading and inserting in lieu thereof a new reader assistance heading to read as follows:

* * * Renewable Energy Standard * * *

Fourth: In Sec. 1, 30 V.S.A. § 8002, by striking out subdivision (26) and inserting in lieu thereof a new subdivision (26) to read as follows:

(26) “RES” means the Renewable Energy Standard established under sections 8004 and 8005 of this title.

Fifth: In Sec. 2, 30 V.S.A. § 8004, in the section header, by striking out “AND ENERGY TRANSFORMATION (RESET) PROGRAM” and inserting in lieu thereof (RES) and, in the section text, by striking out each occurrence of “RESET Program” and inserting in lieu thereof RES

Sixth: In Secs. 3 (30 V.S.A. § 8005), 6 (30 V.S.A. § 8005b), 7 (30 V.S.A. § 8006), 8 (Public Service Board), and 9 (10 V.S.A. § 2751), by striking out each occurrence of “RESET Program” and inserting in lieu thereof RES

Seventh: In Sec. 3, 30 V.S.A. § 8005, in subsection (b) (reduced amounts; providers; 100 percent renewable), in subdivision (1), by striking out subdivision (B) and inserting in lieu thereof a new subdivision (B) to read as follows:

(B) annually each July 1 commencing in 2018, owns and has retired tradeable renewable energy credits monitored and traded on the New England Generation Information System or otherwise approved by the Board equivalent to 100 percent of the provider’s total retail sales of electricity for the previous calendar year.

Eighth: After Sec. 15, by inserting a new Sec. 15a to read as follows:

Sec. 15a. 30 V.S.A. § 209(j)(5) is added to read:

(5) This subdivision applies to a transferee of all or substantially all of the assets at the served property of an entity approved to participate in the self-managed energy efficiency program. The Board shall allow the transferee to continue as a participant in the self-managed energy efficiency program class in the same manner and under the same terms and conditions that the transferor participant was authorized to participate, provided:

(A) the transferor participant met the requirements of subdivision (4)(A) of this subsection (j) and the transferee otherwise meets the requirements of this subsection; and

(B) the transferee assumes the obligation to fulfill any outstanding commitment of the transferor participant under subdivision (4)(D) of this subsection.

Ninth: After Sec. 21 by adding two new sections to be numbered Secs. 21a and 21b to read as follows:

Sec. 21a. HEAT PUMPS; REPORT

On or before December 15, 2015, the Commissioner of Public Service shall submit a report on heat pumps to the House and Senate Committees on Natural Resources and Energy, the House Committee on Commerce and Economic Development, and the Senate Committee on Finance. The Commissioner shall recommend whether the State of Vermont should establish minimum standards for heat pumps sold in the State, including standards related to heat pump efficiency and cold climate use. The report shall include the standards, if any, recommended by the Commissioner. The report shall describe the research and analysis undertaken to prepare the report and the results of the research and analysis, and state the rationale for each recommendation.

Sec. 21b. REPORT; RATEPAYER ADVOCATE OFFICES

(a) Report. The Commissioner of Public Service shall evaluate the pros and cons of various forms of ratepayer advocate offices and report on or before December 15, 2015, to the House Committee on Commerce and Economic Development and the Senate Committee on Finance with any recommendations on how to improve the structure and effectiveness of the Division for Public Advocacy within the Department of Public Service.

(b) Process. In order to receive information relevant to this evaluation, and prior to submit the report, the Commissioner shall:

(1) solicit input from consumer advocates, utilities, and utility regulation experts; and

(2) conduct at least two public hearings dedicated to the subject of this section.

(c) Scope. The Commissioner shall study various forms of ratepayer advocacy offices and assess them in terms of:

(1) their structure and reporting requirements;

(2) whether and how their independence is ensured through structure and budget;

(3) their effectiveness in representing residential ratepayers in regulatory proceedings; and

(4) how ratepayer benefits, specifically rate savings, vary with differing ratepayer advocate structures.

Tenth: In Sec. 25 (conforming amendments; renewable energy definitions), in subsection (b), by striking out subdivision (29), and inserting in lieu thereof a new subdivision (29) to read:

(29) “RES” means the Renewable Energy Standard established under sections 8004 and 8005 of this title.

Eleventh: After Sec. 25, by inserting a new Sec. 25a to read as follows:

Sec. 25a. REVISION AUTHORITY

In preparing this act for publication in the Acts and Resolves and for codification, the Office of Legislative Council is authorized to make appropriate revisions to reflect the amendment of the bill as introduced to change the name of the Renewable Energy Standard and Energy Transformation Program to the Renewable Energy Standard and the associated acronym from RESET to RES.

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

An act relating to establishing a renewable energy standard

(Committee vote: 7-0-0)

Reported without recommendation by Senator Snelling for the Committee on Appropriations.

(Committee voted: 4-0-3)

**Substitute proposal of amendment of the Committee on Natural
Resources & Energy to H. 40**

Senator Bray, on behalf of the Committee on Natural Resources and Energy, moves to substitute the following for the proposal of amendment of the Committee on Natural Resources and Energy:

First: In Sec. 2, 30 V.S.A. § 8004, in subsection (a), after the second occurrence of “renewable energy credits” by inserting that it owns and retires before the comma.

Second: In Sec. 2, 30 V.S.A. § 8004, by striking out subsection (b) (rules; procedures) and inserting in lieu thereof a new subsection (b) (rules) to read:

~~(d)(b) Rules.~~ The Board shall ~~provide, by order or rule,~~ adopt the regulations and procedures rules that are necessary to allow the Board and the Department to implement and supervise further the implementation and maintenance of ~~a renewable portfolio standard~~ the RESET program.

Third: In Sec. 3, 30 V.S.A. § 8005, in subdivision (a)(3), in subdivision (D), in the first sentence, by striking out “or procedures”, and in subdivision (F), by striking out each occurrence of “or procedures”.

Fourth: In Sec. 3, 30 V.S.A. § 8005, in subdivision (a)(3)(E), after subdivision (ii), by inserting a subdivision (iii) to read:

(iii) To meet the requirements of this subdivision (3), one or more retail electricity providers may jointly propose with an energy efficiency entity appointed under subdivision 209(d)(2) of this title an energy transformation project or group of such projects. The proposal shall include standards of measuring performance and methods to allocate savings and reductions in fossil fuel consumption and greenhouse gas emissions among each participating provider and efficiency entity.

Fifth: In Sec. 3, 30 V.S.A. § 8005, in subdivision (a)(3)(F), by striking out subdivision (viii) and inserting in lieu thereof a new subdivision (viii) to read:

(viii) To ensure that, if an energy transformation project will increase the use of electric energy, the project incorporates best practices for demand management, uses technologies appropriate for Vermont, and encourages the installation of the technologies in buildings that meet minimum energy performance standards.

Sixth: In Sec. 3, 30 V.S.A. § 8005, in subdivision (a)(3)(G)(i), by striking out “strict”.

Seventh: In Sec. 3, 30 V.S.A. § 8005, in subdivision (d)(1), by striking out “of Portland, Maine”.

Eighth: In Sec. 4, 30 V.S.A. § 8005a, in subdivision (k)(3), in the last sentence, after “purchasing power” by striking out “from” and inserting in lieu thereof generated by.

Ninth: In Sec. 6, 30 V.S.A. § 8005b, by striking out subsection (b) and inserting in lieu thereof a new subsection (b) to read as follows:

(b) The annual report under this section shall include at least each of the following:

(1) An assessment of the costs and benefits of the RESET Program based on the most current available data, including rate and economic impacts, customer savings, technology deployment, greenhouse gas emission reductions actually achieved, fuel price stability, and effect on transmission and distribution upgrade costs, and any recommended changes based on this assessment.

(2) Projections, looking at least 10 years ahead, of the impacts of the RESET Program. The Department shall employ an economic model to make these projections and shall consider at least three scenarios based on high, mid-range, and low energy price forecasts. The Department shall project, for the State, the RESET Program’s impact in each of the following areas: electric utility rates; total energy consumption; electric energy consumption; fossil fuel consumption; and greenhouse gas emissions. The report shall compare the amount or level in each of these areas with and without the Program.

(3) An assessment of whether the requirements of the RESET Program have been met to date, and any recommended changes needed to achieve those requirements.

Tenth: In Sec. 6, 30 V.S.A. § 8005b, in subsection (c), by striking out subdivision (8) and by renumbering the remaining subdivision to be numerically correct.

Eleventh: By striking out Sec. 8 (Public Service Board rulemaking) and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. PUBLIC SERVICE BOARD IMPLEMENTATION

(a) Commencement. On or before August 31, 2015, the Public Service Board (the Board) shall commence a proceeding to implement Secs. 2 (sales of electric energy; RESET Program), 3 (RESET Program categories), and 7 (tradeable renewable energy credits) of this act.

(b) Notice; comment; workshop. The proceeding shall include one or more workshops to solicit the input of potentially affected parties and the public. The Board shall provide notice of the workshops on its website and directly to the Department, Vermont’s retail electricity providers, Renewable Energy

Vermont, business organizations such as Associated Industries of Vermont, environmental and consumer advocacy organizations such as the Vermont Natural Resources Council and the Vermont Public Interest Research Group, and to any other person that requests direct notice or to whom the Board may consider direct notice appropriate. The Board also shall provide an opportunity for submission of written comments, which the notice shall include.

(c) Procedures; order. On or before July 1, 2016, the Board shall by order adopt initial procedures to implement Secs. 2, 3, and 7 of this act to take effect on January 1, 2017.

(d) On or before July 1, 2017, the Board shall commence rulemaking to implement Secs. 2, 3, and 7 of this act. The Board shall finally adopt these rules within eight months of commencing rulemaking, unless this period is extended by the Legislative Committee on Administrative Rules under 3 V.S.A. § 843.

(e) Assistance. The Board and the Department of Public Service may retain experts and other personnel to assist them with the proceedings and rulemaking under this section and allocate the costs of these personnel to the electric distribution utilities in accordance with the process under 30 V.S.A. § 21.

Twelfth: In Sec. 12, 30 V.S.A. § 8010(c), in subdivision (2)(F), by striking out the third sentence and inserting in lieu thereof:

For example, a monthly credit amount may be higher if taken over 10 years and lower if taken over 20 years.

Thirteenth: By striking out Sec. 14a in its entirety and inserting in lieu thereof the following:

Sec. 14a. [Deleted.]

Fourteenth: By striking out Sec. 14b in its entirety and inserting in lieu thereof a new Sec. 14b to read as follows:

Sec. 14b. JOINT ENERGY COMMITTEE; RECOMMENDATION

(a) On or before February 15, 2016, the Joint Energy Committee under 2 V.S.A. chapter 17 shall submit a recommendation to the House Committee on Commerce and Economic Development, Senate Committee on Finance, House Committee on Ways and Means, and House and Senate Committees on Natural Resources and Energy on:

(1) what revisions, if any, the Committee recommends that the General Assembly enact with respect to the statutes applicable to energy efficiency entities appointed and charges imposed under 30 V.S.A. § 209(d); and

(2) what legislation, if any, the Committee recommends that the General Assembly enact to clarify or alter the relationship of energy efficiency entities and charges under 30 V.S.A. § 209(d) with the energy transformation category adopted under Sec. 3 of this act, 30 V.S.A. § 8005(a).

(b) Prior to submitting its recommendation under this section, the Joint Energy Committee shall offer an opportunity for comment by affected State agencies; utilities; appointed energy efficiency entities; advocates for business, consumer, and environmental interests; and members of the public.

(c) For the purpose of this section, the Joint Energy Committee:

(1) may meet no more than four times during adjournment without prior approval of the Speaker of the House and the President Pro Tempore of the Senate; and

(2) shall have the administrative, technical, and professional assistance of the Office of Legislative Council and the Joint Fiscal Office.

(d) A bill or amendment during the 2016 session to adopt legislation regarding the issues to be addressed by the Joint Energy Committee under this section this act shall be in order.

Fifteenth: After Sec. 15, by inserting a new Sec. 15a to read as follows:

Sec. 15a. 30 V.S.A. § 209(j)(5) is added to read:

(5) This subdivision applies to a transferee of all or substantially all of the assets at the served property of an entity approved to participate in the self-managed energy efficiency program. The Board shall allow the transferee to continue as a participant in the self-managed energy efficiency program class in the same manner and under the same terms and conditions that the transferor participant was authorized to participate, provided:

(A) the transferor participant met the requirements of subdivision (4)(A) of this subsection (j) and the transferee otherwise meets the requirements of this subsection; and

(B) the transferee assumes the obligation to fulfill any outstanding commitment of the transferor participant under subdivision (4)(D) of this subsection.

Sixteenth: In Sec. 19, 30 V.S.A. § 248(b), by striking out subdivision (9) and inserting a new subdivision (9) to read as follows:

(9) with respect to a waste to energy facility;

(A) is included in a solid waste management plan adopted pursuant to 24 V.S.A. § 2202a, which is consistent with the State Solid Waste Management Plan; and

(B) is included in a solid waste management plan adopted pursuant to 24 V.S.A. § 2202a for the municipality and solid waste district from which 1,000 tons or more per year of the waste is to originate, if that municipality or district owns an operating facility that already beneficially uses a portion of the waste;

Seventeenth: In Sec. 21, 30 V.S.A. § 8001(b), by striking out “and procedures” and inserting in lieu thereof ~~and procedures~~.

Eighteenth: After Sec. 26, by inserting new Secs. 26a through 26f to read as follows:

* * * Solar Plants; Setback and Screening Requirements * * *

Sec. 26a. 30 V.S.A. § 248(a)(4)(F) is added to read:

(F) The legislative body and the planning commission for the municipality in which a facility is located shall have the right to appear as a party in any proceedings held under this subsection.

Sec. 26b. 30 V.S.A. § 248(s) is added read:

(s) This subsection sets minimum setback requirements that shall apply to in-state ground-mounted solar electric generation facilities approved under this section.

(1) The minimum setbacks shall be:

(A) from a State or municipal highway, measured from the edge of the traveled way:

(i) 100 feet for a facility with a plant capacity exceeding 150 kW; and

(ii) 40 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.

(B) From each property boundary that is not a State or municipal highway:

(i) 50 feet for a facility with a plant capacity exceeding 150 kW; and

(ii) 25 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.

(2) This subsection does not require a setback for a facility with a plant capacity equal to or less than 15 kW.

(3) On review of an application, the Board may:

(A) require a larger setback than this subsection requires; or

(B) approve an agreement to a smaller setback among the applicant, the municipal legislative body, and each owner of property adjoining the setback area.

(4) In this subsection:

(A) “kW” and “plant capacity” shall have the same meaning as in section 8002 of this title.

(B) “Setback” means the shortest distance between the nearest portion of a solar panel or support structure for a solar panel, at its point of attachment to the ground, and a property boundary or the edge of a highway’s traveled way.

Sec. 26c. 30 V.S.A. § 248(b) is amended to read:

(b) Before the Public Service Board issues a certificate of public good as required under subsection (a) of this section, it shall find that the purchase, investment or construction:

(1) with respect to an in-state facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. However,;

(A) with respect to a natural gas transmission line subject to Board review, the line shall be in conformance with any applicable provisions concerning such lines contained in the duly adopted regional plan; and, in addition, upon application of any party, the Board shall condition any certificate of public good for a natural gas transmission line issued under this section so as to prohibit service connections that would not be in conformance with the adopted municipal plan in any municipality in which the line is located; and

(B) with respect to a ground-mounted solar electric generation facility, shall comply with the screening requirements of a municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance adopted under 24 V.S.A. § 2291(28), and the recommendation of a municipality applying such a bylaw or ordinance, unless the Board finds that requiring such

compliance would prohibit or have the effect of prohibiting the installation of such a facility or have the effect of interfering with the facility's intended functional use.

* * *

Sec. 26d. 24 V.S.A. § 4414(15) is added to read:

(15) Solar plants; screening. Notwithstanding any contrary provision of sections 2291a and 4413 of this title or 30 V.S.A. chapter 5 or 89, a municipality may adopt a freestanding bylaw to establish screening requirements that shall apply to a ground-mounted plant that generates electricity from solar energy. In a proceeding under 30 V.S.A. § 248, the municipality may make recommendations to the Public Service Board applying the bylaw to such a plant. The bylaw may designate the municipal body to make this recommendation. Screening requirements and recommendations adopted under this subdivision shall be a condition of a certificate of public good issued for the plant under 30 V.S.A. § 248, provided that they do not prohibit or have the effect of prohibiting the installation of such a plant and do not have the effect of interfering with its intended functional use.

(A) Screening requirements under this subdivision shall not be more restrictive than screening requirements applied to other land development in the municipality under this chapter or, if the municipality does not have other bylaws except flood hazard, 10 V.S.A. chapter 151.

(B) In this section, "plant" shall have the same meaning as in 30 V.S.A. § 8002 and "screening" means reasonable aesthetic mitigation measures to harmonize a facility with its surroundings and includes landscaping, vegetation, fencing, and topographic features.

(C) This subdivision (15) shall not authorize requiring a municipal land use permit for a solar electric generation plant and a municipal action under this subdivision shall not be subject to the provisions of subchapter 11 (appeals) of this chapter. Notwithstanding any contrary provision of this title, enforcement of a bylaw adopted under this subdivision shall be pursuant to the provisions of 30 V.S.A. § 30 applicable to violations of 30 V.S.A. § 248.

Sec. 26e. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(28) Notwithstanding any contrary provision of sections 2291a and 4413 of this title or 30 V.S.A. chapter 5 or 89, a municipality may adopt an ordinance to establish screening requirements that shall apply to a ground-mounted plant that generates electricity from solar energy. In a proceeding under 30 V.S.A. § 248, the municipality may make recommendations to the Public Service Board applying the ordinance to such a plant. The ordinance may designate the municipal body to make this recommendation. Screening requirements and recommendations adopted under this subdivision shall be a condition of a certificate of public good issued for the plant under 30 V.S.A. § 248, provided that they do not prohibit or have the effect of prohibiting the installation of such a plant and do not have the effect of interfering with its intended functional use.

(A) Screening requirements under this subdivision shall not be more restrictive than screening requirements applied to other land development in the municipality under chapter 117 of this title or, if the municipality does not have other bylaws except flood hazard, 10 V.S.A. chapter 151.

(B) In this section, “plant” shall have the same meaning as in 30 V.S.A. § 8002 and “screening” means reasonable aesthetic mitigation measures to harmonize a facility with its surroundings and includes landscaping, vegetation, fencing, and topographic features.

(C) This subdivision (28) shall not authorize requiring a municipal permit for a solar electric generation plant. Notwithstanding any contrary provision of this title, enforcement of an ordinance adopted under this subdivision shall be pursuant to the provisions of 30 V.S.A. § 30 applicable to violations of 30 V.S.A. § 248.

Sec. 26f. REPORT; TOWN ADOPTION OF SOLAR SCREENING

(a) On or before January 15, 2017, the Commissioners of Housing and Community Development and of Public Service (the Commissioners) jointly shall submit a report to the House and Senate Committees on Natural Resources and Energy that:

(1) identifies the municipalities that have adopted screening requirements pursuant to Sec. 26d of this act, 24 V.S.A. § 4414(15), or Sec. 26e of this act, 24 V.S.A. § 2291(28);

(2) summarizes these adopted screening requirements; and

(3) provides the number of proceedings before the Public Service Board in which these screening requirements were applied and itemizes the disposition and status of those proceedings.

(b) Each municipality adopting an ordinance or bylaw under 24 V.S.A. § 2291(28) or 4414(15) shall provide the Commissioners, on request, with information needed to complete the report required by this section.

Nineteenth: By striking out Sec. 28 (effective dates), and inserting in lieu thereof a new Sec. 28 to read as follows:

Sec. 28. EFFECTIVE DATES

(a) This section and Secs. 8 (Public Service Board rulemaking), 10 (Forests, Parks and Recreation rulemaking), 14b (joint energy committee; recommendation), 18 (net metering pilot project), and 27 (severability) shall take effect on passage. Notwithstanding 1 V.S.A. § 214, Sec. 18 shall apply to facilities for which an application for a certificate of public good is pending as of its effective date.

(b) Secs. 1 through 7, 9, 11, 13, 14, 15 through 17, 19, 20, and 21 through 26 shall take effect on July 1, 2015. Sec. 11 (net metering systems; environmental attributes) shall not apply to complete applications filed prior to its effective date.

(c) Secs. 26a (municipal party status), 26b (setbacks), 26c (certificate of public good), 26d (solar screening bylaw), 26e (solar screening ordinance), and 26f (report) shall take effect on passage.

(d) Sec. 12 (net metering systems; environmental attributes) shall amend 30 V.S.A. § 8010 as added effective January 1, 2017 by 2014 Acts and Resolves No. 99, Sec. 4. Sec. 12 shall take effect on January 2, 2017, except that, notwithstanding 1 V.S.A. § 214, the section shall apply to the Public Service Board process under 2014 Acts and Resolves No. 99, Sec. 5. Sec. 12 shall not affect a net metering system for which a complete application was filed before January 1, 2017.

Amendment to 11th proposal of amendment of the Committee on Natural Resources & Energy to H. 40 to be offered by Senator Lyons

Senator Lyons moves to amend the *eleventh* proposal of amendment of the Committee on Natural Resources & Energy in Sec. 8, (Public Service Board implementation), subsection (d), by striking out “July 1, 2017” and inserting in lieu thereof July 1, 2018

H. 282.

An act relating to professions and occupations regulated by the Office of Professional Regulation.

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

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: By striking out Sec. 30 (amending 26 V.S.A. § 3006 (Board; establishment)) in its entirety and inserting in lieu thereof [Deleted.]

Second: By striking out Sec. 44 (effective dates) in its entirety and its accompanying reader assistance heading and inserting in lieu thereof the following:

* * * Applied Behavior Analysis * * *

Sec. 44. FINDINGS

(a) Licensure of applied behavior analysts and their assistants allows consumers to identify behavior analysts and assistants with defined competencies. It promotes credibility in the field of applied behavior analysis and defines scope of practice within State law.

(b) Licensure protects the public from harm and the misuse of behavioral technologies by untrained or undertrained practitioners and ensures that individuals holding themselves out as “behavior analysts” are appropriately trained and otherwise qualified.

(c) Licensure provides the State with the authority to respond to complaints of unprofessional conduct and to enforce appropriate practice standards within the field of applied behavior analysis.

Sec. 45. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

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

* * *

(43) Property Inspectors

(44) Applied Behavior Analysts.

Sec. 46. 26 V.S.A. chapter 95 is added to read:

CHAPTER 95. APPLIED BEHAVIOR ANALYSIS

Subchapter 1. General Provisions

§ 4901. PURPOSE AND EFFECT

In order to safeguard the life and health of the people of this State, a person shall not hold himself or herself out as practicing, practice, or offer to practice, as an applied behavior analyst or an assistant behavior analyst unless currently licensed under this chapter.

§ 4902. DEFINITIONS

As used in this chapter:

(1) “Applied behavior analyst” means a person who is licensed under this chapter to engage in the practice of applied behavior analysis.

(2) “Assistant behavior analyst” means a person who is licensed under this chapter to engage in the practice of applied behavior analysis under the supervision of an applied behavior analyst.

(3) “Director” means the Director of Professional Regulation.

(4) “License” means a current authorization granted by the Director permitting the practice of applied behavior analysis.

(5) “Practice of applied behavior analysis” means the design, implementation, and evaluation of systematic instructional and environmental modifications for the purpose of producing socially significant improvements in and understanding of behavior based on the principles of behavior identified through the experimental analysis of behavior.

(A) It includes the identification of functional relationships between behavior and environments.

(B) It uses direct observation and measurement of behavior and environment. Contextual factors, establishing operations, antecedent stimuli, positive reinforcers, and other consequences are used, based on identified functional relationships with the environment, in order to produce practical behavior change.

§ 4903. PROHIBITIONS; OFFENSES

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

(1) sell or fraudulently obtain or furnish any applied behavior analysis degree, diploma, certificate of registration, license, or any other related document or record or to aid or abet another person to do so;

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

(3) practice applied behavior analysis unless currently licensed or otherwise authorized to do so under the provisions of this chapter;

(4) represent himself or herself as being licensed or otherwise authorized by this State to practice applied behavior analysis or use in connection with a name any words, letters, signs, or figures that imply that a person is an applied behavior analyst or assistant behavior analyst when not licensed or otherwise authorized under this chapter;

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

(6) employ an unlicensed or unauthorized person to practice as an applied behavior analyst or assistant behavior analyst.

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

§ 4904. EXCEPTIONS

This chapter does not prohibit:

(1) The practice of a person who is not licensed under this chapter, who does not use the term “behavior analysis” or similar descriptors suggesting licensure under this chapter, and who is engaged in the course of his or her customary duties:

(A) in the practice of a religious ministry;

(B) in employment or rehabilitation counseling;

(C) as an employee of or under contract with the Agency of Human Services;

(D) as a mediator;

(E) in an official evaluation for court purposes;

(F) as a member of a self-help group, such as Alcoholics Anonymous, peer counseling, or domestic violence groups, whether or not for consideration;

(G) as a respite caregiver, foster care worker, or hospice worker; or

(H) incident to the practice of any other legally recognized profession or occupation.

(2) A person engaged or acting in the discharge of his or her duties as a student of applied behavior analysis or preparing for the practice of applied behavior analysis, provided that the person's title indicates his or her training status and that the preparation occurs under the supervision of an applied behavior analyst in a recognized training institution or facility.

(3) A behavior interventionist or paraprofessional, employed by a school, from working under the close direction of a supervisor licensed under this chapter, in relation to the direct implementation of skill-acquisition and behavior-modification plans developed by the supervisor or in relation to data collection or assessment designed by the supervisor, provided the supervisor retains ultimate responsibility for delegating professional responsibilities in a manner consistent with 3 V.S.A. § 129a(a)(6).

Subchapter 2. Administration

§ 4911. DUTIES OF THE DIRECTOR

(a) The Director shall:

(1) provide general information to applicants for licensure under this chapter;

(2) receive applications for licensure and provide licenses to applicants qualified under this chapter;

(3) administer fees as established by law;

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

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

(6) explain appeal procedures to persons licensed under this chapter and to applicants and complaint procedures to the public.

(b) The Director may adopt rules necessary to perform his or her duties under this section.

§ 4912. ADVISOR APPOINTEES

(a) The Secretary of State shall appoint three persons in accordance with 3 V.S.A. § 129b for three-year staggered terms to serve at the Secretary's pleasure as advisors in matters relating to applied behavior analysis. One of the initial appointments shall be for less than a three-year term.

(1) Two of these appointees shall be applied behavior analysts.

(A) An applied behavior analyst advisor appointee shall have not less than three years' experience as an applied behavior analyst immediately preceding appointment, shall be licensed as an applied behavior analyst in Vermont, and shall be actively engaged in the practice of applied behavior analysis in this State during incumbency.

(B) Not more than one of these appointees may be employed by a designated agency. As used in this subdivision, "designated agency" shall have the same meaning as in 18 V.S.A. § 7252.

(2) One of these appointees shall be the parent of an individual with autism or a developmental disorder who is a recipient of applied behavior analysis services. This appointee shall not have a child or other family member who is receiving applied behavior analysis services from one of the advisor appointees appointed under subdivision (1) of this subsection.

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

Subchapter 3. Licenses

§ 4921. ELIGIBILITY FOR LICENSURE BY EXAMINATION AS AN APPLIED BEHAVIOR ANALYST

To be eligible for licensure as an applied behavior analyst, an applicant shall:

(1) Obtain a doctoral or master's degree from a recognized educational program accredited by the Association for Behavior Analysis International Accreditation Board, or from a program at a recognized educational institution that is approved by the Director and that substantially meets the educational standards of the Association for Behavior Analysis International Accreditation Board or the Behavior Analysis Certification Board. Any program shall include an approved course sequence of the Behavior Analyst Certification Board.

(2) Successfully complete an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1,500 hours over a period of not less than one calendar year, of which at least 75 hours are in direct one-to-one contact with a supervisor.

(3) Successfully complete, as defined by the Director, a nationally recognized examination adopted from the Behavior Analyst Certification Board and approved by the Director, related to the principles and practice of applied behavior analysis. This subdivision (3) shall not be construed to require the Director to develop or administer any examination.

§ 4922. ELIGIBILITY FOR LICENSURE BY EXAMINATION AS AN ASSISTANT BEHAVIOR ANALYST

To be eligible for licensure as an assistant behavior analyst, an applicant shall:

(1) Obtain a bachelor's degree from a program at a recognized educational institution that is approved by the Director and that substantially meets the educational standards of the Association for Behavior Analysis International Accreditation Board or the Behavior Analysis Certification Board. Any program shall include an approved course sequence of the Behavior Analyst Certification Board.

(2) Successfully complete an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1,000 hours over a period of not less than one calendar year, of which at least 50 hours are in direct one-to-one contact with a supervisor.

(3) Successfully complete, as defined by the Director, a nationally recognized examination adopted from the Behavior Analyst Certification Board and approved by the Director, related to the principles and practice of applied behavior analysis. This subdivision (3) shall not be construed to require the Director to develop or administer any examination.

§ 4923. LICENSURE BY ENDORSEMENT

A person may be licensed under this chapter if he or she:

(1)(A) possesses a valid registration or license to engage in the practice of applied behavior analysis issued by the appropriate regulatory authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements and qualifications shown by the application to be equal to or greater than the requirements of this chapter; or

(B) is certified as a board certified behavior analyst by the Behavior Analyst Certification Board; and

(2) meets any active practice requirements established by the Director by rule.

§ 4924. ISSUANCE OF LICENSES

The Director shall issue a license, upon payment of the fees prescribed in this chapter, to any applicant who has satisfactorily met all the requirements of this chapter.

§ 4925. RENEWALS

(a) Licenses shall be renewed every two years, on a schedule determined by the Director, upon payment of the renewal fee.

(b) Biennially, the Director shall provide notice to each licensee of license expiration and renewal requirements. Upon receipt of the completed form and the renewal fee, the Director shall issue a new license.

(c) As a condition of renewal, the Director may by rule require that a licensee establish that he or she has completed continuing education. The Director may accept proof of current certification from the Behavior Analyst Certification Board as evidence of continuing competency if the Director finds that the maintenance of such certification implies appropriate continuing education.

(d)(1) The Director may reinstate the license of an individual whose license has expired upon payment of the required fee and reinstatement penalty, provided the individual has satisfied all the requirements for renewal, including continuing education.

(2) The Director may adopt rules necessary for the protection of the public to assure the Director that an applicant whose license has expired or who has not worked for more than three years as an applied behavior analyst or an assistant behavior analyst is professionally qualified for license renewal. Conditions imposed under this subsection shall be in addition to the other requirements of this section.

§ 4926. LICENSE AND RENEWAL FEES

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

§ 4927. APPLICATIONS

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

§ 4928. SCOPE OF PRACTICE OF APPLIED BEHAVIOR ANALYSTS

(a) A person licensed under this chapter shall only engage in the practice of applied behavior analysis upon, and within the scope of, a referral from a licensed health professional or school official duly authorized to make such a referral.

(b) The practice of applied behavior analysis shall not include psychological testing, neuropsychology, diagnosis of mental health or

developmental conditions, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, psychopharmacological recommendations, hypnotherapy, or academic teaching by college or university faculty.

§ 4929. SUPERVISION OF ASSISTANT BEHAVIOR ANALYSTS

An assistant behavior analyst shall only engage in the practice of applied behavior analysis if he or she has a minimum of five hours per month of off-site case supervision by an applied behavior analyst. A supervising applied behavior analyst may require that his or her supervision of an assistant behavior analyst exceed the minimum requirements of this section, including the requirement that the supervision be on-site.

§ 4930. DISCLOSURE OF INFORMATION

The Director may adopt rules requiring a person licensed under this chapter to disclose the licensee's professional qualifications and experience, those actions that constitute unprofessional conduct, and the method for filing a complaint or making a consumer inquiry, and the manner in which that information shall be made available and to whom.

§ 4931. UNPROFESSIONAL CONDUCT

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

(1) making or causing to be made a false, fraudulent, or forged statement or representation in procuring or attempting to procure licensure or renew a license to practice under this chapter;

(2) using dishonest or misleading advertising;

(3) misusing a title in professional activity;

(4) engaging in any sexual conduct with a client, or with the immediate family member of a client, with whom the licensee has had a professional relationship within the previous five years;

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

(6) entering into an additional relationship with a client, supervisee, research participant, or student that might impair the person's objectivity or otherwise interfere with a licensee's obligations;

(7) practicing outside or beyond a licensee's area of training, experience, or competence;

(8) being or having been convicted of a misdemeanor related to the practice of applied behavior analysis or a felony;

(9) being unable to practice applied behavior analysis competently by reason of any cause;

(10) willfully or repeatedly violating any of the provisions of this chapter;

(11) being habitually intemperate or addicted to the use of habit-forming drugs;

(12) having a mental, emotional, or physical disability, the nature of which interferes with the ability to practice applied behavior analysis competently;

(13) engaging in conduct of a character likely to deceive, defraud, or harm the public, including exposing clients to unjustifiably degrading or cruel interventions or implementing therapies not supported by a competent clinical rationale; or

(14) failing to notify the Director in writing within ten days of the loss, revocation, discontinuation, or invalidation of any certification or degree offered to support eligibility for licensure or to demonstrate continuing competency.

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

Sec. 47. TRANSITIONAL PROVISIONS

(a) Advisor appointees. Notwithstanding the provisions of 26 V.S.A. § 4912(a)(1) (advisor appointees; qualifications of appointees) in Sec. 46 of this act, an initial advisor appointee may serve while reasonably expected within one year of appointment to become eligible for licensure as an applied behavior analyst and to satisfy the other requirements of 26 V.S.A. § 4912(a)(1).

(b) Licensing of applied behavior analysts. The Director of the Office of Professional Regulation shall establish a procedure so that an individual may become licensed as an applied behavior analyst without being required to take an examination if he or she:

(1) has graduated with a doctoral or master's degree from a regionally accredited university and is a Board Certified Behavior Analyst certificant of the Behavior Analyst Certification Board; or

(2) holds either a doctoral or master's degree in behavior analysis or a related field and can demonstrate competency in applied behavior analysis by virtue of training and experience as determined by the Director.

(c) Licensing of assistant behavior analysts. The Director of the Office of Professional Regulation shall establish a procedure so that an individual may become licensed as an assistant behavior analyst without being required to take an examination if he or she:

(1) has graduated with a bachelor's degree from a regionally accredited university and is a Board Certified Assistant Behavior Analyst certificant of the Behavior Analyst Certification Board; or

(2) holds a bachelor's degree in behavior analysis or a related field and can demonstrate competency in applied behavior analysis by virtue of training and experience as determined by the Director.

(d) Any person licensed under subsection (b) or (c) of this section shall thereafter be eligible for licensure renewal pursuant to 26 V.S.A. § 4925.

(e) The ability of a person to become licensed under the provisions of subsection (b) or (c) of this section shall expire on July 1, 2017.

* * * Positions Authorization * * *

Sec. 48. CREATION OF NEW POSITIONS WITHIN THE OFFICE OF PROFESSIONAL REGULATION

(a) There is created within the Secretary of State's Office of Professional Regulation the following new positions:

(1) one (1) classified Research and Statistics Analyst position; and

(2) one (1) classified Enforcement position.

(b) Any funding necessary to support the positions created under subsection (a) of this section shall be derived from the Office's Professional Regulatory Fee Fund.

* * * Effective Dates * * *

Sec. 49. EFFECTIVE DATES

This act shall take effect on passage, except that:

(1) Sec. 34 (amending 26 V.S.A. chapter 67 (audiologists and hearing aid dispensers)) shall take effect on September 1, 2015;

(2) Secs. 39 (amending 26 V.S.A. chapter 87 (speech-language pathologists)) and 40 (repeal of sections in 26 V.S.A. chapter 87) shall take effect on September 1, 2015;

(3) Secs. 45 (amending 3 V.S.A. § 122 (Office of Professional Regulation)) and 46 (adding 26 V.S.A. chapter 95 (applied behavior analysis)) shall take effect on July 1, 2016; and

(4) Sec. 31 (amending 26 V.S.A. chapter 61 (social workers)) shall take effect on July 1, 2017.

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 24, 2015, page 621)

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

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Government Operations with the following amendment thereto:

By striking out Sec. 48 (creation of new positions within the Office of Professional Regulation) in its entirety and inserting in lieu thereof the following:

Sec. 48. [Deleted.]

(Committee vote: 6-1-0)

Reported favorably by Senator McCormack for the Committee on Appropriations.

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Government Operations and that the recommendation of amendment of the Committee on Finance be rejected.

(Committee vote: 5-1-1)

ORDERED TO LIE

S. 137.

An act relating to penalties for selling and dispensing marijuana.

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.

Regine Ewins of Shelburne – Member of the Board of Libraries – By Sen. Baruth for the Committee on Education. (5/13/15)

Lucy Comstock-Gay of New Haven – Member of the Board of Libraries – By Sen. Baruth for the Committee on Education. (5/13/15)

J. Edward Pagano of Washington, D.C.- Member of the University of Vermont and Agriculture College Board of Trustees – By Sen. Campion for the Committee on Education. (5/13/15)

Offie Wortham of Johnson – Member of the Community High School of Vermont Board – By Sen. Campion for the Committee on Education. (5/13/15)

Krista Huling of Jeffersonville – Member of the State Board of Education – By Sen. Degree for the Committee on Education. (5/13/15)

Carol Ann Bokan of Shelburne – Member of the Community High School of Vermont Board – By Sen. Zuckerman for the Committee on Education. (5/13/15)

Daniel P. Alcorn of Rutland – Member of the Community High School of Vermont Board – By Sen. Campion for the Committee on Education. (5/13/15)

Lindsay Kurrle of Middlesex – Member of the Vermont State Lottery Commission – By Sen. Cummings for the Committee on Econ. Dev., Housing and General Affairs. (5/14/15)

Emma Marvin of Hyde Park – Member of the Vermont Economic Progress Council – By Sen. Cummings for the Committee on Econ. Dev., Housing and General Affairs. (5/14/15)

Robert Joseph O'Rourke of Rutland – Member of the Vermont Racing Commission – By Sen. Mullin for the Committee on Econ. Dev., Housing and General Affairs. (5/14/15)

Steve Goodrich of North Bennington – Member of the Plumbers Examining Board – By Sen. Mullin for the Committee on Econ. Dev., Housing and General Affairs. (5/14/15)