

# House Calendar

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Thursday, March 02, 2017

58th DAY OF THE BIENNIAL SESSION

House Convenes at 1:00 PM

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**ORDERS OF THE DAY**

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**Third Reading**

**H. 144**

An act relating to the membership of the Nuclear Decommissioning Citizens Advisory Panel

**H. 171**

An act relating to expungement

**Amendment to be offered by Reps. Murphy of Fairfax and Donahue of Northfield to H. 171**

That the bill be amended in Sec. 5, 13 V.S.A. § 7605, denial of petition, by striking out “~~five years~~ one year” and inserting in lieu thereof the words “five years”

**H. 297**

An act relating to judicial organization and restructuring

**Committee Bill for Second Reading**

**H. 493**

An act relating to relief from abuse orders.

**(Rep. Morris of Bennington** will speak for the Committee on Judiciary.)

**H. 495**

An act relating to miscellaneous agriculture subjects.

**(Rep. Bock of Chester** will speak for the Committee on Agriculture & Forestry.)

**Favorable with Amendment**

**H. 4**

An act relating to calculating time periods in court proceedings

**Rep. LaLonde of South Burlington**, for the Committee on Judiciary, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 4 V.S.A. § 961(a) is amended to read:

(a) Any person who fails to return a completed questionnaire within ~~ten~~ 14 days of its receipt may be summoned by the ~~superior court~~ Superior Court clerk to appear forthwith before the clerk to fill out a jury questionnaire. Any person so summoned who fails to appear as directed shall be ordered forthwith

by the presiding judge to appear and show cause for his or her failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance may be found in contempt of court and shall be subject to the penalties for contempt.

Sec. 2. 6 V.S.A. § 4996(b) is amended to read:

(b) If the Secretary issues an emergency order under this chapter, the person subject to the order may request a hearing before the Civil Division of Superior Court. Notice of the request for hearing under this subdivision shall be filed with the Civil Division of Superior Court and the Secretary within five business days of receipt of the order. A hearing on the emergency order shall be held at the earliest possible time and shall take precedence over all other hearings. The hearing shall be held within five business days of receipt of the notice of the request for hearing. A request for hearing on an emergency order shall not stay the order. The Civil Division of the Superior Court shall issue a decision within five business days from the conclusion of the hearing, and no later than 30 days from the date the notice of request for hearing was received by the person subject to the order.

Sec. 3. 8 V.S.A. § 3370(b) is amended to read:

(b) Service of such process shall be made by delivering and leaving with the Secretary of State two copies thereof and the payment to the Secretary of State of the fee prescribed by law. The Secretary of State shall forthwith mail by registered mail one of the copies of such process to such insurer at its last known principal place of business, and shall keep a record of all process so served upon him or her. Such process shall be sufficient service upon such insurer provided notice of such service and a copy of the process are, within ~~40~~ 14 days thereafter, sent by registered mail or on behalf of the director to such insurer at its last known principal place of business, and such insurer's receipt and the affidavit of compliance herewith by or on behalf of the director are filed with the clerk of the court in which such action or proceeding is pending on or before the return date of such process or within such further time as the ~~Court~~ court may allow.

Sec. 4. 8 V.S.A. § 3383 is amended to read:

§ 3383. SERVICE UPON THE SECRETARY OF STATE; NOTICE TO  
DEFENDANT

Such service of process shall be made by delivering to and leaving with the Secretary of State or some person in apparent charge of his or her office two copies thereof and the payment to him or her of such fee as is required by 12 V.S.A. § 852. The Secretary of State shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal

place of business and shall keep a record of all processes so served upon him or her. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ~~10~~ 14 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

Sec. 5. 8 V.S.A. § 3384 is amended to read:

§ 3384. SERVICE UPON OTHER AGENTS; NOTICE TO DEFENDANT

Service of process in any such action, suit, or proceeding shall in addition to the manner provided in section 3383 of this title be valid if served upon any person within this State who, in this State on behalf of such insurer, is:

- (1) soliciting insurance; or
- (2) making, issuing, or delivering any contract of insurance; or

(3) collecting or receiving any premium, membership fee, assessment, or other consideration for insurance; and a copy of such process is sent within ~~10~~ 14 days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

Sec. 6. 8 V.S.A. § 10204 is amended to read:

§ 10204. EXCEPTIONS

This subchapter does not prohibit any of the activities listed in this section. This section shall not be construed to require any financial institution to make any disclosure not otherwise required by law. This section shall not be construed to require or encourage any financial institution to alter any procedures or practices not inconsistent with this subchapter. This section shall not be construed to expand or create any authority in any person or entity other than a financial institution.

\* \* \*

(19) Disclosure requested pursuant to subpoena, provided that no disclosure shall be made until ~~ten~~ 14 days after the financial institution has notified the customer that financial information has been requested by subpoena. Such notice shall be served by first class mail to the customer at the most recent address known to the financial institution. The provisions of this subdivision shall not apply where the subpoena is issued by or on behalf of a regulatory, criminal, or civil law enforcement agency.

\* \* \*

Sec. 7. 8 V.S.A. § 19108 is amended to read:

§ 19108. APPEAL; RECEIVER

The propriety and necessity of the orders issued by the Commissioner under sections 19103 through 19107 of this title shall be open to review upon action brought in the usual form by an aggrieved party within ~~ten~~ 14 days to the Superior Court of Washington County. No injunction may be issued without prior notice to the Commissioner, and the court, on motion of the Commissioner, may appoint a temporary receiver of a financial institution involved in those proceedings.

Sec. 8. 8 V.S.A. § 36103(b) is amended to read:

(b) Not later than ~~ten~~ 14 days after the date on which the Commissioner takes possession and control of the business and assets of a credit union pursuant to subsection (a) of this section, such credit union may apply to the Superior Court of Washington County for an order requiring the Commissioner to show cause why the Commissioner should not be enjoined from continuing such possession and control. Except as provided in this subsection, no court may take any action, except at the request of the Commissioner by regulation or order, to restrain or affect the exercise of powers or functions of the Commissioner as conservator.

Sec. 9. 9 V.S.A. § 4025(b) is amended to read:

(b) If the company defaults in the performance of its obligation to redeem trading stamps, any rightful holder may file, within three months after the default, a complaint in the Washington Superior Court. Upon the filing of a complaint, the presiding judge shall, upon ~~10~~ 14 days' notice in writing sent by certified mail to the company, summarily hear and forthwith make a determination whether there has been a default. If the presiding judge determines that there has been a default, he or she shall give notice of the determination to the company and if the default is not corrected within ~~10~~ 14 days, he or she shall order the clerk of the ~~Court~~ court to publish notice of the default in three consecutive publications of one or more newspapers having general circulation throughout this State and therein require that proof of all

claims for redemption of the trading stamps of the company shall be filed with the ~~Court~~ court, together with the trading stamps upon which the claim is based, within three months after the date of the first publication. Promptly after the expiration of that period, the ~~Court~~ court shall determine the validity of all claims so filed. Thereupon, the ~~Court~~ court shall be paid by the surety such amount as shall be necessary to satisfy all valid claims so filed, not exceeding, however, the principal sum of the bond. Upon the failure to pay the amount demanded, the ~~Court~~ court shall notify the Attorney General who shall bring an action in a ~~Court~~ court of record, to recover the amount demanded. Upon payment or recovery of the amount demanded, the clerk of the ~~Court~~ court shall promptly thereafter make an equitable distribution of the proceeds of the bond to the claimants and shall promptly destroy the trading stamps so surrendered.

Sec. 10. 9 V.S.A. § 4469a(e) is amended to read:

(e) If the ~~Court~~ court finds that the farm employer has suffered actual hardship because of the unavailability of the farm housing for a replacement employee, the ~~Court~~ court shall enter an order approving a writ of possession, which shall be executed ~~no sooner~~ not earlier than five business days nor later than 30 days after the writ is served, to put the plaintiff into possession.

Sec. 11. 9 V.S.A. § 5602(f) is amended to read:

(f) Unless presented by an emergency or exigent circumstances, the Commissioner shall give notice to the Attorney General and U.S. Attorney not less than five business days before applying to the Washington County Superior Court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence under subsection (e) of this section. In the case of an emergency or exigent circumstances, the Commissioner shall notify the Attorney General and U.S. Attorney as soon as possible before applying to the Washington County Superior Court.

Sec. 12. 10 V.S.A. § 8009 is amended to read:

§ 8009. EMERGENCY ADMINISTRATIVE ORDERS; REQUEST FOR  
HEARING

\* \* \*

(d) Request for hearing. If an emergency order is issued, the respondent may request a hearing before the Environmental Division. Notice of the request for hearing shall be filed with the Environmental Division and the agency issuing the order within five business days of receipt of the order. A hearing on the emergency order shall be held at the earliest possible time and shall take precedence over all other hearings. The hearing shall be held within five business days of receipt of the notice of the request for hearing. A request

for hearing on an emergency order shall not stay the order. The Environmental Division shall issue a decision within five business days from the conclusion of the hearing, and no later than 30 days from the date the notice of request for hearing was received.

\* \* \*

Sec. 13. 11 V.S.A. § 1534 is amended to read:

§ 1534. APPOINTMENT OF COMMISSIONERS, HEARING

If sufficient cause is shown, the court shall appoint three disinterested persons as commissioners, who shall fix a time and place for hearing, and give reasonable notice thereof to those who defend. If, at the time of giving such notice, a person has not entered to defend, the commissioners shall give notice of such hearing by posting a notice thereof, at least ~~ten~~ 14 days before such hearing, in three or more public places in the town in which such corporation or society is located.

Sec. 14. 11C V.S.A. § 1210(b) is amended to read:

(b) Not later than ~~10~~ 14 days after filing an application under subsection (a) of this section, a dissolved mutual benefit enterprise shall give notice of the proceeding to each known claimant holding a contingent claim.

Sec. 15. 12 V.S.A. § 2432 is amended to read:

§ 2432. PASSING CAUSES TO SUPREME COURT; RECOGNIZANCE IN  
EJECTMENT CASES

In actions brought under the provisions of sections 4851-4853 of this title, within three business days after judgment, the appealing party shall give security to the other party by way of recognizance or bond approved by the court to pay the costs as the other party shall finally recover against him or her. If the appealing party is the defendant, he or she shall also give the security ~~as above provided~~ for rents then due and intervening rent. If final judgment is for the plaintiff, the costs, damages, and rents may be recovered by an action upon the recognizance or an action on contract founded on the judgment.

Sec. 16. 12 V.S.A. § 2791 is amended to read:

§ 2791. RETURN OF EXECUTION

The officer commencing proceedings for sale on execution of real estate or the right to collect and receive rents, issues, and profits thereof, may make such sale, although the return day of the execution has passed, and shall return the execution within five business days after the sale. A failure to make such return shall not affect the purchaser's title to the property.

Sec. 17. 12 V.S.A. § 2796 is amended to read:



§ 2796. REDEMPTION-BOND; WRIT OF POSSESSION; ACCOUNTING  
BY PURCHASER FOR RENTS AND PROFITS

When real estate is sold on execution, the debtor or person claiming under him or her may redeem the same at any time within six months from the date of such sale. He or she shall file a bond within ~~ten~~ 14 days after such sale with the clerk of the court or magistrate who issued such execution, to the purchaser, in a penal sum that the clerk or magistrate shall order, conditioned in case he or she does not redeem the property to pay the purchaser the fair rents and profits of such premises and commit no waste on the same, which bond shall be approved by the clerk or magistrate. When the debtor fails to file the bond as ~~aforsaid~~ provided for in this section, the purchaser may have his or her writ of possession from the clerk or magistrate, and may enter and take possession and manage such real estate in a good husbandlike manner. If the defendant in such action shall redeem the same, the purchaser shall account for the fair value of the rents and profits thereof, until the same shall be redeemed.

Sec. 18. 12 V.S.A. § 4853a is amended to read:

§ 4853a. PAYMENT OF RENT INTO COURT; EXPEDITED HEARING

\* \* \*

(b) A hearing on the motion shall be held any time after ~~10~~ 14 days' notice to the parties. If the tenant appears at the hearing and has not been previously defaulted, the court shall not enter judgment by default unless the tenant fails to file a written answer within ~~10~~ 14 days after the hearing. Any rent escrow order shall remain in effect notwithstanding the issuance of a default judgment but shall cease upon execution of a writ of possession.

\* \* \*

(h) If the tenant fails to pay rent into court in the amount and on the dates ordered by the court, the landlord shall be entitled to judgment for immediate possession of the premises. The court shall forthwith issue a writ of possession directing the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendant and, ~~no sooner~~ not earlier than five business days after the writ is served, or, in the case of an eviction brought pursuant to 10 V.S.A. chapter 153, 30 days after the writ is served, to put the plaintiff into possession.

Sec. 19. 12 V.S.A. § 4854 is amended to read:

§ 4854. JUDGMENT FOR PLAINTIFF; WRIT OF POSSESSION

If the court finds that the plaintiff is entitled to possession of the premises, the plaintiff shall have judgment for possession and rents due, damages, and costs, and when a written rental agreement so provides, the court may award

reasonable attorney's fees. A writ of possession shall issue on the date judgment is entered, unless the court for good cause orders a stay. The writ shall direct the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendant and, ~~no sooner~~ not earlier than ~~ten~~ 14 days after the writ is served, to put the plaintiff into possession.

Sec. 20. 12 V.S.A. § 4914 is amended to read:

§ 4914. COMPLAINT AND WARRANT

When a complaint is formally made in writing, to a district judge of such unlawful or forcible entry or detainer, he or she shall issue a warrant returnable within such county not less than six business days thereafter, which shall be directed to the sheriff, commanding such officer to apprehend the person against whom such complaint is made and bring him or her before the district judge having jurisdiction.

Sec. 21. 12 V.S.A. § 4919 is amended to read:

§ 4919. PROCEEDINGS WHEN RESPONDENT CANNOT BE FOUND

When the sheriff or his or her deputy cannot find the party against whom the warrant is issued, six business days before the time appointed for returning the same, he or she may leave a true and attested copy thereof at the usual place of abode of such person. If, at the return of the warrant, he or she cannot find or apprehend the person against whom it issued, he or she shall make a return of such fact of the time he or she so left a copy. If the party complained against does not appear at the time appointed for trial, a district judge, in his or her discretion, may adjourn or proceed with the case, but shall not impose a fine at such hearing.

Sec. 22. 12 V.S.A. § 4933(c) is amended to read:

(c) Acceptance of a foreclosure complaint by the court clerk that, due to a good faith error or omission by the plaintiff or the clerk, does not contain the certification required in subsection (a) of this section shall not invalidate the foreclosure proceeding, provided that the plaintiff files the required notice with the Commissioner within ~~40~~ 14 days of obtaining knowledge of the error or omission.

Sec. 23. 12 V.S.A. § 5134(b) is amended to read:

(b) Every order issued under this section shall contain the name of the court, the names of the parties, the date of the petition, and the date and time of the order and shall be signed by the judge. Every order issued under this section shall state upon its face a date, time, and place that the defendant may appear to petition the court for modification or discharge of the order. This opportunity to contest shall be scheduled as soon as reasonably possible, which in no event shall be more than ~~40~~ 14 days from the date of issuance of the

order. At such hearings, the plaintiff shall have the burden of proving by a preponderance of the evidence that the defendant stalked or sexually assaulted the plaintiff. If the court finds that the plaintiff has met his or her burden, it shall continue the order in effect and make such other orders as it deems necessary to protect the plaintiff or the plaintiff's children, or both.

Sec. 24. 13 V.S.A. § 354 is amended to read:

§ 354. ENFORCEMENT; POSSESSION OF ABUSED ANIMAL;

SEARCHES AND SEIZURES; FORFEITURE

\* \* \*

(f)(1) At the hearing on the motion for forfeiture, the State shall have the burden of establishing by clear and convincing evidence that the animal was subjected to cruelty, neglect, or abandonment in violation of section 352 or 352a of this title. The ~~Court~~ court shall make findings of fact and conclusions of law and shall issue a final order. If the State meets its burden of proof, the ~~Court~~ court shall order the immediate forfeiture of the animal in accordance with the provisions of subsection 353(c) of this title.

(2) Affidavits of law enforcement officers, humane officers, animal control officers, veterinarians, or expert witnesses of either party shall be admissible evidence which may be rebutted by witnesses called by either party. The affidavits shall be delivered to the other party at least five business days prior to the hearing. Upon request of the other party or the ~~Court~~ court, the party offering an affidavit shall make the affiant available by telephone at the hearing. The ~~Court~~ court may allow any witness to testify by telephone in lieu of a personal appearance and shall adopt rules with respect to such testimony.

(3) No testimony or other information presented by the defendant in connection with a forfeiture proceeding under this section or any information directly or indirectly derived from such testimony or other information may be used for any purpose, including impeachment and cross-examination, against the defendant in any criminal case, except a prosecution for perjury or giving a false statement.

(g)(1) If the defendant is convicted of criminal charges under this chapter or if an order of forfeiture is entered against an owner under this section, the defendant or owner shall be required to repay all reasonable costs incurred by the custodial caregiver for caring for the animal, including veterinary expenses. The Restitution Unit within the Center for Crime Victim Services is authorized to collect the funds owed by the defendant or owner on behalf of the custodial caregiver or a governmental agency that has contracted or paid for custodial care in the same manner as restitution is collected pursuant to section 7043 of this title. The restitution order shall include the information required under

subdivision 7043(e)(2)(A) of this title. The ~~Court~~ court shall make findings with respect to the total amount of all costs incurred by the custodial caregiver.

(2)(A) If the defendant is acquitted of criminal charges under this chapter and a civil forfeiture proceeding under this section is not pending, an animal that has been taken into custodial care shall be returned to the defendant unless the State institutes a civil forfeiture proceeding under this section within seven business days of the acquittal.

(B) If the ~~Court~~ court rules in favor of the owner in a civil forfeiture proceeding under this section and criminal charges against the owner under this chapter are not pending, an animal that has been taken into custodial care shall be returned to the owner unless the State files criminal charges under this section within seven business days after the entry of final judgment.

\* \* \*

Sec. 25. 13 V.S.A. § 2451(c) is amended to read:

(c) It shall be a defense to a charge of keeping a child from the child's lawful custodian that the person charged with the offense was acting in good faith to protect the child from real and imminent physical danger. Evidence of good faith shall include, ~~but is not limited to,~~ the filing of a ~~non-frivolous~~ nonfrivolous petition documenting that danger and seeking to modify the custodial decree in a Vermont court of competent jurisdiction. This petition must be filed within ~~72 hours~~ three business days of the termination of visitation rights. This defense shall not be available if the person charged with the offense has left the ~~state~~ State with the child.

Sec. 26. 13 V.S.A. § 5403(b) is amended to read:

(b) Within ~~40~~ 14 days after sentencing, the ~~Court~~ court shall forward to the Department:

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

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

Sec. 27. 13 V.S.A. § 5405(h) is amended to read:

(h) After making its determinations, the court shall issue a written decision explaining the reasons for its determinations and provide a copy of the decision to the ~~department~~ Department within ~~40~~ 14 days.

Sec. 28. 13 V.S.A. § 5405a is amended to read:

§ 5405a. COURT DETERMINATION OF SEX OFFENDER REGISTRY  
REQUIREMENTS

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

(2) If the State and the defendant do not agree as to the applicability of Sex Offender Registry requirements to the defendant, the State shall file a motion setting forth the Sex Offender Registry requirements applicable to the defendant within ~~10~~ 14 days of the entry of a guilty plea. To the extent the defendant opposes the motion, the State and the defendant shall present evidence at the sentencing as to the applicability of Sex Offender Registry requirements to the defendant.

\* \* \*

(d) Within ~~10~~ 14 days after the sentencing or the presentation of evidence pursuant to subdivision (a)(2) of this section, the ~~Court~~ court shall issue an order determining whether Sex Offender Registry requirements apply to the defendant. The order shall include:

\* \* \*

Sec. 29. 13 V.S.A. § 7042(b) is amended to read:

(b) A ~~state's attorney or the attorney general~~ State's Attorney or the Attorney General, within seven business days of the imposition of a sentence, may file with the sentencing judge a motion to increase, reduce, or otherwise modify the sentence. This motion shall set forth reasons why the sentence should be altered. After hearing, the court may confirm, increase, reduce, or otherwise modify the sentence.

Sec. 30. 13 V.S.A. § 7403 is amended to read:

§ 7403. APPEAL BY THE STATE

\* \* \*

(e) The appeal in all cases shall be taken within seven business days after the decision, judgment, or order has been rendered. In cases where the defendant is detained for lack of bail, he or she shall be released pending the appeal upon such conditions as the ~~Court~~ court shall order unless bail is denied as provided in the Vermont Constitution or in other pending cases. Such appeals shall take precedence on the docket over all cases and shall be assigned for hearing or argument at the earliest practicable date and expedited in every way.

Sec. 31. 13 V.S.A. § 7556 is amended to read:

§ 7556. APPEAL FROM CONDITIONS OF RELEASE

\* \* \*

(e) A person held without bail prior to trial shall be entitled to review of that determination by a panel of three ~~supreme court justices~~ Supreme Court Justices within seven business days after bail is denied.

Sec. 32. 13 V.S.A. § 7560a(b) is amended to read:

(b) The surety may respond to a motion to forfeit a bond. Responses must be served within ~~10~~ 14 days of service of the motion.

Sec. 33. 14 V.S.A. § 2625(f) is amended to read:

(f)(1) The court may grant an emergency guardianship petition filed ex parte by the proposed guardian if the court finds that:

(A) both parents are deceased or medically incapacitated; and

(B) the best interests of the child require that a guardian be appointed without delay and before a hearing is held.

(2) If the court grants an emergency guardianship petition pursuant to subdivision (1) of this subsection (e), it shall schedule a hearing on the petition as soon as practicable and in no event more than ~~72 hours~~ three business days after the petition is filed.

Sec. 34. 14 V.S.A. § 2671(h) is amended to read:

(h) The person under guardianship may, at any time, file a motion to revoke the guardianship. Upon receipt of the motion, the court shall give notice as provided by the rules of probate procedure. Unless the guardian files a motion pursuant to section 3063 of this title within ~~ten~~ 14 days from the date of the notice, the court shall enter judgment revoking the guardianship and shall provide the ward and the guardian with a copy of the judgment.

Sec. 35. 14 V.S.A. § 3067(d) is amended to read:

(d) The proposed guardian shall provide the court with the information and consents necessary for a complete background check. Not more than ~~10~~ 14 days after receipt of an evaluation supporting guardianship of the respondent, the court shall order from the respective registries background checks of the proposed guardian from any available ~~state~~ State registries, including ~~but not limited to~~ the adult abuse registry, child abuse registry, Vermont ~~crime information center~~ Crime Information Center, and the Vermont ~~state sex offender registry~~ State Sex Offender Registry, and the court shall consider information received from the registries in determining whether the proposed guardian is suitable. However, if appropriate under the circumstances, the court may waive the background reports or may proceed with appointment of a

guardian prior to receiving the background reports, provided that the court may remove a guardian if warranted by background reports which the court receives after the guardian's appointment. If the proposed guardian has lived in Vermont for fewer than five years or is a resident of another state, the court may order background checks from the respective state registries of the states in which the proposed guardian lives or has lived in the past five years or from any other source. The court shall provide copies of background check reports to the petitioner, the respondent, and the respondent's attorney.

Sec. 36. 14 V.S.A. § 3081(c) is amended to read:

(c) An emergency temporary guardian may be appointed without notice to the respondent or respondent's counsel only if it clearly appears from specific facts shown by affidavit or sworn testimony that immediate, serious, and irreparable harm will result to the respondent before the hearing on the appointment of an emergency temporary guardian can be held. A request for ex parte emergency temporary guardianship under this section shall be made by written motion, accompanied by a petition for guardianship, unless waived by the court for good cause shown. If the court appoints an ex parte emergency temporary guardian, the court shall immediately schedule a temporary hearing in accordance with subsection (b) of this section. The ex parte order shall state why the order was granted without notice and include findings on the immediate, serious, and irreparable harm. The ex parte order shall be for a fixed period of time, not to exceed ~~10~~ 14 days, and shall expire on its terms unless extended after the temporary hearing. If the temporary hearing cannot be held before the ex parte order expires, the ex parte order can be extended for good cause shown for an additional ~~10~~ 14 days until the temporary hearing is held.

Sec. 37. 15 V.S.A. § 304(e) is amended to read:

(e) Any motion objecting to genetic test results must be made in writing to the court and to the party intending to introduce the evidence not less than five business days prior to any hearing at which the results may be introduced into evidence. If no timely objection is made, the written results shall be admissible as evidence without the need for foundation testimony or other proof of authenticity or accuracy.

Sec. 38. 15 V.S.A. § 594a is amended to read:

§ 594a. TEMPORARY RELIEF

Either party or both parties to a civil marriage may apply for temporary relief at any time following the separation of the parties to the marriage coincidental with, or subsequent to the filing of complaint for absolute divorce or legal separation. The court to which the cause is returnable, or a ~~superior~~ Superior judge, on such notice to the adverse party as the court or judge

directs, may make such orders pending final hearing and further order of the court as the court would be authorized to make upon final hearing. A prompt hearing will be held, and the evidence shall be recorded by a court reporter. The court or judge shall issue an order within ~~40~~ 14 days from the date of the hearing. Failure of the court or judge to issue an order within ~~40~~ 14 days shall not affect the validity of any order issued after the ~~40-day~~ 14-day period.

Sec. 39. 15 V.S.A. § 663 is amended to read:

§ 663. SUPPORT ORDERS; REQUIRED CONTENTS

\* \* \*

(c) Every order for child support made or modified under this chapter on or after July 1, 1990, shall:

\* \* \*

(3) require that every party to the order must notify the ~~registry~~ Registry in writing of their current mailing address and current residence address and of any change in either address within seven business days of the change, until all obligations to pay support or support arrearages or to provide for visitation are satisfied;

\* \* \*

Sec. 40. 15 V.S.A. § 668a(e) is amended to read:

(e)(1) If a custodial parent refuses to honor a noncustodial parent's visitation rights without good cause, the court may modify the parent-child contact order if found to be in the best interests of the child. Good cause shall include:

(A) a pattern or incidence of domestic or sexual violence;

(B) a reasonable fear for the child's or the custodial parent's safety; or

(C) a history of failure to honor the visitation schedule agreed to in the parent-child contact order.

(2) A custodial parent, upon a showing of good cause as defined in subdivision (1)(A) or (B) of this subsection, may receive an ex parte order suspending a noncustodial parent's visitation rights until a court hearing is held. A hearing shall be held within ~~40~~ 14 days from the issuance of the order.

Sec. 41. 15 V.S.A. § 684(a) is amended to read:

(a) Upon the return of the deploying parent, either parent may file a motion to modify the temporary order on the grounds that compliance with the order will result in immediate danger of irreparable harm to the child, and may



request that the court issue an ex parte order. The deploying parent may file such a motion prior to his or her return. The motion shall be accompanied by an affidavit in support of the requested order. Upon a finding of irreparable harm based on the facts set forth in the affidavit, the court may issue an ex parte order modifying parental rights and responsibilities and parent-child contact. If the court issues an ex parte order, the court shall set the matter for hearing within ~~ten~~ 14 days from the issuance of the order.

Sec. 42. 15 V.S.A. § 782 is amended to read:

§ 782. EXPEDITED PROCEDURE FOR WAGE WITHHOLDING

(a) In the case of an order for child support made or modified after July 1, 1990 which does not include an order for immediate wage withholding, an obligee may request a wage withholding order when any amount due under the order has not been paid within seven business days after the amount is due. The obligor may request wage withholding at any time. The petition for wage withholding shall set forth:

(1) ~~The~~ the amount of support arrearages, if any;

(2) ~~The~~ the terms of the support order;

(3) ~~The~~ the periodic amount to be withheld for support and arrearages; and

(4) ~~A~~ a statement that the obligor may object to wage withholding on the basis of an error in the amount of current support or arrearages or an error in identity, at a hearing to be held within ~~ten~~ 14 days of the date the petition is filed.

(b) The petition shall be served upon the other party or parties as provided in section 783 of this title.

(c) The court shall set the date for the hearing and notify the parties of the place, date, and time. The hearing shall be held within ~~ten~~ 14 days of the date the petition is filed.

(d) The court shall enter a judgment for wage withholding under any one of the following circumstances:

(1) The obligor does not appear at the hearing without good cause.

(2) The obligor has requested the wage withholding order.

(3) The court finds after hearing that any amount due under a support order has not been paid within seven business days after the amount is due.

\* \* \*

Sec. 43. 15 V.S.A. § 783 is amended to read:

§ 783. WAGE WITHHOLDING; NOTICE AND HEARING

(a) In the case of a child support order issued prior to July 1, 1990 or a spousal support order, an obligee may request a wage withholding order when any amount due under a support order has not been paid within seven business days after the amount is due. The obligor may request wage withholding at any time. The petition for wage withholding shall set forth:

\* \* \*

(e) The court shall order wage withholding if the obligor has requested wage withholding or if any amount due under a support order has not been paid within seven business days after the amount is due. In all cases the court shall issue a wage withholding order, if any, within 45 days of notice sent to the responding party.

\* \* \*

Sec. 44. 15 V.S.A. § 785(c) is amended to read:

(c) The court shall file a wage withholding order with the ~~registry~~ Registry. Within seven business days of receipt of the order, the ~~registry~~ Registry shall provide the obligor's employer with notice of withholding by first class mail and send a copy of the notice and the order to the obligor and the obligee.

Sec. 45. 15 V.S.A. § 788(a) is amended to read:

(a) Any parent subject to a child support or parental rights and responsibilities order shall notify in writing the court which issued the most recent order and the ~~office of child support~~ Office of Child Support of his or her current mailing address and current residence address and of any change in either address within seven business days of the change, until all obligations to pay support or support arrearages, or to provide for parental rights and responsibilities are satisfied. For good cause the court may keep information provided under this subsection confidential.

Sec. 46. 15 V.S.A. § 791(d) is amended to read:

(d) If the ~~office of child support~~ Office of Child Support does not issue a release of lien within 10 days or if there is a disagreement over the amount of arrearages, the obligor may request the court to determine the amount of arrearages or to issue a release of lien, or both. The court shall schedule a hearing to be held within ~~10~~ 14 days of the request. The court may issue a release of lien without requiring the obligor to satisfy his or her liability for the total amount due if it finds that justice so requires.

Sec. 47. 15 V.S.A. § 798(d) is amended to read:

(d) Upon receipt of a license suspension order issued under this section, the license issuing authority shall suspend the license according to the terms of the order. Prior to suspending the license, the license issuing authority shall notify the license holder of the pending suspension and provide the license holder with an opportunity to contest the suspension based solely on the grounds of mistaken identity or compliance with the underlying child support order. The license shall be reinstated within five business days of a reinstatement order from the court or notification from the ~~office of child support~~ Office of Child Support or the custodial parent, where the rights of that parent have not been assigned to the ~~office of child support~~ Office of Child Support, that the parent is in compliance with the underlying child support order. The license issuing authority shall charge a reinstatement fee as provided for in 23 V.S.A. § 675, or as otherwise provided by law or rule.

Sec. 48. 15 V.S.A. § 1104(b) is amended to read:

(b) Every order issued under this section shall contain the name of the court, the names of the parties, the date of the petition, and the date and time of the order and shall be signed by the judge. Every order issued under this section shall state upon its face a date, time, and place when the defendant may appear to petition the ~~Court~~ court for modification or discharge of the order. This opportunity to contest shall be scheduled as soon as reasonably possible, which in no event shall be more than ~~40~~ 14 days from the date of issuance of the order. At such hearings, the plaintiff shall have the burden of proving abuse by a preponderance of the evidence. If the ~~Court~~ court finds that the plaintiff has met his or her burden, it shall continue the order in effect and make such other order as it deems necessary to protect the plaintiff.

Sec. 49. 15A V.S.A. § 3-601(a) is amended to read:

(a) Not later than five business days after a complete petition for adoption of a minor is filed, the court shall order that an evaluation be made by:

(1) a qualified employee of the agency that placed the minor for adoption; or

(2) in a direct placement adoption, the person who made the placement evaluation or another person qualified under section 2-202 of this title.

Sec. 50. 21 V.S.A. § 208(a) is amended to read:

(a) Whenever the ~~commissioner~~ Commissioner finds that any workplace is in violation of any portion of the VOSHA Code or this chapter and that the violation creates a dangerous condition which can be reasonably expected to cause imminent death or serious physical harm, the ~~commissioner~~ Commissioner may order the workplace or any portion of the workplace to be immediately closed or order that steps be taken to avoid, correct, or remove the

imminently dangerous conditions. The ~~commissioner~~ Commissioner may permit the presence of individuals necessary to avoid, correct, or remove the imminent danger, or to maintain the capacity of a continuous process operation to resume normal operations without complete cessation of operations, or where a cessation of operations is necessary, to permit it to be accomplished in a safe and orderly manner. On two business days' notice to the ~~commissioner~~ Commissioner, an order issued under this section may be contested by filing a petition in ~~superior court~~ Superior Court requesting dissolution or modification of the order. In that event, the court shall proceed to hear and to make an expeditious determination.

Sec. 51. 21 V.S.A. § 392 is amended to read:

§ 392. COURT PROCEEDINGS

If any employer covered by a wage order has failed to comply with the wage order within ~~10~~ 14 days after receiving notification of the violation, the ~~commissioner~~ Commissioner shall take court action to enforce the order.

Sec. 52. 21 V.S.A. § 1733(b) is amended to read:

(b) Where an impasse continues for 20 days after a fact finder has made a report public under subsection 1732(e) of this title, a three-member arbitration panel shall be formed as follows:

Each party to the impasse shall select one member of the panel and state its final offer on all disputed issues on the 20th day following publication of the fact finder's report. The two members so selected shall within five days, select the third member of the panel to serve as chair. If the two members fail to select a third member of the panel within five business days, the third member shall be appointed by the Superior Court for the county in which the municipality is situated, upon petition of either party, and notice to the other party. Within 30 days of the appointment of the chair, the panel shall decide by majority vote all disputed issues involving wages, hours, and conditions of employment as defined by this chapter, and this award shall become an agreement of the parties.

Sec. 53. 23 V.S.A. § 1746 is amended to read:

§ 1746. VIOLATIONS; ADMISSION; WAIVER

Any person who has violated any ordinance of the town which regulates, districts, or defines the time, place, or manner of parking vehicles in the town and who has not been convicted of any violation of the parking ordinances more than twice before in the same calendar year may, within three business days from the date of such violation, by a statement signed by him or her admit the violation and waive the issuance of any process and a trial by jury or hearing, and may voluntarily pay to the police court of the town the penalty

herein prescribed; provided, however, that whenever in the opinion of the court the gravity of the offense requires a fine in excess of the prescribed penalty, as provided in section 1749 of this title, the court may refuse to accept the signed statement and penalty and refer the matter to the grand juror or State's Attorney who may proceed against the offender in the manner prescribed by law. In that event, the signed statement and penalty shall be returned to the offender and shall not be considered as an admission or used as evidence in any court in this State.

Sec. 54. 27 V.S.A. § 143(a) is amended to read:

(a) When the spouse of an owner of a homestead lacks capacity to protect his or her interests due to a mental condition or psychiatric disability and the owner desires to convey it or an interest therein, he or she may petition the Probate Division of the Superior Court in the district in which the homestead is situated for a license to convey the same. Upon not less than ~~ten~~ 14 days' notice of the petition to the kindred of the spouse who lacks capacity to protect his or her interests due to a mental condition or psychiatric disability residing in the State, and to the selectboard members of the town in which the homestead is situated, which notice may be personal or by publication, the ~~Court~~ court may hear and determine the petition and may license the owner or convey the homestead, or an interest therein, by his or her sole deed. The license shall be recorded in the office where a deed of the homestead is required to be recorded and the sole deed shall have the same effect as if the spouse has the capacity to protect his or her interests and had joined therein.

Sec. 55. 27 V.S.A. § 372 is amended to read:

§ 372. PROCEEDINGS WHEN GRANTOR REFUSES TO  
ACKNOWLEDGE-SUMMONS

When a grantor or lessor refuses to acknowledge his or her deed, the grantee or lessee, or a person claiming under him or her, may apply to a district judge who shall thereupon issue a summons to the grantor or lessor to appear at a certain time and place before him or her to hear the testimony of the subscribing witnesses to the deed. Such summons, with a copy of the deed annexed, shall be served like a writ of summons, seven business days at least before the time therein assigned for proving the deed.

Sec. 56. 27 V.S.A. § 378 is amended to read:

§ 378. EFFECT OF RECORDING UNACKNOWLEDGED DEED

A person interested in a deed or lease not acknowledged may cause the deed or lease to be recorded without acknowledgment before or during the application to the court, or the proceedings before any of the authorities named in sections 371-376 of this title; and, when so recorded in the proper office, it

shall be as effectual as though the same had been duly acknowledged and recorded for 60 days thereafter. If such proceedings for proving the execution of the deed are pending at the expiration of such 60 days, the effect of such record shall continue until the expiration of six business days after the termination of the proceedings.

Sec. 57. 32 V.S.A. § 642(a)(3)(F) is amended to read:

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven business days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

Sec. 58. 32 V.S.A. § 4461(b) is amended to read:

(b) On or before the last day on which appeals may be taken from the decision of the board of civil authority, the agent of the town to prosecute and defend suits in which the town is interested, in the name of the town, on written application of one or more taxpayers of the town whose combined grand list represents at least three percent of the grand list of the town for the preceding year, shall appeal to the Superior Court from any action of the board of civil authority not involving appeals of the applying taxpayers. However, the town agent shall, in any event, have at least six business days after receipt of such taxpayers' application for appeal in which to take the appeal, and the date for the taking of such appeal shall accordingly be extended, if necessary, until the six business days shall have elapsed. The \$70.00 entry fee shall be paid by the applicants with respect to each individual property thus being appealed which is separately listed in the grand list.

Sec. 59. 32 V.S.A. § 4463 is amended to read:

#### § 4463. OBJECTIONS TO APPEAL

When a taxpayer, town agent, or selectboard claims that an appeal to the Director is in any manner defective or was not lawfully taken, on or before ~~40~~ 14 days after mailing of the notice of appeal by the clerk under Rule 74(b) of the Vermont Rules of Civil Procedure, the taxpayer, town agent, or selectboard shall file objections in writing with the Director, and furnish the appellant or appellant's attorney with a copy of the objections. When the taxpayer, town agent, or selectboard so requests, the Director shall thereupon fix a time and place for hearing the objections, and shall notify all parties thereof, by mail or otherwise. Upon hearing or otherwise, the Director shall pass upon the objections and make such order in relation thereto as is required by law. The

order shall be recorded or attached in the town clerk's office in the book wherein the appeal is recorded.

Sec. 60. 32 V.S.A. § 5412(a) is amended to read:

(a)(1) If a listed value is reduced as the result of an appeal or court action, and if the municipality files a written request with the Commissioner within 30 days after the date of the determination, entry of the final order, or settlement agreement if the Commissioner determines that the settlement value is the fair market value of the parcel, the Commissioner shall recalculate the municipality's education property tax liability for the year at issue, in accord with the reduced valuation, provided that:

(A) the reduction in valuation is the result of an appeal under chapter 131 of this title to the Director of Property Valuation and Review or to a court, with no further appeal available with regard to that valuation, or any judicial decision with no further right of appeal, or a settlement of either an appeal or court action if the Commissioner determines that the settlement value is the fair market value of the parcel;

(B) the municipality notified the Commissioner of the appeal or court action, in writing, within ~~10~~ 14 days after notice of the appeal was filed under section 4461 of this title or after the complaint was served; and

(C) as a result of the valuation reduction of the parcel, the value of the municipality's grand list is reduced at least one percent.

Sec. 61. 32 V.S.A. § 5843 is amended to read:

#### § 5843. FAILURE TO ACCOUNT; MAINTENANCE OF TRUST

##### ACCOUNT

If a person fails at any time to comply with the Commissioner's requirement under ~~subdivision~~ subsection 5842(b) of this title to remit amounts deducted and withheld at such intervals and based upon such classifications as the Commissioner designates, the Commissioner may petition the Superior Court wherein the person has a place of business, and, upon the petition and hearing, a judge of that ~~Court~~ court shall issue a citation declaring any amounts thereafter deducted and withheld by the person under section 5841 of this title to be a trust for the State of Vermont. That order shall further require the person, (and, if the person is a corporation, any principal officer of the corporation), to remit those amounts as the Commissioner has required to, and to file a return with respect to each of those payments under the terms of this subchapter with, the ~~Court~~ court upon pain of contempt of court. The order of notice upon the petition shall be returnable not later than seven business days after the filing of the petition. The petition shall be heard and determined on the return day, or on such day as soon thereafter as the ~~Court~~ court considers

practicable and shall fix, having regard to the circumstances of the case. The costs of the proceeding shall be payable as the ~~Court~~ court determines. The remittance of those amounts shall be made to the court or, if the court so directs, to the Commissioner, as the Commissioner has required for such period of time as the Commissioner determines with the approval of the ~~Court~~ court, whether or not all tax liabilities theretofore due have been satisfied, having regard to the maintenance of regular future payments by the person. All amounts and all returns received by the ~~Court~~ court under this section shall be remitted as soon as is practicable by the ~~Court~~ court to the Commissioner.

Sec. 62. 32 V.S.A. § 9280(d) is amended to read:

(d) As an additional or alternate remedy, the Commissioner may issue a warrant, directed to the sheriff of any county commanding him or her to levy upon and sell the real and personal property of any person liable for the tax, which may be found within his or her county, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return the warrant to the Commissioner and to pay to him or her the money collected by virtue thereof within 60 days after the receipt of the warrant. The sheriff shall within five business days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon the clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties, and interest for which the warrant is issued and the date when the copy is filed. Thereupon, the amount of the warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he or she shall be entitled to the same fees, which he or she may collect in the same manner. If a warrant is returned not satisfied in full, the Commissioner may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the State had recovered judgment therefor and execution thereon had been returned unsatisfied.

Sec. 63. 32 V.S.A. § 9811(b) is amended to read:

(b) As an additional or alternate remedy, the Commissioner may issue a warrant, directed to the sheriff of any county commanding him or her to levy upon and sell the real and personal property of any person liable for the tax, which may be found within his or her county, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return the warrant to the Commissioner and to pay to him or her the money collected by virtue thereof within 60 days after the receipt of the warrant. The sheriff shall within five business days after the receipt of the



warrant file with the county clerk a copy thereof, and thereupon the clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties, and interest for which the warrant is issued and the date when the copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant, he or she shall be entitled to the same fees, which he or she may collect in the same manner. If a warrant is returned not satisfied in full, the Commissioner may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the State had recovered judgment therefor and execution thereon had been returned unsatisfied.

Sec. 64. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

( **Committee Vote: 10-0-1** )

**H. 50**

An act relating to extending the current expiration date of the telecommunications siting law

**Reps. Carr of Brandon**, for the Committee on Energy and Technology, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

\* \* \*

(e) Notice. No less than 60 days prior to filing an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the Board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the Secretary of Natural Resources; the Secretary of Transportation; the Division for Historic Preservation; the Commissioner of Public Service and its Director for Public Advocacy; the Natural Resources Board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions.

The notices to the legislative body and planning commission of the municipality shall attach a statement that itemizes the rights and opportunities available to those bodies under subdivisions (c)(2) and (e)(2) of this section and under subsections (m), (n), and (o) of this section and informs them of the guide published under subsection (p) of this section and how to obtain a copy of that guide.

\* \* \*

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

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

\* \* \*

(i) Sunset of Board authority. Effective on July 1, ~~2017~~ 2020, no new applications for certificates of public good under this section may be considered by the Board.

\* \* \*

## Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

and that after passage the title of the bill be amended to read: "An act relating to the telecommunications siting law"

**( Committee Vote: 8-0-0)**

**NOTICE CALENDAR**  
**Committee Bill for Second Reading**

**H. 497**

An act relating to health requirements for animals used in agriculture.

(Rep. Higley of Lowell will speak for the Committee on Agriculture & Forestry.)

**Favorable with Amendment**

**H. 5**

An act relating to investment of town cemetery funds

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

First: In Sec. 1, 18 V.S.A. § 5384 (payment to treasurer; record; investment), in subdivision (b)(1), by striking out subdivision (E) and inserting in lieu thereof the following:

(E) or in the shares of an investment company, or an investment trust, which such as a mutual fund, closed-end fund or unit investment trust, that is registered under the federal Investment Company Act of 1940, as amended, if such mutual investment fund has been in operation for at least 10 five years and has net assets of at least \$10,000,000.00 \$100,000,000.00; or

Second: In Sec. 1, 18 V.S.A. § 5384 (payment to treasurer; record; investment), in subdivision (b)(2), by striking out subdivisions (A)–(B) and inserting in lieu thereof the following:

(2)(A) However, in towns a town that elect elects trustees of public funds, such cemetery funds shall be invested by such the trustees in any of the securities hereinbefore enumerated in this section, and the income thereof paid to the proper officers as the same falls due.

(B) The trustees may delegate management and investment of cemetery funds to the extent that is prudent under the terms of the trust or endowment, and in accordance with Uniform Prudent Management of Institutional Funds Act, 14 V.S.A. § 3415 (delegation of investment functions). An agent exercising a delegated management or investment function shall invest cemetery funds in any of the securities enumerated in this section.

**( Committee Vote: 11-0-0)**

**H. 9**

An act relating to deferred sentences

**Rep. Willhoit of St. Johnsbury**, for the Committee on Judiciary, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 7041 is amended to read:

§ 7041. DEFERRED SENTENCE

(a) Upon an adjudication of guilt and after the filing of a presentence investigation report, the court may defer sentencing and place the respondent on probation upon such terms and conditions as it may require if a written agreement concerning the deferring of sentence is entered into between the ~~state's attorney~~ State's Attorney and the respondent and filed with the clerk of the court.

(b) Notwithstanding subsection (a) of this section, the court may defer sentencing and place the respondent on probation without a written agreement between the ~~state's attorney~~ State's Attorney and the respondent if the following conditions are met:

(1) ~~(A)~~ (A) the respondent is 28 years ~~old~~ of age or younger; or

(B) the respondent is 29 years of age or older and has not previously been convicted of a crime;

(2) the crime for which the respondent is being sentenced is not a listed crime as defined in subdivision 5301(7) of this title;

(3) the court orders, unless waived by the State's Attorney:

(A) a presentence investigation in accordance with the procedures set forth in Rule 32 of the Vermont Rules of Criminal Procedure, unless the state's attorney agrees to waive the presentence investigation; or

(B) an abbreviated presentence investigation in a form approved by the Commissioner of Corrections;

(4) the court permits the victim to submit a written or oral statement concerning the consideration of deferment of sentence;

(5) the court reviews the presentence investigation and the victim's impact statement with the parties; and

(6) the court determines that deferring sentence is in the interest of justice.

(c) Notwithstanding subsections (a) and (b) of this section, the court may not defer a sentence for a violation of section 3253a (aggravated sexual assault of a child), section 2602 (lewd and lascivious conduct with a child unless the victim and the defendant were within five years of age and the act was consensual), 3252(c) (sexual assault of a child under 16 years of age unless the

victim and the defendant were within five years of age and the act was consensual), 3252(d) or (e) (sexual assault of a child), 3253(a)(8) (aggravated sexual assault), or 3253a (aggravated sexual assault of a child) of this title.

\* \* \*

## Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

( Committee Vote: 10-0-1)

## H. 182

An act relating to certain businesses regulated by the Department of Financial Regulation

**Rep. O'Sullivan of Burlington**, for the Committee on Commerce and Economic Development, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Consumer Litigation Funding \* \* \*

Sec. 1. 8 V.S.A. § 2252 is amended to read:

### § 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~~ \$200.00 fee at the time of registration and at the time of each renewal. Registrations shall be renewed every ~~three years~~ year on or before December 1.

(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.

(d) The registration of a company that fails to complete a renewal, meet minimum registration requirements, or pay the renewal fee on or before December 30 shall automatically expire on December 31.

## Sec. 2. CONSUMER LITIGATION FUNDING COMPANIES; ANNUAL REGISTRATION RENEWAL; APPLICATION

Notwithstanding 8 V.S.A. § 2252(b), a company that registered on or before the effective date of this act may renew its registration on or before

December 1 of the third calendar year following its initial registration date and then annually thereafter.

\* \* \* Licensed Lenders; Substituted Information; Prelicensure Training \* \* \*

Sec. 3. 8 V.S.A. § 2204 is amended to read:

§ 2204. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

\* \* \*

(d) For good cause shown and consistent with the purposes of this section, the Commissioner may waive or modify the requirements of subdivisions (a)(3) and (a)(4) of this section.

(e) This section does not apply to a lender making only commercial loans.

Sec. 4. 8 V.S.A. § 2204a is amended read:

§ 2204a. MORTGAGE LOAN ORIGINATOR PRELICENSING AND RELICENSING EDUCATION REQUIREMENT

\* \* \*

(f) A person previously licensed as a mortgage loan originator under this chapter applying to be licensed again must prove that he or she has completed all of the continuing education requirements for the year in which the license was last held. This subsection does not apply to an individual who is required to retake 20 hours of prelicensing education pursuant to subsection (g) of this section.

(g) A person who has completed 20 hours of prelicensing education under 12 U.S.C. § 5104(c) must retake such prelicensing education to be eligible to apply for a Vermont loan originator license if he or she:

(1) within three years of completing the prelicensing education, does not acquire a valid mortgage loan originator license in any state or does not become a federally registered mortgage loan originator; or

(2) within three years of completing the prelicensing education, obtains a valid mortgage loan originator license in any state or becomes a federally registered mortgage loan originator and subsequently does not maintain an approved mortgage loan originator license in any state or an approved federal registration for a period of three years or more.

(h) A person who has completed two hours of Vermont prelicense education as required by subdivision (a)(4) of this section must retake such prelicensing education to be eligible to apply for a Vermont mortgage loan originator license if he or she:

(1) does not acquire a valid Vermont mortgage loan originator license within three years of completing the prelicense education; or

(2) obtains a valid Vermont mortgage loan originator license and then subsequently does not maintain an approved Vermont mortgage loan originator license for a period of three years or more.

Sec. 5. 8 V.S.A. § 2204c is amended to read:

§ 2204c. APPROVAL OF APPLICATION; ISSUANCE OF COMMERCIAL LENDER LICENSE

\* \* \*

(d) For good cause shown and consistent with the purposes of this section, the Commissioner may waive or modify the requirements of subdivisions (a)(3) and (a)(4) of this section.

Sec. 6. 8 V.S.A. § 2209a(h) is amended to read:

(h) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license. This subsection does not apply to an individual who is required to retake 20 hours of prelicensing education pursuant to subsection 2204a(g) of this title.

\* \* \* Financial Responsibility; Money Servicers;

Debt Adjusters; Loan Servicers \* \* \*

Sec. 7. 8 V.S.A. § 2508(a) is amended to read:

(a) Upon the filing of an application under this subchapter, the Commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant, and any person named in the application. The Commissioner may conduct an on-site investigation of the applicant, the cost of which the applicant shall bear in accordance with section 18 of this title. The Commissioner shall issue a license to an applicant under this subchapter if the Commissioner finds that all of the following conditions have been fulfilled:

(1) ~~the~~ The applicant has complied with sections 2506, 2507, and 2510 of this title;

(2)(A) ~~the~~ The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant, and competence, experience, character, and general fitness of the executive officers, managers, and directors of, and persons in control of the

applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission; ~~and.~~

(B) For purposes of assessing whether a person is financially responsible under this subdivision, the Commissioner may consider how the person has managed his or her own financial condition. A determination that a person has not shown financial responsibility may include the following:

(i) current outstanding judgments, except judgments solely as a result of medical expenses;

(ii) current outstanding tax liens or other government liens and filings;

(iii) foreclosures within the past three years; or

(iv) a pattern of seriously delinquent accounts within the past three years.

(3) ~~the~~ The applicant has paid the requisite application and license fees.

Sec. 8. 8 V.S.A. § 2517(a) is amended to read:

(a) Upon the filing of an application under this subchapter, the Commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The Commissioner may conduct an on-site investigation of the applicant, the cost of which the applicant shall bear in accordance with section 18 of this title. The Commissioner shall issue a license to an applicant under this subchapter if the Commissioner finds that all of the following conditions have been fulfilled:

(1) ~~the~~ The applicant has complied with section 2516 of this title;

(2)(A) ~~the~~ The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant, and competence, experience, character, and general fitness of the executive officers, managers, directors of, and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in check cashing and currency exchange; ~~and.~~

(B) For purposes of assessing whether a person is financially responsible under this subdivision, the Commissioner may consider how the person has managed his or her own financial condition. A determination that a person has not shown financial responsibility may include the following:

(i) current outstanding judgments, except judgments solely as a result of medical expenses;



(ii) current outstanding tax liens or other government liens and filings;

(iii) foreclosures within the past three years; or

(iv) a pattern of seriously delinquent accounts within the past three years.

(3) ~~the~~ The applicant has paid the requisite application and license fees.

Sec. 9. 8 V.S.A. § 2756(a) is amended to read:

(a) The Commissioner shall issue a license to the applicant upon the filing of the application and the payment of the fees, if the Commissioner finds upon investigation that all of the following conditions have been fulfilled:

(1) ~~the~~ The financial responsibility, experience, character, and general fitness of the applicant; and of the members, officers, directors, and persons in control of the applicant; command the confidence of the community and warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter; and

(2)(A) ~~neither~~ Neither the applicant nor any of such members, officers, directors, or persons in control of the applicant have been convicted of a felony or ~~has~~ have had a record of having defaulted in the payment of money collected for others, including the discharge of such debts through bankruptcy proceedings; and

(B) For purposes of assessing whether a person is financially responsible under this subdivision, the Commissioner may consider how the person has managed his or her own financial condition. A determination that a person has not shown financial responsibility may include the following:

(i) current outstanding judgments, except judgments solely as a result of medical expenses;

(ii) current outstanding tax liens or other government liens and filings;

(iii) foreclosures within the past three years; or

(iv) a pattern of seriously delinquent accounts within the past three years.

(3) ~~the~~ The applicant has paid the requisite application and license fees.

Sec. 10. 8 V.S.A. § 2904 is amended to read:

§ 2904. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

(a) Upon the filing of the application, payment of the required fees, and approval of the bond, the Commissioner shall issue and deliver a license to the applicant upon findings by the Commissioner as follows:

(1)(A) That the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter. If the applicant is a partnership or association, such findings are required with respect to each partner, member, and control person. If the applicant is a corporation, such findings are required with respect to each officer, director, and control person.

(B) For purposes of assessing whether a person is financially responsible under this subdivision, the Commissioner may consider how the person has managed his or her own financial condition. A determination that a person has not shown financial responsibility may include the following:

(i) current outstanding judgments, except judgments solely as a result of medical expenses;

(ii) current outstanding tax liens or other government liens and filings;

(iii) foreclosures within the past three years; or

(iv) a pattern of seriously delinquent accounts within the past three years;

(2) That allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted.

(3) That the applicant is licensed to engage in such business in its state of domicile, and is in good standing in its state of domicile with its state regulator or equivalent financial industry regulator, if such state licenses third party loan servicers.

(4) That the applicant, and each officer, director, and control person of the applicant, has never had a third party loan servicer license, lender license, mortgage broker license, mortgage loan originator license, or similar license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.

(5) ~~The~~ That the applicant, and each officer, director, and control person of the applicant, has not been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(A) during the seven-year period preceding the date of the application for licensing and registration, other than a conviction for driving under the influence or a similarly titled offense in this State or in any other jurisdiction;

(B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; and

(C) provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.

(6) That the applicant has satisfied the surety bond requirement of section 2903 of this title.

\* \* \*

(d) For good cause shown and consistent with the purposes of this section, the Commissioner may waive or modify the requirements of subdivisions (a)(3) and (a)(4) of this section.

\* \* \* Money Servicers; Virtual Currency; Exclusions; Receipts and Refunds; Segregated Accounts; Permissible Investments; Enforcement \* \* \*

Sec. 11. 8 V.S.A. § 2500(22) is added to read:

(22) “Virtual currency” means stored value that:

(A) can be a medium of exchange, a unit of account, or a store of value;

(B) has an equivalent value in money or acts as a substitute for money;

(C) may be centralized or decentralized; and

(D) can be exchanged for money or other convertible virtual currency.

Sec. 12. 8 V.S.A. § 2501 is amended to read:

§ 2501. EXCLUSIONS

(a) This chapter does not apply to:

(1) the United States or a department, agency, or instrumentality thereof;

(2) the sale or issuance of payment instruments or stored value, or money transmission, by the U.S. Postal Service, or by a contractor on behalf of the U.S. Postal Service;

(3) a state, county, city, or any other governmental agency or governmental subdivision within a state;

(4) a financial institution as defined in subdivision 11101(32) of this title, a financial institution holding company as defined in subdivision 11101(33) of this title, a credit union, an office of an international banking corporation, a branch of a foreign bank, a corporation organized pursuant to the Bank Services Company Act, or a corporation organized under the Edge Act under the laws of a state or the United States if the person does not issue, sell, or provide payment instruments or stored value through an authorized delegate that is not such a person;

(5) electronic funds transfer of governmental benefits for a federal, state, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof;

(6) a board of trade designated as a contract market under the Commodity Exchange Act or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board of trade;

(7) a registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;

(8) a person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider;

(9) an operator of a payment system that provides processing, clearing, or settlement services, between or among persons excluded by this section or licensees, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers to the extent of its operation as such;

(10) a person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer;

(11) the sale or issuance of stored value by a school to its students and employees;

(12) a seller of goods or services that cashes payment instruments incidental to or independent of a sale and does not charge for cashing the payment instrument in excess of \$1.00 per instrument; or

(13) a debt adjuster licensed pursuant to chapter 133 of this title when engaged in the business of debt adjustment.

(b) The Commissioner may issue an order exempting any person from this chapter when such person is performing services for the benefit of the United States or a department, agency, or instrumentality thereof, or for the benefit of

any state, county, city, or any other governmental agency or governmental subdivision within a state.

Sec. 13. 8 V.S.A. § 2511 is added to read:

§ 2511. ACTIVITIES OF MONEY TRANSMITTERS; RECEIPTS AND REFUNDS

(a) Every money transmitter licensee and its authorized delegates shall provide a receipt to the customer that clearly states the name, address, and telephone number of the licensee; the amount of money presented for transmission; and the total of any fees charged by the licensee.

(1) If the rate of exchange for a money transmission to be paid in the currency of another country is fixed by the licensee for that transaction at the time the money transmission is initiated, then the receipt provided to the customer shall disclose the rate of exchange for that transaction, and the duration, if any, for the payment to be made at the fixed rate of exchange so specified.

(2) If the rate of exchange for a money transmission to be paid in the currency of another country is not fixed at the time the money transmission is sent, the receipt provided to the customer shall disclose that the rate of exchange for the transaction will be set at the time the recipient of the money transmission picks up the funds in the foreign country.

(3) As used in this section, “fees” does not include revenue that a licensee or its authorized delegate generates, in connection with a money transmission, in the conversion of the money of one government into the money of another government.

(b) Every money transmitter licensee and its authorized delegates shall refund to the customer within 10 days of receipt of a written request for a refund all moneys received for transmittal unless any of the following occurs:

(1) Prior to receipt of the written request for a refund, the moneys have been transmitted and delivered to the person designated by the customer.

(2) Prior to receipt of a written request for a refund, instructions have been given committing an equivalent amount of money to the person designated by the customer.

(3) The licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may potentially occur as a result of transmitting the money as requested by the customer or refunding the money as requested by the customer.

(4) The licensee is otherwise barred by law from making a refund.

Sec. 14. 8 V.S.A. § 2536 is added to read:

§ 2536. SEGREGATED ACCOUNTS

(a) All monetary value remitted by customers to a licensee and its authorized delegates subject to this chapter shall be maintained in a permissible investment pursuant to section 2541 of this chapter. Such account or accounts shall be segregated from all other accounts of the licensee and shall not be used in the conduct of the licensee's personal affairs or the licensee's business affairs.

(b) The licensee may withdraw funds from the segregated account for:

- (1) disbursement as directed by the customer;
- (2) fees to which it is entitled for services actually performed; and
- (3) customer refunds.

(c) The licensee shall maintain complete and accurate account records, including the source of all deposits, the nature and recipient of all disbursements, the date and amount of each transaction, and the name of the customer. All documents pertaining to account activity shall be produced upon request of the Commissioner. These records shall be subject to the retention requirements of section 2534 of this title.

Sec. 15. 8 V.S.A. § 2540(c) is amended to read:

~~(c) Permissible investments, even if commingled with other assets of the licensee, are~~ shall be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored-value obligations in the event of bankruptcy or receivership of the licensee.

Sec. 16. 8 V.S.A. § 2541(a) is amended to read:

(a) Except to the extent otherwise limited by the Commissioner pursuant to section 2540 of this title, the following investments are permissible under section 2540 of this title:

- (1) cash, a certificate of deposit, or a senior debt obligation of a depository institution within the meaning of subdivision 11101(24) of this title;
- (2) a banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the Federal Reserve System and is eligible for purchase by a Federal Reserve Bank;
- (3) an investment bearing a rating of one of the three highest grades, as defined by a nationally-recognized organization that rates securities;
- (4) an investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an

investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(5) receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts ~~which~~ that are not past due or doubtful of collection, if the aggregate amount of investments in receivables under this subdivision does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not have at one time investments in receivables under this subdivision in any one person aggregating more than 10 percent of the licensee's total permissible investments; ~~and~~

(6) a share or a certificate issued by an open-end management investment company that is registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.), and whose portfolio is restricted by the management company's investment policy to investments specified in subdivisions (1) through (4) of this subsection; and

(7) virtual currency owned by the licensee, but only to the extent of outstanding transmission obligations received by the licensee in identical denomination of virtual currency.

Sec. 17. 8 V.S.A. § 2545 is amended to read:

§ 2545. SUSPENSION, REVOCATION, AND NONRENEWAL  
RECEIVERSHIP

\* \* \*

(c) If the Commissioner believes, from evidence satisfactory to him or her, that any person has violated a provision of subsection (a) of this section, the Commissioner may, in addition to any other powers, issue orders or directives to any person:

(1) enjoining or prohibiting such person from engaging in the financial services industry in this State;

(2) to remove any officer, director, employee, or control person; or

(3) regarding any other action or remedy as the Commissioner deems necessary to carry out the purposes of this chapter.

(d) The licensee shall receive 15 days' notice and an opportunity to be heard before such order shall be issued. Mailing notice by certified mail to the licensee's current address as stated on the license shall be presumptive evidence of its receipt by the licensee. However, if the Commissioner finds that the public safety or welfare imperatively requires emergency action, action

with no prior notice or prior opportunity to be heard may be taken, pending proceedings for revocation or other action.

\* \* \* Licensed Lenders; Employee Definition; Loan Solicitations; Lead Generation \* \* \*

Sec. 18. 8 V.S.A. § 2200 is amended to read:

§ 2200. DEFINITIONS

As used in this chapter:

\* \* \*

(5)(A) “Employee” means, subject to subdivision (B) of this subdivision (5), an individual whose manner and means of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by:

(i) the controlling person;

(ii) an entity that directly or indirectly owns 100 percent of the controlling person; or

(iii) an entity that is directly or indirectly 100 percent owned by the same parent company as the controlling person.

(B) For purposes of a registered mortgage loan originator as defined in ~~subdivision (22)~~ subdivision (25) of this section, the term employee has such binding definition as may be issued by the federal banking agencies in connection with their responsibilities under the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

\* \* \*

(13) “Lead” means any information identifying a potential consumer of a loan.

(14) “Lead generation” means to:

(A) initiate consumer interest or inquiry in a loan by online marketing, direct response advertising, telemarketing, or other similar consumer contact;

(B) engage in the business of selling leads for loans;

(C) generate or augment leads for other persons for, or with the expectation of, compensation or gain; or

(D) refer Vermont borrowers to other persons for loans for, or with the expectation of, compensation or gain.



(15) “Licensee” means any person subject to the provisions of section 2201 of this title.

~~(14)~~(16) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(A) For purposes of this ~~subdivision (14)~~ subdivision (16), the term “clerical or support duties” may include, subsequent to the receipt of a residential mortgage loan application:

(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(B) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

~~(15)~~(17) “Loan solicitation” means to:

(A) offer, solicit, broker, directly or indirectly arrange, place, or find a loan for a prospective Vermont borrower;

(B) engage in any activity intended to assist a prospective Vermont borrower in obtaining a loan, including lead generation;

(C) arrange, in whole or in part, a loan through a third party, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, through any method, including mail, telephone, Internet, or any electronic means; or

(D) advertise or cause to be advertised in this State a loan or any of the services described in subdivisions (A) to (D) of this subdivision (17). The term does not apply to residential mortgage loans.

(18) “Mortgage broker” means any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, or finds, or offers to negotiate, place, assist in placement, or find mortgage loans, other than commercial loans, on real property for others. The term shall not include real estate brokers or

salespersons, as defined in 26 V.S.A. § 2211, who in connection with services performed in a prospective real estate transaction, provide mortgage information or assistance to a buyer, if such real estate broker or real estate salesperson is not compensated for providing such mortgage information or assistance in addition to the compensation received from the seller or buyer for such real estate brokerage activity. The term shall not include attorneys licensed to practice law in this State acting in their professional capacity. The term shall not include persons engaged in the foregoing activities solely in connection with the sale, assignment, or other transfer of one or more previously originated loans.

~~(16)~~(19) “Mortgage loan” means a loan secured primarily by a lien against real estate.

~~(17)~~(20) “Mortgage loan originator”:

(A) Means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application;

(ii) offers or negotiates terms of a residential mortgage loan;

(iii) represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform the services described in subdivision (A)(i) or (A)(ii) of this ~~subdivision (17)~~ subdivision (20).

(B) An individual “takes a residential mortgage loan application” if the individual receives a residential mortgage loan application for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower (or to accept the terms offered by a borrower or prospective borrower in response to a solicitation), whether the application is received directly or indirectly from the borrower or prospective borrower.

(C) An individual “offers or negotiates terms of a residential mortgage loan for compensation or gain” if the individual:

(i)(I) presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;

(II) communicates directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or

(III) recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in

accordance with a duty to or incentive from any person other than the borrower or prospective borrower; and

(ii) receives or expects to receive payment of money or anything of value in connection with the activities described in subdivision (C)(i) of this ~~subdivision (17)~~ subdivision (20) or as a result of any residential mortgage loan terms entered into as a result of such activities.

(D) Does not include:

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

(ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Vermont law, unless the person or entity is compensated by a buyer or a seller in addition to the compensation received for such real estate brokerage activity or is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(iii) a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in ~~Section 11 U.S.C. § 101(53D) of Title 11, United States Code.~~

~~(18)~~(21) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators, or any successor to the Nationwide Mortgage Licensing System and Registry.

~~(19)~~(22) “Nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

~~(20)~~(23) “Person” ~~shall have~~ has the meaning set forth in 1 V.S.A. § 128 and includes a natural person, corporation, company, limited liability company, partnership, or association.

~~(21)~~(24) “Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including:

(A) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(B) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(D) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(E) offering to engage in any activity or act in any capacity described in subdivision (A), (B), (C), or (D) of this ~~subdivision (21)~~ subdivision (24).

~~(22)~~(25) “Registered mortgage loan originator” means any individual who:

(A) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is:

(I) owned and controlled by a depository institution, as determined by a federal banking agency; and

(II) regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

~~(23)~~(26) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

~~(24)~~(27) “Residential mortgage loan application” means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer.

~~(25)~~(28) “Residential real estate” means any real property located in Vermont, upon which is constructed or intended to be constructed a dwelling.

~~(26)~~(29) “Sales finance company” means any person who has purchased one or more retail installment contracts, as defined in 9 V.S.A. §§ 2351(5) and 2401(7), from one or more retail sellers located in this State. Taking one or

more retail installment contracts as security for a loan or loans shall not be construed as purchasing for purposes of this definition.

~~(27)~~(30) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Sec. 19. 8 V.S.A. § 2201 is amended to read:

§ 2201. LICENSES REQUIRED

(a) ~~No person shall without~~ Without first obtaining a license under this chapter from the Commissioner, a person shall not:

- (1) ~~engage~~ Engage in the business of making loans of money, credit, goods, or things in action and charge, contract for, or receive on any such loan interest, a finance charge, discount, or consideration therefor; ~~;~~
- (2) ~~act~~ Act as a mortgage broker; ~~;~~
- (3) ~~engage~~ Engage in the business of a mortgage loan originator; ~~or.~~
- (4) ~~act~~ Act as a sales finance company.
- (5) Engage in the business of loan solicitation. A person licensed as a lender or mortgage broker is not required to obtain a separate loan solicitation license when acting on the person's own behalf.

\* \* \*

(d) ~~No~~ A lender license, mortgage broker license, ~~or~~ sales finance company license, or loan solicitation license shall not be required of:

\* \* \*

(e) ~~No~~ A mortgage loan originator license shall not be required of:

- (1) Registered mortgage loan originators, when employed by and acting for an entity described in subdivision ~~2200(22)~~ 2200(25) of this chapter.
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.
- (3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence, including a vacation home, or inherited property that served as the deceased's dwelling, provided that the individual does not act as a mortgage loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual activity and acting in a commercial context.

(4) An individual who is an employee of a federal, State, or local government agency, or an employee of a housing finance agency, who acts as a mortgage loan originator only pursuant to his or her official duties as an employee of the federal, State, or local government agency or housing finance agency.

(5) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator. To the extent an attorney licensed in this State undertakes activities that are covered by the definition of a mortgage loan originator, such activities do not constitute engaging in the business of a mortgage loan originator, provided that:

(A) such activities are considered by the State governing body responsible for regulating the practice of law to be part of the authorized practice of law within this State;

(B) such activities are carried out within an attorney-client relationship; and

(C) the attorney carries them out in compliance with all applicable laws, rules, ethics, and standards.

(6) A person who makes no more than three mortgage loans in any consecutive three-year period beginning on or after July 1, 2011.

\* \* \*

Sec. 20. 8 V.S.A. § 2202(b)(6) is added to read:

(6) For an applicant for a loan solicitation license, \$500.00 as a license fee, and \$500.00 as an application and investigation fee.

Sec. 21. 8 V.S.A. § 2203 is amended to read:

§ 2203. BOND; LIQUID ASSETS REQUIRED

\* \* \*

(c) A loan solicitation licensee shall maintain a surety bond in an amount not less than \$25,000.00 or in such other amount as the Commissioner may require.

(d) When an action is commenced on a licensee's bond, the Commissioner may require the filing of a new bond. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

~~(d)~~(e) Every applicant for a lender's license shall also prove, in form satisfactory to the Commissioner, that the applicant has liquid assets of

\$25,000.00, or such greater amount as the Commissioner may require, available for the operation of such business at the location specified in the application. Every applicant wishing to make commercial loans shall prove liquid assets in an amount of \$50,000.00 or such greater amount as the Commissioner may require.

~~(e)~~(f) Notwithstanding subsections (a) and ~~(d)~~(e) of this section, the Commissioner may waive or modify the requirement for or amount of a bond or liquid asset set forth in this section, or accept other appropriate means of assuring the financial responsibility of a licensee.

~~(f)~~(g) This section does not apply to a lender making only commercial loans.

Sec. 22. 8 V.S.A. § 2208(a) is amended to read:

(a) Not more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same lender, mortgage broker, ~~or sales finance company licensee,~~ or loan solicitation licensee upon compliance with all the provisions of this chapter governing an original issuance of a license.

Sec. 23. 8 V.S.A. § 2209(a)(7) is added to read:

(7) For the renewal of a loan solicitation license, \$500.00.

Sec. 24. 8 V.S.A. § 2219 is amended to read:

§ 2219. CONTRACT REQUIRED OF MORTGAGE BROKER

\* \* \*

(b) A mortgage broker who acts as an independent contractor loan processor or an underwriter who performs loan processing or underwriting activities for a licensed or exempt mortgage broker or lender is not required to provide a mortgage broker agreement to the prospective borrower, provided:

(1) the mortgage broker is acting as an independent contractor loan processor or underwriter as described in subsection 2201(g) of this chapter;

(2) the mortgage broker's activities are limited to loan processor or underwriting activities as described in subdivision ~~2200(14)~~ 2200(16) of this chapter;

(3) the mortgage broker is paid a fee solely by the licensed or exempt mortgage broker or lender, is not paid by the prospective borrower, and is not paid a commission based upon the dollar amount of the loan; and

(4) if the mortgage broker is acting as an independent contractor loan processor or underwriter on behalf of a mortgage broker, such mortgage broker

has already entered into a written mortgage broker agreement with the prospective borrower.

(c) A mortgage broker that engages solely in lead generation and does not employ or sponsor any mortgage loan originators is not required to provide a mortgage broker agreement but must include clearly and conspicuously in all advertisements of loans and solicitation of leads, the following disclosure: **THIS IS A LOAN SOLICITATION ONLY. [INSERT LICENSEE NAME] IS NOT THE LENDER. INFORMATION RECEIVED WILL BE SHARED WITH ONE OR MORE THIRD PARTIES IN CONNECTION WITH YOUR LOAN INQUIRY. THE LENDER MAY NOT BE SUBJECT TO ALL VERMONT LENDING LAWS. THE LENDER MAY BE SUBJECT TO FEDERAL LENDING LAWS.**

Sec. 25. 8 V.S.A. § 2220a is added to read:

§ 2220a. DISCLOSURE REQUIRED BY LOAN SOLICITATION LICENSEE

Each loan solicitation licensee shall include clearly and conspicuously in all advertisements of loans and solicitations of leads, the following statement: **THIS IS A LOAN SOLICITATION ONLY. [INSERT LICENSEE NAME] IS NOT THE LENDER. INFORMATION RECEIVED WILL BE SHARED WITH ONE OR MORE THIRD PARTIES IN CONNECTION WITH YOUR LOAN INQUIRY. THE LENDER MAY NOT BE SUBJECT TO ALL VERMONT LENDING LAWS. THE LENDER MAY BE SUBJECT TO FEDERAL LENDING LAWS.**

Sec. 26. 8 V.S.A. § 2223 is amended to read:

§ 2223. RECORDS REQUIRED OF LICENSEE

(a) The licensee shall keep, use in the licensee's business, and make available to the Commissioner upon request, such books, accounts, records, and data compilations as will enable the Commissioner to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the Commissioner ~~hereunder~~. Every licensee shall preserve such books, accounts, records, and data compilations in a secure manner for ~~at least~~ not less than seven years after making the final entry on any loan recorded therein. Thereafter, the licensee shall dispose of such books, accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

(b)(1) A licensee that engages in loan solicitation activity shall maintain the following records for not less than seven years:



(A) copies of all solicitation materials used in its business, regardless of medium, including business cards, telephone scripts, mailers, electronic mail, and radio, television, and Internet advertisements;

(B) records of any contact or attempted contact with a consumer, including the name, date, method, and nature of contact, and any information provided to or received from the consumer; and

(C) the name, address, and, if applicable, unique identifier of any person who received, requested, or contracted for leads or referrals and any fees or consideration charged or received for such services.

(2) Thereafter, the licensee shall dispose of such records in accordance with 9 V.S.A. § 2445.

Sec. 27. 8 V.S.A. § 2224 is amended to read:

§ 2224. ANNUAL REPORT, MORTGAGE CALL REPORTS

(a) Annually, on or before April 1, each licensed lender, mortgage broker, ~~and~~ sales finance company, and loan solicitation licensee shall file a report with the Commissioner giving such relevant information as the Commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by ~~such~~ the licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Commissioner, who shall make and publish annually an analysis and recapitulation of such reports. For good cause, the Commissioner may extend the due date for the annual report required by this subsection. If a licensee does not file its annual report on or before April 1, or within any extension of time granted by the Commissioner, the licensee shall pay to the Department \$100.00 for each month or part of a month that the report is past due.

(b) Annually, within 90 days of the end of its fiscal year, each licensed lender, mortgage broker, ~~and~~ sales finance company, and loan solicitation licensee shall file financial statements with the Commissioner in a form and substance satisfactory to the Commissioner, which financial statements must include a balance sheet and income statement. This subsection does not apply to a lender making only commercial loans.

(c) Each licensed lender, mortgage broker, ~~and~~ mortgage loan originator and loan solicitation licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

Sec. 28. 8 V.S.A. § 2241 is amended to read:

§ 2241. PROHIBITED ACTS AND PRACTICES

(a) It is a violation of this chapter for a person or individual to:

(1) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) engage in any unfair or deceptive practice toward any person;

(3) obtain property by fraud or misrepresentation;

(4) solicit or enter into a contract with a borrower that provides in substance that the person or individual may earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower;

(5) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) conduct any business covered by this chapter without holding a valid license as required under this chapter, ~~or to~~ assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter, or to refer a person to, or receive a fee from, any person who must be licensed but was not licensed as of the time the licensee’s services were provided;

(7) fail to make disclosures as required by this chapter and any other applicable State or federal law, including regulations thereunder;

(8) fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any orders or directives from the Commissioner, or fail to comply with any other State or federal law, including the rules thereunder, applicable to any business authorized or conducted under this chapter;

(9) make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a mortgage loan, ~~or to~~ engage in bait and switch advertising, or to represent to the public that the licensee is able to perform an activity requiring licensure unless such licensee is duly licensed or is exempt from licensure;

(10) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the Commissioner or another governmental agency;

(11) make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or

promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;

(13) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; ~~or~~

(14) fail to account truthfully for monies belonging to a party to a mortgage loan transaction;

(15) fail to clearly and conspicuously identify the licensee and the purpose of the contact in its written and oral communications with a consumer; or

(16) fail to provide the ability to opt out of any unsolicited advertisement communicated to a consumer via an e-mail address; to initiate an unsolicited advertisement via e-mail to a consumer more than 10 business days after the receipt of a request from such consumer to opt out of such unsolicited advertisements; or to sell, lease, exchange or otherwise transfer or release the e-mail address or telephone number of a consumer who has requested to opt out of future solicitations.

Sec. 29. 8 V.S.A. § 2244(b) is amended to read:

(b) The unique identifier issued by the Nationwide Mortgage Licensing System and Registry of any person engaging in the business of lending or acting as a mortgage broker, sales finance company, or loan solicitation licensee shall be clearly shown on all loan application forms, solicitations, or advertisements, including business cards and websites, and any other documents as established by rule or order of the Commissioner.

\* \* \* Banking Housekeeping; Vermont Student Assistance Corporation \* \* \*

Sec. 30. 16 V.S.A. § 2821(c) is amended to read:

(c) Notwithstanding any general or special law to the contrary, the provisions of 8 V.S.A. chapter ~~83~~ 73 shall not apply to the Corporation or to any loan heretofore or hereafter made or serviced by the Corporation in accordance with this title.

Sec. 31. VERMONT STUDENT ASSISTANCE CORPORATION; LOANS;  
LICENSE EXEMPTION; RETROACTIVE APPLICATION

Notwithstanding 1 V.S.A. §§ 213 and 214(b), Sec. 30 of this act applies retroactively to January 1, 2011.

\* \* \* Effective Dates \* \* \*

Sec. 32. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 13 (money transmitter receipts and refunds), 14 (money transmitter segregated accounts), 24 (lead generator disclosure requirement), and 25 (loan solicitor disclosure requirement) shall take effect July 1, 2017.

( Committee Vote: 11-0-0)

**Rep. Baser of Bristol**, for the Committee on Ways and Means, recommends the bill ought to pass when amended as recommended by the Committee on Commerce and Economic Development.

(Committee Vote: 11-0-0)

**Favorable**

**H. 494**

An act relating to the Transportation Program and miscellaneous changes to transportation-related law.

(**Rep. Brennan of Colchester** will speak for the Committee on Transportation.)

**Rep. Helm of Fair Haven**, for the Committee on Appropriations, recommends the bill ought to pass.

(Committee Vote: 11-0-0)

**Consent Calendar**

**Concurrent Resolutions**

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

**H.C.R. 54**

House concurrent resolution in memory of Marilyn Carlson Childs of Chelsea

**H.C.R. 55**

House concurrent resolution honoring Wardsboro Town Moderator Robert Backus M.D. for his nearly four decades of exemplary practice of medicine in southern Vermont

**H.C.R. 56**

House concurrent resolution remembering the late Grace Weber for her enthusiastic dedication to serving the Town of Weybridge

**H.C.R. 57**

House concurrent resolution congratulating the winners of the 2017 Entrepreneurship Education student competition

**H.C.R. 58**

House concurrent resolution honoring Michael Arnowitt for his musical contributions to the Vermont artistic scene

**H.C.R. 59**

House concurrent resolution in memory of former St. Albans Fire Chief Gary Glendon Palmer of Georgia

**H.C.R. 60**

House concurrent resolution in memory of John William Reagan of Wilmington and West Wardsboro

**H.C.R. 61**

House concurrent resolution congratulating Madison Cota of Bellows Falls on being named Miss Vermont USA 2017

**H.C.R. 62**

House concurrent resolution in memory of former Pownal Town Clerk Rachel Mason

**H.C.R. 63**

House concurrent resolution congratulating Nancy Coleman of Woodford on being selected as the 2016 Vermont State School Nurse of the Year

**H.C.R. 64**

House concurrent resolution honoring Tunbridge Fire Chief John W. Durkee for 20 years of exemplary leadership

**H.C.R. 65**

House concurrent resolution honoring Judy Stratton for her 35 years of exemplary public service as the Shaftsbury Town Clerk

**S.C.R. 9**

Senate concurrent resolution honoring former Representative Jennifer R. Nelson of Ryegate for her exemplary career in public service and agriculture