

Senate Calendar

WEDNESDAY, APRIL 13, 2016

SENATE CONVENES AT: 1:00 P.M.

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ACTION CALENDAR

UNFINISHED BUSINESS OF TUESDAY, APRIL 12, 2016

Second Reading

Favorable with Proposal of Amendment

H. 74.

An act relating to safety protocols for social and mental health workers.

Reported favorably with recommendation of proposal of amendment by Senator Pollina for the Committee on Health and Welfare.

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

Sec. 1. 33 V.S.A. chapter 82 is added to read:

CHAPTER 82. SAFETY PROVISIONS FOR WORKERS

§ 8201. SAFETY POLICIES FOR EMPLOYEES DELIVERING DIRECT SOCIAL SERVICES

(a)(1) The Secretary of Human Services, in consultation with each department of the Agency, shall establish and maintain a written workplace violence prevention and crisis response policy that meets or exceeds the requirements of this chapter in place for the benefit of employees delivering direct social services.

(2) The Secretary shall ensure that its contracts with providers whose employees deliver direct social services and that are administered or designated but not otherwise licensed by a department of the Agency include the requirement that providers establish and maintain a written workplace violence prevention and crisis response policy that meets or exceeds the requirements of this chapter in place for the benefit of employees delivering direct social services.

(b) A written workplace violence prevention and crisis response policy prepared with input from employees delivering direct social services shall minimally include the following:

(1) measures the program intends to take to respond to an incident of or credible threat of workplace violence against employees delivering direct social services;

(2) a system for centrally recording all incidents of or credible threats of workplace violence against employees delivering direct social services;

(3) a training program to educate employees delivering direct social services about workplace violence and ways to reduce the risks; and

(4) the development and maintenance of a violence prevention and response committee that includes employees delivering direct social services to monitor ongoing compliance with the violence prevention and crisis response policy and to assist employees delivering direct social services.

(c) In preparing the written violence prevention and crisis response policy required by this section, the Secretary and providers identified in subdivision (a)(2) of this section shall consult the U.S. Occupational Safety and Health Administration's Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers as amended.

(d) A written workplace violence prevention and crisis response policy shall be evaluated annually and updated as necessary by the violence and prevention response committee and provided to employees delivering direct social services.

(e) The requirements of this section shall neither be construed as a waiver of sovereign immunity by the State, nor as creating any private right of action against the State for damages resulting from failure to comply with this section.

Sec. 2. 18 V.S.A. § 7114 is added to read:

§ 7114. SAFETY POLICIES FOR EMPLOYEES DELIVERING DIRECT SOCIAL SERVICES

(a) The Secretary of Human Services, in consultation with each department of the Agency, shall establish and maintain a workplace violence prevention and crisis response policy for the benefit of employees delivering direct social services pursuant to 33 V.S.A. § 8201.

(b) The Secretary shall ensure that its contracts with providers described in 33 V.S.A. § 8201(a)(2) require the providers to establish and maintain a written workplace violence prevention and crisis response policy for the benefit of employees delivering direct social services pursuant to 33 V.S.A. § 8201.

Sec. 3. EFFECTIVE DATE

This act shall take effect on January 1, 2017.

And that after passage the title of the bill be amended to read: "An act relating to safety policies for employees delivering direct social services"

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 17, 2016, page 455)

House Proposal of Amendment to Senate Proposal of Amendment

H. 84

An act relating to internet dating services

The House concurs in the Senate proposal of amendment with further amendment thereto by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Consumer Litigation Funding * * *

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

CHAPTER 74. CONSUMER LITIGATION FUNDING COMPANIES

§ 2251. DEFINITIONS

As used in this chapter:

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

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

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

(A) the claim is in Vermont; or

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2252. REGISTRATION; FEE; FINANCIAL STABILITY

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

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

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

§ 2253. CONTRACTS; DISCLOSURES AND REQUIREMENTS

(a) A contract shall be written in a clear and coherent manner using words with common, everyday meanings to enable the average consumer who makes a reasonable effort under ordinary circumstances to read and understand the terms of the contract without having to obtain the assistance of a professional.

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

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

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

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

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

(5) an itemization of charges;

(6) the annual percentage rate of return;

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

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

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

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

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

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

(c) Each contract shall include the following provisions:

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

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

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

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

§ 2254. PROHIBITED ACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2255. EFFECT OF COMMUNICATION ON PRIVILEGES

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

§ 2256. EXAMINATIONS; CHARGES

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

§ 2257. NATIONWIDE LICENSING SYSTEM; INFORMATION SHARING; CONFIDENTIALITY

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

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

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

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

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

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

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

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

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

The company shall pay the cost of such criminal history background check, including any charges imposed by the Registry.

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

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

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

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

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

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

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

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

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

(f) In this section, “Nationwide Mortgage Licensing System and Registry” or “the Registry” means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators as defined in 12 U.S.C. § 5102(6), or its successor in interest, or any alternative or replacement licensing system and registry designated by the Commissioner.

§ 2258. RULES

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

§ 2259. PENALTIES; ENFORCEMENT

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

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

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

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

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

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

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

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

§ 2260. ANNUAL REPORTS

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

information the Commissioner requires concerning the company's business and operations during the preceding calendar year within Vermont and, in addition, shall include:

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

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

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

* * * Structured Settlement Agreements * * *

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

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

* * *

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

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

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

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

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

(A) a copy of the annuity contract;

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

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

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

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

* * * Business Registration; Enforcement * * *

Sec. C.1. PURPOSE

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

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

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

(2) the enforcement and penalties for failure register.

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

§ 1637. AUTHORITY TO TERMINATE AND AMEND REGISTRATION

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

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

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

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

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

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

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

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

§ 1626. FAILURE TO REGISTER; ENFORCING COMPLIANCE

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

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

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

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

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

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

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

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

(3) other penalties imposed by law.

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

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

§ 3303. EFFECT OF FAILURE TO QUALIFY

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

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

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

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

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

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

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

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

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

(3) other penalties imposed by law.

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

§ 3305. ACTION BY ATTORNEY GENERAL

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

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

§ 3487. TRANSACTION OF BUSINESS WITHOUT REGISTRATION

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

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

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

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

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

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

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

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

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

(3) other penalties imposed by law.

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

§ 3488. ACTION BY ATTORNEY GENERAL

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

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

§ 4119. EFFECT OF FAILURE TO OBTAIN CERTIFICATE OF AUTHORITY

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

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

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

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

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

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

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

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

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

(3) other penalties imposed by law.

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

§ 4120. ACTION BY ATTORNEY GENERAL

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

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

§ 15.02. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

§ 15.02. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY

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

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

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

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

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

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

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

(3) other penalties imposed by law.

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

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

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

§ 1402. APPLICATION FOR CERTIFICATE OF AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) other penalties imposed by law.

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

§ 1408. ACTION BY ATTORNEY GENERAL

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

* * * Anti-Trust Penalties * * *

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

§ 2458. RESTRAINING PROHIBITED ACTS

* * *

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

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

* * *

* * * Discount Membership Programs * * *

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

Subchapter 1D. Third-Party Discount Membership Programs

§ 2470aa. DEFINITIONS

~~As~~ As used in this subchapter:

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

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

§ 2470bb. APPLICABILITY

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

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

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

§ 2470cc. REQUIRED DISCLOSURES; CONSENT

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

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

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

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

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

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

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

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

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

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

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

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

(A) obtaining from the consumer:

(i) the consumer's billing information; and

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

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

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

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

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

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

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

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

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

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

§ 2470dd. PERIODIC NOTICES

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

(1) a description of the program;

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

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

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

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

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

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

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

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

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

§ 2470ee. CANCELLATION AND TERMINATION

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

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

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

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

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

§ 2470ff. MAXIMUM LENGTH OF PLAN

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

§ 2470gg. BILLING INFORMATION

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

§ 2470hh. VIOLATIONS

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

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

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

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

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

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

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

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

Subchapter 1E: Add-On Discount Membership Programs

§ 2470ii. DEFINITIONS

As used in this subchapter:

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

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

§ 2470jj. APPLICABILITY

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

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

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

§ 2470kk. REQUIRED DISCLOSURES; CONSENT

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

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

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

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

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

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

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

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

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

(A) the consumer's billing information; and

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

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

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

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

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

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

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

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

§ 2470ll. CANCELLATION AND TERMINATION

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

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

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

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

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

§ 2470mm. BILLING INFORMATION

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

§ 2470nn. VIOLATIONS

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

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

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

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

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

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

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

* * * Nonresidential Home Improvement Fraud * * *

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

§ 2029. HOME IMPROVEMENT FRAUD

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

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

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

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

(i) refund the payment; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) [Reserved.]

(h) [Repealed.]

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

§ 2029a. NONRESIDENTIAL IMPROVEMENT FRAUD

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

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

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

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

(i) refund the payment; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) the person notifies the Office of Attorney General of the intent to engage in home improvement activities or nonresidential improvement activities, and that the person has filed a surety bond or an irrevocable letter of

credit with the Office in an amount of not less than \$50,000.00, and pays on a regular basis all fees associated with maintaining such bond or letter of credit.

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

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

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

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

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

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

§ 10101. APPLICATION OF CONSUMER PROTECTION CHAPTER

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

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

§ 10601. APPLICATION

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

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

(17) “Mortgage loan originator”:

* * *

(D) Does not include:

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

* * *

* * * Internet Dating Services * * *

Sec. H.1. FINDINGS AND PURPOSE

(a) The General Assembly finds:

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

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

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

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

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

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

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

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

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

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

Subchapter 8. Internet Dating Services

§ 2482a. DEFINITIONS

In this chapter:

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

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

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

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

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

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

§ 2482b. REQUIREMENTS FOR INTERNET DATING SERVICES

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

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

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

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

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

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

(1) clear and conspicuous;

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

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

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

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

(2) a brief description of the change; and

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

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

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

§ 2482c. LIMITED IMMUNITY

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

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

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

§ 2482d. VIOLATIONS

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

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

* * * Effective Dates * * *

Sec. I.1. EFFECTIVE DATES

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW BUSINESS

Third Reading

H. 640.

An act relating to expenses for the repair of town cemeteries.

H. 824.

An act relating to the adoption of occupational safety and health rules and standards.

Second Reading

Favorable with Recommendation of Amendment

S. 242.

An act relating to the service of civil process by a constable.

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

The Committee recommends that the bill be amended as follows:

First: In Sec. 1, 32 V.S.A. § 1591 (sheriffs and other officers), by striking out subdivision (1)(D) in its entirety and inserting in lieu thereof the following:

(D)(i) All civil process to be served by a constable shall be directed to the legislative body of the town in which the constable serves. The legislative body shall assign civil process to the constable to ensure that process is completed in a timely and orderly manner. All payments for service of civil process shall be made to the town. A constable shall be entitled to fees paid for service of process, except as provided in subdivision (ii) of this subdivision (D). A constable shall not receive fees or payment in lieu of fees for civil process, except payment for actual and necessary expenses.

(ii) Quarterly, 15 percent of the gross civil process fees received by a town during that quarter shall be forwarded as follows:

(I) ten percent to the State Treasurer for deposit in the State's General Fund; and

(II) five percent to the town.

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

Sec. 2. 24 V.S.A. § 1936a is amended to read:

§ 1936a. CONSTABLES; POWERS AND QUALIFICATIONS

(a) A town may vote at a special or annual town meeting to prohibit constables from exercising any law enforcement authority or from exercising the service of civil or criminal process.

(b) Notwithstanding the provisions of subsection (a) of this section, constables may perform the following duties:

(1) ~~the service of civil or criminal process, under 12 V.S.A. § 691;~~
[Repealed.]

* * *

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

(Committee vote: 5-0-0)

Reported favorably by Senator Sirotkin for the Committee on Finance.

The Committee recommends that the bill pass when amended as recommended by the Committee on Government Operations.

(Committee vote: 7-0-0)

Favorable with Proposal of Amendment

H. 135.

An act relating to authorizing the Vermont Department of Health to charge fees necessary to support Vermont's status as a Nuclear Regulatory Commission Agreement State.

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

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

Sec. 1. 18 V.S.A. chapter 32 is amended to read:

CHAPTER 32. IONIZING AND NONIONIZING RADIATION CONTROL

§ 1651. DEFINITIONS

In this chapter:

(1) ~~Ionizing radiation means gamma rays and x rays, alpha and beta particles, high speed electrons, neutrons, protons, and other nuclear particles.~~

~~(2) Nonionizing radiation means radiations of any wavelength in the entire electromagnetic spectrum except those radiations defined above as ionizing. Nonionizing radiations include, but are not limited to: Ultraviolet, visible, infrared, microwave, radiowave, low frequency electromagnetic radiation; infrasonic, sonic and ultrasonic waves; electrostatic and magnetic fields.~~

~~(3) Radioactive material means any radioactive material, be it solid, liquid, or gas, which emits ionizing radiation spontaneously.~~

~~(4) Byproduct material~~ “Byproduct material” means each of the following:

~~(A) any~~ Any radioactive material, ~~except other than~~ special nuclear material, that is yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(B) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. However, “byproduct material” does not include underground ore bodies depleted by these solution extraction operations.

(C) Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity.

(D) Any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity.

(E) Any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity, if the Governor, after determination by the NRC, declares by order that the source would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety.

(2) “Commissioner” means the Commissioner of Health.

(3) “Department” means the Department of Health.

~~(5) General license~~ (4) “General license” means a license effective under regulations promulgated by the state State radiation control agency without the filing of an application to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing byproduct, source, or special

nuclear materials or other radioactive material occurring naturally or produced artificially.

(5) “Ionizing radiation” means gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons, and other nuclear particles.

(6) “Nonionizing radiation” means radiations of any wavelength in the entire electromagnetic spectrum except those radiations defined in this section as ionizing. Nonionizing radiations include ultraviolet, visible, infrared, microwave, radiowave, low frequency electromagnetic radiation; infrasonic, sonic, and ultrasonic waves; electrostatic and magnetic fields.

(7) “NRC” means the U.S. Nuclear Regulatory Commission or any successor agency of the United States to the Commission.

(8) “Radioactive material” means any material, whether solid, liquid, or gas, that emits ionizing radiation spontaneously. The term includes material made radioactive by a particle accelerator, byproduct material, naturally occurring radioactive material, source material, and special nuclear material.

~~(6) Specific license~~ (9) “Specific license” means a license, issued to a named person after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, or special nuclear materials or other radioactive material occurring naturally or produced artificially.

~~(7) The department of health is the state radiation control agency, called the agency herein.~~

~~(8) Source material~~ (10) “Source material” means each of the following:

(A) uranium, thorium, or any combination of those elements, in any physical or chemical form;

(B) any other material which the governor that the Governor declares by order to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, NRC has determined the material to be such source material; or

~~(B)(C) ores containing one or more of the foregoing materials, that contain uranium, thorium, or any combination of those elements in a concentration by weight of 0.05 percent or more or in such lower concentration as the governor Governor declares by order to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, NRC has determined the material in such concentration to be source material.~~

~~(9) Special nuclear material~~ (11) “Special nuclear material” means:

(A) plutonium, uranium ~~223~~ 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material ~~which the governor~~ that the Governor declares by order to be special nuclear material after the ~~United States Nuclear Regulatory Commission, or any successor thereto,~~ NRC has determined the material to be such ~~special nuclear material~~, but does not include source material; or

(B) any material artificially enriched by any ~~of the foregoing elements, isotopes, or materials listed in~~ subdivision (A) of this subdivision (11), but does not include source material.

§ 1652. STATE RADIATION CONTROL

(a) ~~The Department is the radiation control agency for the State of Vermont.~~ The Commissioner of Health may designate the Radiation Control Director of Occupational Health within the Department as the individual who shall perform the functions vested in the ~~agency~~ Department by this chapter.

(b) The ~~Agency~~ Department shall, for the protection of the occupational and public health and safety, develop programs for the control of ionizing and ~~non-ionizing~~ nonionizing radiation compatible with federal programs for regulation of byproduct, source, and special nuclear materials.

(c) The ~~Agency~~ Department may adopt, amend, and repeal rules under 3 V.S.A. chapter 25:

~~(1) which~~ that may provide for licensing and registration for the control of sources of ionizing radiation;

~~(2) and that~~ may provide for the control and regulation of sources of ~~non-ionizing~~ nonionizing radiation.

(d) The ~~Agency~~ Department shall advise, consult, and cooperate with other agencies of the State, the federal government, other states and interstate agencies, political subdivisions, industries, and with groups concerned with control of sources of ionizing and ~~non-ionizing~~ nonionizing radiation.

(e) Applicants for registration of X-ray equipment shall pay an annual registration fee of \$85.00 per piece of equipment.

(f) Fees collected under this section shall be credited to a special fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 and shall be available to the Department to offset the costs of providing services relating to licensing and registration and controlling sources of ionizing radiation.

§ 1653. FEDERAL–STATE AGREEMENTS

(a) The ~~governor~~ Governor, on behalf of the ~~state~~ State of Vermont, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to byproduct, source, and special nuclear materials and the assumption ~~thereof~~ of these responsibilities by the ~~state~~ State of Vermont.

(b) In the event of such agreement:

(1) The ~~agency~~ Department shall provide by rule for general or specific licensing of ~~byproducts~~ byproduct, source, special nuclear materials, or devices or equipment utilizing such materials. The rule shall provide for amendment, suspension, or revocation of licenses. A rule adopted under this subsection shall be consistent with regulations duly adopted by the NRC except as the Commissioner determines is necessary to protect public health.

(2) The ~~agency~~ Department shall ~~be authorized~~ have authority to:

(A) impose conditions that are individual to a license when necessary to protect public health and safety;

(B) reciprocate in the recognition of specific licenses issued by the NRC or another state that has reached agreement with the NRC pursuant to 42 U.S.C. § 2021(b) (agreement state);

(C) require that licensees and unlicensed individuals comply with the federal statutes and regulations relating to the authority assumed by the Department under this section and with the rules adopted by the Department under this section; and

(D) exempt certain byproduct, source, or special nuclear materials or kinds of uses or users from the licensing or registration requirements set forth in this section when the ~~agency~~ Department makes a finding that the exemption of such materials or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(3) The Department may collect a fee for licenses issued under this section. The fee schedule for these licenses shall be the schedule adopted by the U.S. Nuclear Regulatory Commission and published in 10 C.F.R. § 170.31 that is in effect as of the effective date of this section. Fees collected under this section shall be credited to the Nuclear Regulatory Fund established and managed under subdivision (4) of this subsection and shall be available to the Department to offset the costs of providing services under this section.

(4) There is established the Nuclear Regulatory Fund to consist of the fees collected under subdivision (3) of this subsection and any other monies that may be appropriated to or deposited into the Fund. Balances in the

Nuclear Regulatory Fund shall be expended solely for the purposes set forth in this section and shall not be used for the general obligations of government. All balances in the Fund at the end of any fiscal year shall be carried forward and remain part of the Fund, and interest earned by the Fund shall be deposited in the Fund. The Nuclear Regulatory Fund is established in the State Treasury pursuant to 32 V.S.A. chapter 7, subchapter 5.

~~(3)~~(5) Any person having a license immediately before the effective date of an agreement under subsection (a) of this section from the federal government or agreement state relating to byproduct material, source material, or special nuclear material and which on the effective date of this agreement is subject to the control of this ~~state~~ State shall be considered to have a like license with the ~~state~~ State of Vermont until the expiration date specified in the license from the federal government or agreement state or until the end of the ~~ninetieth~~ 90th day after the person receives notice from the ~~agency~~ Department that the license will be considered expired.

~~(4)~~(6) The ~~agency~~ Department shall require each person who possesses or uses byproduct, source, or special nuclear materials to maintain records relating to the receipt, storage, transfer, or disposal of such materials and such other records as the ~~agency~~ Department may require subject to such exemptions as may be provided by rule.

~~(5)~~(7) Violations:

(A) ~~It shall be unlawful for any person to~~ A person shall not use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any byproduct, source, or special nuclear material unless licensed by or registered with the ~~agency~~ Department in accordance with the provisions of this chapter or rules adopted under this chapter.

(B) The ~~agency~~ Department shall have the authority in the event of an emergency to impound or order the impounding of byproduct, source, and special nuclear materials in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules ~~or regulations issued thereunder~~ adopted under this chapter.

~~(6)~~(8) The provisions of this section relating to the control of byproduct, source, and special nuclear materials shall become effective on the effective date of an agreement between the federal government and this ~~state~~ State as provided in ~~section 1656 of this title~~ subsection (a) of this section.

(c) This section does not confer authority to regulate materials or activities reserved to the NRC under 42 U.S.C. § 2021(c) and 10 C.F.R. Part 150.

§ 1654. INSPECTION

The ~~agency~~ Department or its duly authorized representatives may enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of this chapter and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be made only with the concurrence of the federal government or its duly designated representative.

§ 1655. HEARINGS AND JUDICIAL REVIEW

(a) In any proceeding under this chapter for the issuance or modification of rules relating to control of byproducts, source, and special nuclear materials; or for granting, suspending, revoking, or amending any license; or for determining compliance with or granting exemptions from rules and regulations of the ~~agency~~ Department, the ~~agency~~ Department shall hold a public hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to the proceeding, subject to the emergency provisions in subsection (b) of this section.

(b) Whenever the ~~agency~~ Department finds that an emergency exists requiring immediate action to protect the public health and safety, the ~~agency~~ Department may, without notice or hearing, issue ~~a regulation or an~~ order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet it. Notwithstanding any ~~provisions contrary provision~~ of this chapter, the ~~regulation or~~ order shall be effective immediately. Any person to whom the ~~regulation or~~ order is directed shall comply ~~therewith~~ with the order immediately, but on application to the ~~agency~~ Department shall be afforded a hearing within ten days. On the basis of the hearing, the emergency ~~regulation or~~ order shall be continued, modified, or revoked within ten days after the hearing.

(c) Any final order entered in any proceeding under subsections (a) and (b) ~~above of this section~~ shall be subject to judicial review in the ~~superior court~~ Civil Division of the Superior Court.

§ 1656. INJUNCTION PROCEEDINGS

Whenever, in the judgment of the ~~agency~~ Department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule issued thereunder, the ~~attorney general~~ Attorney General shall make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the ~~agency~~ Department that such person has engaged or is about to engage in any such acts or practices, a

permanent or temporary injunction, restraining order, or other order may be granted.

* * *

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

And that after passage the title of the bill be amended to read: “An act relating to enabling the Vermont Department of Health to reach an agreement with the Nuclear Regulatory Commission regarding authority over regulation and licensing of radioactive materials”

(Committee vote: 5-0-2)

(For House amendments, see House Journal for March 26, 2015, page 641)

H. 261.

An act relating to criminal record inquiries by an employer.

Reported favorably with recommendation of proposal of amendment by Senator Mullin for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the Senate propose to the House to amend the bill in Sec. 1, 21 V.S.A. § 495j, by striking out subdivision (b)(1)(B) and inserting a new subdivision (b)(1)(B) in lieu thereof to read as follows:

(B) the employer or an affiliate of the employer is subject to a federal or State law or regulation that restricts its ability to employ individuals, in either one or more positions, who have been convicted of one or more types of criminal offenses; and

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 17, 2016, page 456)

H. 539.

An act relating to establishment of a Pollinator Protection Committee.

Reported favorably with recommendation of proposal of amendment by Senator Sirotkin for the Committee on Agriculture.

The Committee recommends that the Senate propose to the House to amend the bill in Sec. 1 (Pollinator Protection Committee; report), in subsection (f), after “On or before” and before “, the Pollinator Protection Committee shall submit” by striking out “January 15, 2017” and inserting in lieu thereof December 15, 2016

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 17, 2016, page 242)

H. 674.

An act relating to public notice of wastewater discharges.

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

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

First: In Sec. 1, in 10 V.S.A. § 1295, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) Public alert. An operator of a wastewater treatment facility or the operator's delegate shall as soon as possible, but no longer than one hour from discovery of an untreated discharge from the wastewater treatment facility, post on a publicly accessible electronic network, mobile application, or other electronic media designated by the Secretary an alert informing the public of the untreated discharge and its location, except that if the operator or his or her delegate does not have telephone or Internet service at the location where he or she is working to control or stop the untreated discharge, the operator or his or her delegate may delay posting the alert until the time that the untreated discharge is controlled or stopped, provided that the alert shall be posted no later than four hours from discovery of the untreated discharge.

Second: In Sec. 3, 18 V.S.A. § 1222, in subdivision (a)(1), after "photosynthesis," and before the period, by striking out "microcystin, anatoxin, and cylindrospermopsin" and inserting in lieu thereof microcystis, anabaena, and aphanizomenon

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 9, 2016, page 337)

H. 765.

An act relating to technical corrections.

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: After Sec. 46, 17 V.S.A. § 2680, by inserting a new section to be numbered Sec. 46a to read as follows:

Sec. 46a. 18 V.S.A. § 906 is amended to read:

§ 906. EMERGENCY MEDICAL SERVICES DIVISION;
RESPONSIBILITIES

To implement the policy of section 901 of this title, the ~~department of health~~ Department of Health shall be responsible for:

* * *

(3) Developing a statewide system of emergency medical services, including ~~but not limited to~~ planning, organizing, coordinating, improving, expanding, monitoring, and evaluating emergency medical services.

* * *

Second: After Sec. 50, 18 V.S.A. § 4243, by inserting a new section to be numbered Sec. 50a to read as follows:

Sec. 50a. 18 V.S.A. § 4631a is amended to read:

§ 4631a. EXPENDITURES BY MANUFACTURERS OF PRESCRIBED
PRODUCTS

(a) As used in this section:

* * *

(5) “Gift” means:

(A) anything of value provided for free to a health care provider or to a member of the Green Mountain Care Board established in chapter 220 of this title; or

(B) except as otherwise provided in ~~subdivision~~ subdivisions (a)(1)(A)(ii) and (a)(1)(H)(ii) of this section, any payment, food, entertainment, travel, subscription, advance, service, or anything else of value provided to a health care provider or to a member of the Green Mountain Care Board established in chapter 220 of this title, unless:

* * *

Third: After Sec. 51, 18 V.S.A. § 8839(2), by inserting a new section to be numbered Sec. 51a to read as follows:

Sec. 51a. 18 V.S.A. § 9454 is amended to read:

§ 9454. HOSPITALS; DUTIES

(a) Hospitals shall file the following information at the time and place and in the manner established by the board:

(1) a budget for the forthcoming fiscal year;

(2) financial information, including ~~but not limited to~~ costs of operation, revenues, assets, liabilities, fund balances, other income, rates, charges, units of services, and wage and salary data;

(3) scope-of-service and volume-of-service information, including ~~but not limited to~~ inpatient services, outpatient services, and ancillary services by type of service provided;

* * *

Fourth: After Sec. 61, 26 V.S.A. § 3001(1), by inserting a new section to be numbered Sec. 61a to read as follows:

Sec. 61a. 26 V.S.A. § 3178a is amended to read:

§ 3178a. FEES

(a) Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application for agency license:

(A) Investigative agency	\$340.00
(B) Security agency	\$340.00
(C) Investigative/security agency	\$400.00
(D) Sole proprietor	\$250.00

(2) Application for individual license:

(A) Unarmed licensee	\$150.00
(B) Armed licensee	\$200.00

(3) Application for employee registration:

(A) Unarmed registrants	\$60.00
(B) Armed registrants	\$120.00
(C) Transitory permits	60.00

(4) Biennial renewal:

(A) Investigative agency	\$300.00
(B) Security agency	\$300.00
(C) Investigative/security agency	\$300.00
(D) Unarmed licensee	\$120.00
(E) Armed licensee	\$180.00

(F) Unarmed registrants (agency employees)	\$80.00
(G) Armed registrants (agency employees)	\$130.00
(H) Sole proprietor	\$250.00
(5) Instructor licensure:	
(A) Application for licensure	\$120.00
(B) Biennial renewal	\$180.00

~~(6)~~(b) A sole proprietor of an investigative agency or security agency shall only pay the sole proprietor fees pursuant to this section, provided the agency has no other registered investigative or security employees.

(Committee vote: 4-0-1)

(For House amendments, see House Journal for February 11, 2016, page 191)

H. 778.

An act relating to State enforcement of the federal Food Safety Modernization Act.

Reported favorably with recommendation of proposal of amendment by Senator Zuckerman for the Committee on Agriculture.

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

Sec. 1. 6 V.S.A. chapter 66 is added to read:

CHAPTER 66. PRODUCE INSPECTION

§ 851. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Agriculture, Food and Markets.

(2) “Farm” means lands that are owned or leased by a person engaged in any of the activities stated in 10 V.S.A. § 6001(22).

(3) “Produce” shall have the same meaning as used in 21 C.F.R. § 112.3.

(4) “Produce farm” means any farm engaged in the growing, harvesting, packing, or holding of produce.

(5) “Secretary” means the Secretary of Agriculture, Food and Markets.

§ 852. AUTHORITY; ENFORCEMENT

(a) The Secretary may enforce in the State the requirements of the rules adopted under the federal Food Safety Modernization Act, Public Law No. 111-353, for standards for growing, harvesting, packing, and holding of produce for human consumption, 21 C.F.R. part 112.

(b) The Agency may collaborate with the Vermont Department of Health regarding application of the federal Food Safety Modernization Act and the rules adopted thereunder.

(c) The Secretary shall carry out the provisions of this chapter using:

(1) monies appropriated to the Agency by the federal government for the purpose of administering the federal Food Safety Modernization Act and the rules adopted thereunder;

(2) monies appropriated to the Agency by the State for the purpose of administering this chapter; and

(3) other gifts, bequests, and donations by private entities for the purposes of administering this chapter.

§ 853. FARM INSPECTIONS

(a)(1) The Secretary may inspect a produce farm during reasonable hours for the purposes of ensuring compliance with:

(A) the federal standards for growing, harvesting, packing, and holding of produce for human consumption, as adopted under 21 C.F.R. part 112; or

(B) the rules adopted under this chapter.

(2) Unless the circumstances warrant otherwise, the Secretary shall provide reasonable notice prior to inspection.

(3) This section shall not limit the Secretary's authority to respond to an emergency in order to prevent a public health hazard under section 21 of this title.

(b) After inspection, the Secretary may issue an inspection certificate that shall include the date and place of inspection along with any other pertinent facts that the Secretary may require.

(c) The Secretary may coordinate with other State agencies and organizations to carry out inspections at or near the same time on a given produce farm.

§ 854. RECORDS

The owner or operator of a produce farm shall maintain records required by the federal Food Safety Modernization Act, rules adopted thereunder, and rules adopted under this chapter and shall make those records available to the Agency upon request.

§ 855. RULES

The Secretary may adopt rules pursuant to 3 V.S.A. chapter 25 as may be necessary to implement this chapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 9, 2016, page 342)

NOTICE CALENDAR

Second Reading

Favorable

H. 864.

An act relating to agricultural exemption from Vermont's sales and use tax.

Reported favorably by Senator MacDonald for the Committee on Finance.

(Committee vote: 7-0-0)

(For House amendments, see House Journal of March 23, 2016, page 624)

House Proposal of Amendment

S. 171

An act relating to eligibility for pretrial risk assessment and needs screening.

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

In Sec. 1, 13 V.S.A. § 7554c, in subdivision (d)(2), by striking out "voluntarily agreed to participate in a risk assessment or needs screening post-arraignment" and inserting in lieu thereof completed a risk assessment or needs screening

Proposed Amendment to the Constitution

PROPOSAL 1

(Second day on Notice Calendar pursuant to Rule 77)

Offered by Senator Benning

Subject: Declaration of rights; right to privacy.

PENDING ACTION: Second reading of the Proposed Amendment.

PROPOSAL 1

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to specifically provide that each person has a right to privacy, including the right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body.

Sec. 2. Article 22 of Chapter I of the Vermont Constitution is added to read:

Article 22. [RIGHT TO PRIVACY]

That each person has a right to privacy, including the right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body.

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2018 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

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

The Committee recommends that the proposal be amended by striking out the proposal in its entirety and inserting in lieu thereof the following:

PROPOSAL 1

Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont specifically to provide that each individual has a right to privacy, including the right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body.

Sec. 2. Chapter I, Article 22 of the Vermont Constitution is added to read:

Article 22. [RIGHT TO PRIVACY]

That each individual has a right to privacy that shall not be infringed without the showing of a compelling State interest. This right includes the individual's right to keep personal information private; to communicate with others privately; and to make decisions concerning his or her body. This section shall not be construed to modify the public's right of access to public records and open meetings as provided by law.

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2018 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

(Committee vote: 5-0-0)

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.

Thomas Carlson of Hinesburg – Superior Court Judge – By Sen. Ashe for the Committee on Judiciary. (4/6/16)

Michael J. Harris of Williston – Superior Court Judge – By Sen. Benning for the Committee on Judiciary. (4/6/16)

John Pacht of Hinesburg – Superior Court Judge – By Sen. Ashe for the Committee on Judiciary. (4/6/16)

John Valente of Rutland – Superior Court Judge - By Sen. Nitka for the Committee on Judiciary. (4/6/16)

FOR INFORMATION ONLY

CROSS OVER DATES

The Joint Rules Committee established the following Crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 11, 2016**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 18, 2016**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

Note: The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

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