

House Calendar

Wednesday, April 11, 2018

99th DAY OF THE ADJOURNED SESSION

House Convenes at 1:00 P.M.

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ACTION CALENDAR

Third Reading

S. 164

An act relating to establishing the Unused Prescription Drug Repository Program

S. 182

An act relating to the investment authority of municipal trustees of public funds

Amendment to be offered by Rep. Fagan of Rutland City to S. 182

To amend the House proposal of amendment as follows:

First: In Sec. 1, 24 V.S.A. § 2432, in subsection (d), by striking the subsection in its entirety and inserting in lieu thereof the following:

(d) The trustees may delegate management and investment of funds under their charge to the extent that is prudent under the terms of the trust or endowment, and in accordance with section 3415 (delegation of management and investment functions) of the Uniform Prudent Management of Institutional Funds Act, 14 V.S.A. chapter 120. Notwithstanding the limitations on investments set forth in subsection (b) of this section, an agent exercising a delegated management or investment function, if investing, shall invest the funds in a publicly traded security that is:

(1) registered with the Securities and Exchange Commission pursuant to 15 U.S.C. § 78l and listed on a national securities exchange;

(2) issued by an investment company registered pursuant to 15 U.S.C. § 80a-8;

(3) a corporate bond registered as an offering with the Securities and Exchange Commission pursuant to 15 U.S.C. § 78l and issued by an entity whose stock is a publicly traded security;

(4) a municipal security;

(5) a deposit in federally insured financial institutions as defined in 8 V.S.A. § 11101(32); or

(6) a security issued, insured, or guaranteed by the United States.

Second: In Sec. 3, 18 V.S.A. § 5384, in subsection (b), in subdivision (3), by striking the subdivision in its entirety and inserting in lieu thereof the

following:

(3) The treasurer, selectboard, or trustees of public funds may delegate management and investment of town cemetery funds to the extent that it is prudent under the terms of the trust or endowment, and in accordance with ~~the Uniform Prudent Management of Institutional Funds Act, 14 V.S.A. § section 3415 (delegation of management and investment functions) of the Uniform Prudent Management of Institutional Funds Act, 14 V.S.A. chapter 120.~~ Notwithstanding the limitations on investments set forth in this subsection, an agent exercising a delegated management or investment function, if investing, may shall invest cemetery funds only in the securities enumerated in this section in a publicly traded security that is:

(A) registered with the Securities and Exchange Commission pursuant to 15 U.S.C. § 78l and listed on a national securities exchange;

(B) issued by an investment company registered pursuant to 15 U.S.C. § 80a-8;

(C) a corporate bond registered as an offering with the Securities and Exchange Commission pursuant to 15 U.S.C. § 78l and issued by an entity whose stock is a publicly traded security;

(D) a municipal security;

(E) a deposit in federally insured financial institutions as defined in 8 V.S.A. § 11101(32); or

(F) a security issued, insured, or guaranteed by the United States.

S. 237

An act relating to providing representation to needy persons concerning immigration matters

Amendment to be offered by Reps. Willhoit of St. Johnsbury, Donahue of Northfield and Kimbell of Woodstock to S. 237

That the House propose to the Senate to amend the bill by adding a new Sec. 1 to read as follows:

Sec. 1. LEGISLATIVE INTENT

It is the intent of the General Assembly that the Defender General shall, pursuant to 13 V.S.A. § 5203(3):

(1) only provide representation to a person in federal court if that person, or an immediate family member, is already represented by the Defender General in or with respect to a matter in the courts of this State;

(2) provide such representation in a manner that is fiscally responsible,

that will not require additional funds or resources, and without impacting in any manner the provision of representation, advice, or other services to any other persons or concerning any other matters; and

(3) not routinely appear in federal court on immigration matters.

and by renumbering the remaining sections to be numerically correct.

S. 282

An act relating to health care providers participating in Vermont's Medicaid program

NOTICE CALENDAR

Favorable with Amendment

S. 29

An act relating to decedents' estates

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

Sec. 1. 14 V.S.A. chapter 1 is amended to read:

CHAPTER 1. WILLS

§ 1. WHO MAY MAKE

~~A person of age and sound mind may devise, bequeath and dispose of his estate, real and personal, and of any right or interest which he has in any real or personal estate, by his last will and testament, and the word "person" shall include a married woman~~ Every individual 18 years of age or over or emancipated by court order who is of sound mind may make a will in writing.

§ 2. DEPOSIT OF WILL FOR SAFEKEEPING; DELIVERY; FINAL

DISPOSITION

(a) ~~A testator may deposit a~~ A will may be deposited for safekeeping in the Probate Division of the Superior Court for the district in which the testator resides on the payment to the Court of the applicable fee required by 32 V.S.A. § 1434(a)(17). The register shall give to the testator a certificate of deposit receipt, shall safely keep each will so deposited, and shall keep an index of the wills so deposited.

(b) Each will so deposited shall be ~~inclosed~~ enclosed in a sealed ~~wrapper~~ envelope on which is written the name and residence address of the testator, ~~the day when and the person by whom it was deposited,~~ names and the wrapper may also have ~~indorsed thereon the name~~ addresses of

~~the person to whom executors named in the will is to be delivered after the death of the testator. The wrapper will shall not be opened until it is delivered to a person entitled to receive it or until otherwise disposed of as hereinafter provided by the court.~~

~~(c) During the life of the testator, that will shall be delivered only to the testator, or in accordance with the testator's order in writing duly acknowledged or otherwise proved by oath to the satisfaction of a subscribing witness the court, but the testator's duly authorized legal guardian or attorney-in-fact may at any time inspect and copy the will in the presence of the judge or register. After the death of the testator it shall be delivered on demand to the person named in the indorsement.~~

~~(d) If the will is not called for by the person named in the indorsement, it shall be publicly opened at a time to be appointed by the Court as soon as may be after notice of the testator's death. If a petition to open a decedent's estate is filed in a district other than where the will has been kept, the will shall be delivered to the executor therein named or to the person whose name is indorsed on the wrapper or shall be filed in the other Court, as the Court may order. [Repealed.]~~

~~(e) Except as provided herein in this section, wills deposited for safekeeping or any index of wills so deposited are not open to public inspection during the life of the testator.~~

~~§ 3. AFTER ACQUIRED REAL ESTATE MAY PASS BY WILL MAY PASS ALL PROPERTY AND AFTER-ACQUIRED PROPERTY~~

~~Real estate acquired after making a will shall pass thereby as if the testator had possessed it at the time of making the will, if it appears by the will that such was his or her intention. A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.~~

~~§ 4. WHOLE INTEREST TO PASS; EXCEPTION~~

~~A devise of land in a will shall convey all the estate which the deviser could devise in such lands, unless it clearly appears by the will that he or she intended to convey a less estate. [Repealed.]~~

~~§ 5. EXECUTION OF WILL; REQUISITES~~

~~Except such nuncupative wills as are hereinafter mentioned, a will shall not pass any real or personal estate, or charge or affect the same, unless it is A will shall be:~~

- ~~(1) in writing and;~~

~~(2) signed in the presence of two or more credible witnesses by the testator, or by in the testator's name written by some other person in the testator's presence and by the testator's express direction; and~~

~~(3) attested and subscribed by two or more credible the witnesses in the presence of the testator and of each other.~~

~~§ 6. NUNCUPATIVE WILL~~

~~A nuncupative will shall not pass personal estate when the estate thereby bequeathed exceeds the value of \$200.00, nor shall such will be proved and allowed, unless a memorandum thereof is made in writing by a person present at the time of making such will, within six days from the making of it, nor unless it is presented for probate within six months from the death of the testator. [Repealed.]~~

~~§ 7. HOW MADE BY SOLDIER OR SAILOR; MILITARY WILL~~

~~(a) The provisions of this chapter shall not prevent a soldier a person in actual active military service, or a mariner or seaman at sea, from disposing of his or her wages or other personal estate as he or she might otherwise have done.~~

~~(b) Notwithstanding any other provision of law, a military will prepared and executed in compliance with, and containing a provision stating that the will is prepared pursuant to, 10 U.S.C. § 1044d shall be deemed to be legally executed and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state State.~~

~~§ 8. SUBSEQUENT INCOMPETENCY OF WITNESSES~~

~~If the witnesses attesting the execution of a will are competent at the time of attesting, their becoming subsequently incompetent shall not prevent the probate and allowance of the will. [Repealed.]~~

~~§ 10. DEVISE OR LEGACY TO WITNESS~~

~~If a person, other than an heir at law, attests the execution of a will whereby he or she or his wife or her husband is given a beneficial devise, legacy or interest in or affecting real or personal estate, such devise, legacy or interest shall be void so far only as concerns such person or his wife or her husband or one claiming under such person, husband or wife, unless there are three other competent witnesses to such will. Such person so attesting shall be admitted as a witness as if such devise, legacy or interest had not been made or given. A mere charge on the real or personal estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. Any beneficial devise or legacy made or given in a will to a subscribing witness to the will or to the spouse of a subscribing witness shall be voidable~~

unless there are two other competent, subscribing witnesses to the will. Notwithstanding this section, a provision in the will for payment of a debt shall not be void or disqualify the creditor as a witness to the will.

§ 11. HOW REVOKED

~~A will shall not be revoked, except by implication of law, otherwise than by some will, codicil or other writing, executed as provided in case of wills; or by burning, tearing, canceling or obliterating the same, with the intention of revoking it, by the testator himself, or by some person in his or her presence and by his or her express direction.~~

(a)(1) A will is revoked:

(A) by executing a subsequent will that revokes the previous will expressly or by inconsistency; or

(B) by performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction.

(2) As used in this subsection, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touched any of the words on the will.

(b) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked and only the subsequent will is operative on the testator's death.

(c) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will, and each will is fully operative on the testator's death to the extent they are not inconsistent.

Sec. 2. 14 V.S.A. chapter 3 is amended to read:

CHAPTER 3. PROBATE AND PROCEDURE FOR CONSTRUCTION OF WILL

§ 101. WILL NOT EFFECTIVE UNTIL ALLOWED

~~A will shall not pass either real or personal estate unless it is proved and To~~

~~be effective, a will must be allowed in the probate division of the superior court~~ Probate Division of the Superior Court, or by appeal in the ~~superior or supreme court~~ Civil Division of the Superior Court or the Supreme Court.

§ 102. ALLOWANCE CONCLUSIVE AS TO EXECUTION

~~The allowance of a will of real or personal estate shall be conclusive as to its due execution and validity.~~

§ 103. CUSTODIAN OF WILL TO DELIVER

~~If a person has the custody of a will, within 30 days after learning of the death of the testator, the custodian shall deliver the will to a probate division of the superior court~~ the Probate Division of the Superior Court where venue lies or to the executor named in the will.

§ 104. EXECUTOR TO PRESENT WILL AND ACCEPT OR REFUSE

TRUST

(a) ~~A person named executor in a will and who has knowledge thereof shall file a death certificate and petition to open the decedent's estate in the probate division of the superior court~~ Probate Division of the Superior Court where venue lies with reasonable promptness.

(b) ~~If the person so named learns of the nomination prior to the testator's death, the petition shall be filed within 30 days of learning of the death. If learned after the testator's death, the petition shall be filed within 30 days of learning of being named executor. The person shall notify the court in the petition, or in another writing if a petition has been previously filed, whether the appointment as executor will be accepted by that person. A petition to open an estate need not be filed when no assets require probate administration. The named executor may file with the court an original death certificate and will without filing a petition to open an estate by notifying the court that no assets appear to require probate administration.~~

§ 105. PENALTY

~~Unless he or she gives a satisfactory excuse to the probate division of the superior court a person who neglects a duty required in sections 103 and 104 of this title shall forfeit \$10.00 for each month he or she so neglects after the 30 days mentioned therein, to be recovered with costs in an action on this statute by any person having an interest in the will. [Repealed.]~~

§ 106. ~~PERSON RETAINING WILL MAY BE COMMITTED~~ DUTY OF CUSTODIAN OF WILL; LIABILITY

~~If, after the death of the testator, a person having the custody of a will neglects without reasonable cause to deliver the same to a probate division of~~

~~the superior court where venue lies, after order by the court and failure to deliver it, the court may issue a warrant committing the person to the custody of the commissioner of corrections until compliance is given.~~

(a) After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to an appropriate court. A person who intentionally refuses or fails to deliver a will after being ordered to do so by the court in a proceeding brought for the purpose of compelling delivery may be subject to proceedings for civil contempt under 12 V.S.A. § 122.

(b) A person who suffers damages as a result of another person's intentional failure to deliver a will shall have an action in Superior Court for damages and injunctive relief.

~~§ 107. COURT TO SCHEDULE HEARING ON ALLOWANCE OF WILL;
CUSTODY OF PROPERTY~~

~~(a) When a will is delivered to a probate division of the superior court accompanied by a petition to commence a probate proceeding, the court shall schedule a hearing and notice shall be given as provided by the rules of probate procedure. If consents are filed by all the heirs at law and surviving spouse, a will may be allowed without hearing. If consents are not obtained, the court shall schedule a hearing and notice shall be given as provided by the Rules of Probate Procedure.~~

~~(b) The Objections to allowance of the will must be filed in writing not less than three business days prior to the hearing. In the event that no timely objections are filed, the will may be allowed without hearing if it meets criteria set out in section 108 of this title.~~

~~(c) After delivery of the will to the court, the person named as executor in a the will shall have power after delivery of the will to the court, and pending allowance thereof, to assume custody of the estate for its preservation, unless or until a special or other administrator is appointed and qualifies.~~

~~§ 108. HOW PROVED, WHEN UNCONTESTED SELF-PROVED WILLS~~

~~If a person does not appear to contest the allowance of a will at the time appointed, the court may allow the will on the testimony of only one of the subscribing witnesses, if the witness testifies that the will was executed as provided in chapter 1 of this title. If the allowance of the instrument is consented to in writing by the surviving spouse of the deceased, if any, and by all the heirs at law and next of kin, it may be allowed without testimony. A will may be self-proved as to its execution, by the sworn acknowledgment of the testator and the witnesses, made before a notary public or other official authorized to administer oaths in the place of execution in the following~~

circumstances:

(1) The testator signed the instrument as the testator's will or expressly directed another to sign for the testator in the presence of two witnesses.

(2) The signing was the testator's free and voluntary act for the purposes expressed in the will.

(3) Each witness signed at the request of the testator, in the testator's presence, and in the presence of the other witness.

(4) To the best knowledge of each witness at the time of the signing, the testator was at least 18 years of age or emancipated by court order and was of sound mind and under no constraint or undue influence.

§ 109. ~~WHEN WITNESS DOES NOT RESIDE IN STATE~~

~~If none of the subscribing witnesses resides in the state at the time of the death of the testator, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will although the subscribing witnesses are living. As evidence of the execution of the will, such court may admit proof of the handwriting of the testator and of the subscribing witnesses in cases where the names of such witnesses are subscribed to a certificate stating that the will was executed as provided in chapter 1 of this title. [Repealed.]~~

§ 110. ABSENCE OF WITNESS, PROOF

When it appears to the court that a will cannot be proven as otherwise provided by law, because one or more ~~or all~~ of the subscribing witnesses ~~to the will, at the time the will is offered for probate, are serving in or present with the armed forces of the United States or its allies or as merchant seamen, or by reason of such service are dead or mentally or physically~~ are unavailable or incapable of testifying ~~or otherwise unavailable~~, the court may admit the will to probate upon the testimony in person or by ~~deposition~~ affidavit of at least ~~two~~ one credible disinterested witnesses individual that the signature to the will is in the handwriting of the person whose will it purports to be, or upon other sufficient proof of ~~such~~ the handwriting, and the will on its face complies with other legal requirements. ~~The foregoing provision~~ This section shall not preclude the court, in its discretion, from requiring ~~in addition~~ the additional testimony ~~in person or by deposition~~ of any available subscribing witness or proof of ~~such~~ other pertinent facts and circumstances as that the court ~~may deem~~ deems necessary to admit the will to probate.

§ 111. NOTICE TO BENEFICIARIES

Within 30 days after the allowance of a will ~~containing a devise or a bequest~~, the court shall mail, postage paid, a written notice thereof to each

beneficiary, devisee, or legatee named in the will, and to any other person who contested the allowance.

§ 112. WILLS MADE OUT OF STATE

(a) A last will and testament executed ~~without outside~~ this state State in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state State, provided that ~~such~~ the last will and testament is in writing and subscribed by the testator.

(b) When a will is allowed pursuant to subsection (a) of this section, the Probate Division of the Superior Court shall grant letters testamentary or letters of administration with the will annexed, and the letters shall extend to all the estate of the testator in this State. After the payment of enforceable debts and expenses of administration, the estate shall be disposed of according to the will so far as the will may operate upon it, and the residue shall be disposed of as is provided in case of estates in this State belonging to persons who are residents of another state or country.

§ 113. WILLS ALLOWED OUT OF STATE—GENERALLY

A will allowed in any other state, or in a foreign country, according to the laws of that state or country, may be the subject of ancillary administration in the ~~probate division of the superior court~~ Probate Division of the Superior Court.

§ 114. PETITION AND HEARING ON

(a) When a will has been allowed in any other state or country, as provided in section 113 of this title, an executor or other person interested may file a petition for ancillary administration. The petition shall contain:

(1) ~~A~~ a duly authenticated copy of the decedent's will and the allowance thereof ~~(, where probate is required by the laws of such~~ the state or country);
or

(2) ~~A~~ a duly authenticated certificate of the legal custodian of ~~such~~ the original will that the same is a true copy and that ~~such~~ the will has become operative by the laws of ~~such~~ the state or country ~~(, where probate is not required by the laws of such~~ the state or country);
or

(3) ~~A~~ a copy of a notarial will in possession of a notary in a foreign state or country entitled to the custody thereof and duly authenticated by ~~such~~ the notary ~~(, the laws of such~~ the state or country requiring that ~~such~~ the will remain in the custody of ~~such~~ the notary).

(b) After receiving a petition for ancillary administration, the ~~probate~~

~~division of the superior court~~ Probate Division of the Superior Court shall schedule a hearing, and notice shall be given, as provided by the rules of probate procedure and require notice as provided by the Rules of Probate Procedure. Objections to allowance of the will in Vermont shall be filed in writing not less than 14 business days prior to the hearing. In the event that no objections are filed, the will shall be allowed without hearing.

§ 115. ORDER FOR FILING

If the instrument is allowed in this state State as the last will and testament of the deceased, the copy shall be filed and recorded and the will shall have the same effect as if originally allowed in the same court.

§ 116. ~~ADMINISTRATION UNDER; ESTATE, HOW DISPOSED OF~~

~~When a will is thus allowed, the probate division of the superior court shall grant letters testamentary or letters of administration with the will annexed, and such letters shall extend to all the estate of the testator in this state. After the payment of just debts and expenses of administration, such estate shall be disposed of according to such will so far as such will may operate upon it and the residue shall be disposed of as is provided in case of estates in this state belonging to persons who are inhabitants of another state or country. [Repealed.]~~

§ 117. ~~CONSTRUCTION BY SUPERIOR COURT AND SUPREME COURT~~

~~In cases where the terms of a will are doubtful or in dispute, a person interested in the estate, either as legatee, devisee or heir at law, may bring a complaint before the superior court to have the will construed. The superior judge, or the supreme court on appeal, shall proceed to construe the will, and that decision shall be binding on parties who are served with process and all who appear in the cause, notwithstanding it appears that others may at some future time become interested under the will. [Repealed.]~~

§ 118. REFERRAL TO SUPERIOR COURT

The Probate Division of the Superior Court may, on its own motion or upon motion of an interested person, refer a matter directly to the Civil Division of the Superior Court for the purpose of conserving judicial resources. The Probate Division shall consult with and obtain the consent of the Civil Division before making a transfer pursuant to this section. A decision of the Civil Division whether to consent to a transfer under this section shall be final and shall not be appealed.

Sec. 3. 14 V.S.A. chapter 42 is amended to read:

CHAPTER 42. DESCENT AND SURVIVORS' RIGHTS

Subchapter 1. General Provisions

§ 301. INTESTATE ESTATE

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs, except as modified by the decedent's will.

(b) A decedent's will may expressly exclude or limit the right of an individual or a class to inherit property. If such an individual or member of such a class survives the decedent, the share of the decedent's intestate estate which would have passed to that individual or member of such a class passes subject to any such limitation or exclusion set forth in the will.

(c) Nothing in this section shall preclude the surviving spouse of the decedent from making the election and receiving the benefits provided by section 319 of this title.

§ 302. DOWER AND CURTESY ABOLISHED

The estates of dower and curtesy are abolished.

§ 303. AFTERBORN HEIRS

For purposes of this chapter and chapter 1 of this title relating to wills, an individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

Subchapter 2. Survivors' Rights and Allowances

§ 311. SHARE OF SURVIVING SPOUSE

After payment of the debts, funeral charges, allowances to the surviving spouse and children pursuant to sections 316 and 317 of this title and expenses of administration, the intestate share of the decedent's surviving spouse is as follows:

(1) The surviving spouse shall receive the entire intestate estate if no descendant of the decedent survives the decedent or if all of the decedent's surviving descendants are also descendants of the surviving spouse.

(2) In the event there shall survive the decedent one or more descendants of the decedent who are not descendants of the surviving spouse and are not excluded by the decedent's will from inheriting from the decedent, the surviving spouse shall receive one-half of the intestate estate.

§ 312. SURVIVING SPOUSE TO RECEIVE HOUSEHOLD GOODS

Upon motion, the surviving spouse of a decedent may receive out of the decedent's estate all furnishings and furniture in the decedent's household ~~when the decedent leaves no descendants who object~~. If any objection is made

by any of the descendants, the ~~probate division of the superior court~~ Probate Division of the Superior Court shall decide what, if any, of such personalty shall pass under this section. Goods and effects so assigned shall be in addition to the distributive share of the estate to which the surviving spouse is entitled under other provisions of law. In making a determination pursuant to this section, the ~~probate division of the superior court~~ Probate Division of the Superior Court may consider the length of the decedent's marriage, or civil union, the sentimental and monetary value of the property, and the source of the decedent's interest in the property.

§ 313. SURVIVING SPOUSE; VESSEL, SNOWMOBILE, OR
ALL-TERRAIN VEHICLE

Whenever the estate of a decedent who dies intestate consists principally of a vessel, snowmobile, or all-terrain vehicle, the surviving spouse shall be deemed to be the owner of the vessel, snowmobile, or all-terrain vehicle, and title to the vessel, snowmobile, or all-terrain vehicle shall automatically pass to the surviving spouse. The surviving spouse may register the vessel, snowmobile, or all-terrain vehicle pursuant to 23 V.S.A. § 3816.

§ 314. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE

(a) The balance of the intestate estate not passing to the decedent's surviving spouse under section 311 of this title passes to the decedent's descendants by right of representation.

(b) If there is no taker under subsection (a) of this section, the intestate estate passes in the following order:

(1) to the decedent's parents equally if both survive or to the surviving parent;

(2) to the decedent's siblings and the descendants of any deceased siblings by right of representation;

(3) one-half of the intestate estate to the decedent's paternal grandparents equally if they both survive or to the surviving paternal grandparent and one-half of the intestate estate to the decedent's maternal grandparents equally if they both survive or to the surviving maternal grandparent and if decedent is survived by a grandparent, or grandparents on only one side, to that grandparent or those grandparents;

(4) in equal shares to the next of kin in equal degree.

(c) If property passes under this section by right of representation, the property shall be divided into as many equal shares as there are children or siblings of the decedent, as the case may be, who either survive the decedent or who predecease the decedent leaving surviving descendants.

§ 315. PARENT AND CHILD RELATIONSHIP

For the purpose of intestate succession, an individual is the child of his or her parents, regardless of their marital status, but a parent shall not inherit from a child unless the parent has openly acknowledged the child and not refused to support the child. The parent and child relationship may be established in parentage proceedings under 15 V.S.A. chapter 5, subchapter 3A of chapter 5 of Title 15.

§ 316. SUPPORT OF ALLOWANCES FOR SURVIVING SPOUSE AND FAMILY DURING SETTLEMENT ADMINISTRATION

~~The probate division of the superior court~~ Probate Division of the Superior Court may make reasonable allowance for the necessary expenses of support and maintenance of the surviving spouse and minor children or either, constituting the family of a decedent, out of the personal estate or the income of real or personal estate from date of death until settlement of the estate, but for no longer a period than until their shares in the estate are assigned to them or, in case of an insolvent estate, for not more than eight months after administration is granted. This allowance may take priority, in the discretion of the court, over debts of the estate.

§ 317. ALLOWANCE TO CHILDREN BEFORE PAYMENT OF DEBTS

~~When a person dies leaving children under 18 years of age, an~~ The court may make reasonable allowance ~~may be made~~ for the necessary expenses of support and maintenance of such any children of the decedent until they become reach 18 years of age. The court may order the executor or administrator to retain sufficient estate assets for that purpose, except where some provision is made by will for their support. ~~Such~~ The allowance shall be made before any distribution of the estate among creditors, heirs, or beneficiaries by will.

§ 318. ALLOWANCE TO CHILDREN ~~BEFORE~~ AFTER PAYMENT OF DEBTS

Before any partition or division of an estate among the heirs or beneficiaries by will, an allowance may be made for the necessary expenses of the support and maintenance of the children of the decedent ~~under~~ until they reach 18 years of age ~~until they arrive at that age.~~ ~~The probate division of the superior court~~ Probate Division of the Superior Court may order the executor or administrator to retain sufficient estate assets for that purpose, except where some provision is made by will for their support.

§ 319. ~~WAIVER~~ ELECTIVE SHARE OF WILL BY SURVIVING SPOUSE;
NOTICE OF RIGHTS

(a) A Subject to subsection (d) of this section, a surviving spouse may elect to waive the provisions of the decedent's will and in lieu thereof elect to take one-half of the balance of the probate estate, after the payment of allowances, claims, and expenses.

(b) The surviving spouse must be living at the time this election is made. If An election under this section may be signed on behalf of the surviving spouse is mentally disabled and cannot make the election personally, by a guardian, an agent, or attorney in fact an attorney-in-fact under a valid durable power of attorney may do so that:

(1) expressly grants the authority to make the election; or

(2)(A) grants the agent or attorney-in-fact the authority to act in the management and disposition of the principal's property that is as broad or comprehensive as the principal could exercise for himself or herself; and

(B) does not expressly exclude the authority to make the election.

(c) An agent or attorney-in-fact may petition the Probate Division of the Superior Court to determine whether a power of attorney described in subdivision (b)(2) grants the agent or attorney-in-fact authority that is as broad or comprehensive as that which the principal could exercise for himself or herself.

(d) A surviving spouse may not elect against a deceased spouse's will under this section if the surviving spouse has waived the right to elect against the deceased spouse's will pursuant to section 323 of this title.

(e)(1) The court shall provide the surviving spouse with a notice of the rights of the surviving spouse not later than 30 days from the filing of the initial inventory.

(2) Unless otherwise ordered by the court, a surviving spouse shall file with the court a written election to waive the provisions of a decedent's will within four months of the later of the following dates:

(A) the date of service of the notice of rights of surviving spouse; or

(B) the date of service of the inventory.

(f) Upon the filing of any subsequent or amended inventory or any accounting that reports previously undisclosed property owned by the decedent as of the date of death, the surviving spouse shall have 30 days from the date of service of the filing to elect against the newly reported property, unless otherwise ordered by the court.

§ 320. EFFECT OF DIVORCE ORDER

A final divorce or dissolution order from any state shall ~~have the effect of~~

~~nullifying nullify~~ a gift by will ~~or inheritance by operation of law~~ to an individual who was the decedent's spouse at the time the will was executed and any nomination of the spouse as executor, executrix, trustee, guardian, or other fiduciary as named in the will, if the decedent was no longer married to or in a civil union with that individual at the time of death, unless ~~his or her~~ the decedent's will specifically states to the contrary.

§ 321. CONVEYANCE TO DEFEAT SPOUSE'S INTEREST

(a) A voluntary transfer of any property by an individual during a marriage or civil union and not to take effect until at or after the individual's death, made without adequate consideration and for the primary purpose of defeating a surviving spouse ~~in a claim to a spouse's right to claim the survivor's intestate or elective share of the decedent's property so transferred~~, shall be void and inoperative to bar the claim. ~~The, unless the surviving spouse waived the survivor's right to make a claim against the deceased spouse's estate or the property transferred pursuant to section 323 of this title. If the surviving spouse has not signed a waiver of spousal rights pursuant to section 323 of this title, then the~~ decedent shall be deemed at the time of his or her death to be the owner ~~and seised of an interest in such of the property sufficient for the purpose of assigning and setting out~~ and the court may:

(1) increase the surviving spouse's share of the decedent's probate estate in an amount the court deems reasonable to account for the right the surviving spouse would otherwise have had in the property so transferred; or

(2) if the assets of the decedent's probate estate are insufficient to account for the right the surviving spouse would otherwise have had in the property, then order any other equitable relief the court deems appropriate.

(b) Neither this section nor any other provision of this title shall be construed to affect an enhanced life estate deed. As used in this subsection, "enhanced life estate deed," also known as a "Ladybird deed," shall mean a deed that conveys a future interest in real estate that is revocable or otherwise subject to limitation, with the transfer of the remaining title rights to take place when the grantor dies.

§ 322. UNLAWFUL KILLING AFFECTING INHERITANCE

Notwithstanding sections 311 through 314 of this title or provisions otherwise made, in any case in which an individual is entitled to inherit or receive property under the last will of a decedent, or otherwise, ~~such~~ the individual's share in the decedent's estate shall be forfeited and shall pass to the remaining heirs or beneficiaries of the decedent if the individual intentionally and unlawfully kills the decedent. In any proceedings to contest the right of an individual to inherit or receive property under a will or

otherwise, the record of that individual's conviction of intentionally and unlawfully killing the decedent shall be admissible in evidence and shall conclusively establish that ~~such~~ the individual did intentionally and unlawfully kill the decedent.

§ 323. WRITTEN WAIVER OF SPOUSAL RIGHTS

(a) At any time before or during a marriage, a spouse may waive the right to an elective share of a deceased spouse's estate, waive the right to a homestead or other allowance, and waive any other spousal rights or interest in property, in whole or in part, by a written instrument signed by the waiving spouse.

(b) A written waiver of spousal rights is presumed to be valid unless the party contesting the waiver demonstrates that:

(1) the waiver was not voluntary, or was made as a result of fraud, duress, or coercion;

(2) the waiver was unconscionable when signed or is unconscionable in its application due to a material change in circumstances that arose subsequent to the execution of the instrument through no fault or no action of the contesting party;

(3) before signing the waiver, the waiving spouse was not provided fair and reasonable disclosure of the property and financial obligations of the decedent; or

(4) before signing the waiver, the waiving spouse did not have an opportunity for meaningful access to independent counsel.

(c) A waiver under this section may be signed on behalf of a waiving spouse by a guardian or by an agent or an attorney-in-fact under a power of attorney that:

(1) expressly grants the authority to make the election; or

(2)(A) grants the agent or attorney-in-fact the authority to act in the management and disposition of the principal's property that is as broad or comprehensive as the principal could exercise for himself or herself; and

(B) does not expressly exclude the authority to make the election.

(d) An agent or attorney-in-fact may petition the Probate Division of the Superior Court to determine whether a power of attorney described in subdivision (c)(2) grants the agent or attorney-in-fact authority that is as broad or comprehensive as that which the principal could exercise for himself or herself.

Subchapter 3. Descent, Omitted Issue, and Lapsed Legacies

§ 331. DEGREES; HOW COMPUTED: KINDRED OF HALF-BLOOD

Kindred of the half-blood shall inherit the same share they would inherit if they were of the whole blood.

§ 332. SHARE OF AFTERBORN CHILD

When a child of a testator is born after the making of a will and provision is not ~~therein~~ made in the will for that child, he or she shall have the same share in the estate of the testator as if the testator had died intestate unless it is apparent from the will that it was the intention of the testator that provision should not be made for the child.

§ 333. SHARE OF CHILD OR DESCENDANT OF CHILD OMITTED
FROM WILL

When a testator omits to provide in ~~his or her~~ the testator's will for any of ~~his or her children~~ child of the testator, or for the descendants of a deceased child, and it appears that the omission was made by mistake or accident, the child or descendants, as the case may be, shall have and be assigned the same share of the estate of the testator as if the testator had died intestate.

§ 334. AFTERBORN AND OMITTED CHILD; FROM WHAT PART OF
ESTATE SHARE TAKEN

When a share of a testator's estate is assigned to a child born after the making of a will, or to a child or the descendant of a child omitted in the will, the share shall be taken first from the estate not disposed of by the will, if there is any. If that is not sufficient, so much as is necessary shall be taken from the devisees or legatees in proportion to the value of the estate they respectively receive under the will. If the obvious intention of the testator, as to some specific devise, legacy, or other provision in the will, would thereby be defeated, the specific devise, legacy, or provision may be exempted from ~~such~~ the apportionment and a different apportionment adopted in the discretion of the court.

§ 335. BENEFICIARY DYING BEFORE TESTATOR; DESCENDANTS
TO TAKE

When a testamentary gift is made to a child or other kindred of the testator, and the designated beneficiary dies before the testator, leaving one or more descendants who survive the testator, ~~such~~ the descendants shall take the gift that the designated beneficiary would have taken if ~~he or she~~ the designated beneficiary had survived the testator, unless a different disposition is required by the will.

§ 336. INDIVIDUAL ABSENT AND UNHEARD OF; SHARE OF ESTATE

If an individual entitled to a distributive share of the estate of a decedent is absent and unheard of for six years, two of which are after the death of the decedent, the probate court in which the decedent's estate is pending may order the share of the absent individual distributed in accordance with the terms of the decedent's will or the laws of intestacy as if such the absent individual had not survived the decedent. If the absent individual proves to be alive, he or she shall be entitled to the share of the estate notwithstanding prior distribution, and may recover in an action on this statute any portion thereof which any other individual received under order. Before an order is made for the payment or distribution of any money or estate as authorized in this section, notice shall be given as provided by the Vermont Rules of Probate Procedure.

§ 337. REQUIREMENT THAT INDIVIDUAL SURVIVE DECEDENT FOR
120 HOURS

Except as provided in the decedent's will, an individual who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, intestate succession, and taking under decedent's will, and the decedent's heirs and beneficiaries shall be determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir or beneficiary survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in escheat.

§ 338. DISTRIBUTION; ORDER IN WHICH ASSETS APPROPRIATED;
ABATEMENT

(a)(1) Except as provided in subsection (b) of this section, shares of distributees given under a will abate, without any preference or priority as between real and personal property, in the following order:

- (A) property not disposed of by the will;
- (B) residuary devises and bequests;
- (C) general devises and bequests;
- (D) specific devises and bequests.

(2) For purpose of abatement, a general devise or bequest charged on any specific property or fund is a specific devise or bequest to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise or bequest to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the

beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement or if the testamentary plan or the express or implied purpose of a devise or bequest would be defeated by the order of abatement listed in subsection (a) of this section, the shares of the distributees shall abate as may be necessary to give effect to the intention of the testator.

(c) If the subject of a preferred devise or bequest is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

Sec. 4. 14 V.S.A. chapter 49 is amended to read:

CHAPTER 49. ESCHEATS

§ 681. PERSONS DYING TESTATE OR INTESTATE WITHOUT HEIRS OR KNOWN LEGATEES

When a person dies testate or intestate, seised of real or personal property in this State, leaving no heir nor person entitled to the same, the selectboard members of the town where the deceased last resided, if an inhabitant of the State, or of the town in which estate lies, if the absent person resided out of the State, may file a petition, on behalf of the town, with the Probate Division of the Superior Court for a hearing in accordance with the Rules of Probate Procedure.

§ 683. ESCHEAT, PROCEEDS FROM SALE

If sufficient cause is not shown to the contrary, at the time appointed for that purpose, the court shall order and decree that the estate of the deceased in the ~~state~~ State, after the payment of just debts and charges, shall escheat. ~~Such~~ The court shall assign the personal estate to the town where ~~such~~ the deceased was last an inhabitant in the ~~state~~ State and the real estate to the towns in which the same is situated. If he or she were never an inhabitant of the ~~state~~ State, the whole estate shall be assigned to the towns where the same is located. ~~Such~~ The estate shall be for the use of schools in the towns respectively and shall be managed and disposed of like other property appropriated to the use of the town school districts. Any property decreed to a town by virtue of this chapter or subsequently conveyed to an incorporated school district within ~~such~~ the town for the use of its schools may be sold without restriction, provided the proceeds shall be expended for the use of the schools of the town.

§ 684. RIGHTS OF HEIR SUBSEQUENTLY APPEARING

If a devisee, legatee, heir, widow, or other person, entitled to ~~such~~ some

portion or all of an estate, appears within 17 years from the date of such the decree and files a claim with the probate division of the superior court Probate Division of the Superior Court which made such the decree, and establishes the claim to such the estate, he or she shall have possession of the same to the extent of the claim, or, if sold, the town shall be accountable to him or her for the avails, after deducting reasonable charges for the care of the estate. If the claim is not made within the time mentioned, it shall be barred.

Sec. 5. 14 V.S.A. chapter 61 is amended to read:

CHAPTER 61. EXECUTORS AND ADMINISTRATORS

Subchapter 1. General Provisions

§ 902. WILL ALLOWED; LETTERS TO EXECUTOR

When a will has been allowed, the probate division of the superior court Probate Division of the Superior Court shall issue letters testamentary thereon of administration to the person named executor therein if the person accepts the trust appointment and gives a bond as required by law any required bond.

§ 903. ADMINISTRATION; TO WHOM GRANTED

If an executor is not named in the will, or if a person dies intestate, administration shall be granted appointments to administer the estate may be made in the following manner:

(1) To the surviving husband or wife, as the case may be, spouse or next of kin, or both, or to such the person as such surviving husband or wife nominated by the surviving spouse or next of kin request to have appointed;

(2) If such the surviving husband or wife, as the case may be, spouse or next of kin or the persons selected person nominated by them are is unsuitable, or if the widow surviving spouse or the next of kin neglects for 30 days does not within a reasonable period of time after the death of the person to apply for letters of administration or to request that nominate another person to whom letters of administration may be granted to some other person, it may be granted to, the court may grant letters of administration to one or more of the principal creditors, if competent and willing to serve;

(3) If there is not such a creditor who is competent and willing to serve, the same letters of administration may be committed issued to such other another person as appointed by the probate division of the superior court may appoint; Probate Division of the Superior Court in its discretion.

(4) To such person as to the court shall seem suitable upon application of the reputed owner of land formerly owned by such deceased person, in case the title to such land is not clear If the appointment is to enable a quiet title action or another action to clear title to lands, the court may appoint a suitable

person as the administrator for that purpose upon application of the reputed owner of the land formerly owned by the decedent.

§ 904. NONRESIDENT EXECUTOR OR ADMINISTRATOR OR
EXECUTOR TO BE RESIDENT OF STATE; EXCEPTIONS;
AGENT

(a) ~~In all cases where the principal administration is in this state~~ State, the ~~probate division of the superior court~~ Probate Division of the Superior Court shall ~~not~~ appoint a trustee ~~not named in a will nor an executor or administrator who is not domiciled in this state at the time of appointment, nor an executor who is not domiciled in this state, except in State only at the discretion of the court; provided, however, that the court shall appoint an administrator who is not domiciled in the state when requested so to do by the surviving spouse, the surviving children of lawful age or the surviving parent or parents or a guardian, on motion in that order of sequence.~~

(b) ~~In case of the appointment of a nonresident executor, administrator or trustee, the person appointed~~ Any nonresident estate fiduciary shall forthwith designate in writing some person resident in the state from which letters testamentary, of administration or trusteeship are granted, upon whom a resident of this State who accepts appointment as the resident agent of the nonresident estate fiduciary and agrees to accept service of legal process may be made as agent of the nonresident executor, administrator or trustee and other communications on behalf of the executor or administrator. The appointment and acceptance shall be filed with the court. Service of legal process against the nonresident administrator, executor or trustee may be made by delivering to the agent a true and attested copy of the process with the officer's return thereon ~~executor or administrator may be accomplished by serving the resident agent.~~

§ 905. APPEAL TO THE CIVIL DIVISION OF THE SUPERIOR COURT

~~Upon appeal from~~ If any person appeals to the Civil Division of the Superior Court an order appointing an administrator, if executor or administrator and the appeal is sustained, the superior court Civil Division of the Superior Court shall fill the vacancy by the immediate appointment of a suitable person, and the judgment and appointment shall be certified to the probate court. When the administrator files the bond required, the probate court shall grant letters of administration appoint another suitable person as executor or administrator, and certify the judgment and subsequent appointment to the Probate Division of the Superior Court. The Probate Division shall set bond and, after the required bond is filed by the executor or administrator, grant letters of administration.

§ 906. BOND; AMOUNT, CONDITIONS

~~Before letters testamentary or of administration are issued, the person to be appointed shall give a bond in such reasonable sum as the probate division of the superior court directs, with one or more sufficient sureties, conditioned as follows. An executor or administrator shall give a bond to secure the executor's or administrator's performance of the executor's or administrator's duties. The Probate Division of the Superior Court shall set the amount of the bond and may order that the bond have sureties. The bond shall be for the security and benefit of all interested persons, except where a bond is to be taken to the adverse party, and shall be filed before the court issues letters of administration. The court shall set the conditions of any bond, which shall include the following:~~

(1) ~~To~~ to make and return an inventory to the ~~probate division of the superior court~~ Probate Division of the Superior Court within ~~30~~ 60 days a true and perfect inventory of the goods, chattels, rights, credits and estate of the deceased, which shall come into the possession or knowledge of the person appointed, or into the possession of any other person for the person appointed as required by law and the rules of the court;

(2) ~~To~~ to administer according to law, ~~if an executor, according to the will of the testator, all goods, chattels, rights, credits and estate which shall at any time come into the possession of the person appointed, or into the possession of any other person for the person appointed, and of the same, pay and discharge all debts, legacies and charges on the same, or dividends thereon as shall be decreed by the probate division of the superior court and the decedent's will, if any, all property comprising the decedent's estate, whether in the possession of the executor or administrator or others for the benefit of the executor or administrator, and discharge all debts, legacies, and charges;~~

(3) ~~To~~ to render a true and just an account of administration to the ~~probate division of the superior court~~ Probate Division within one year and at any other time when required by the court;

(4) ~~To~~ to pay to the ~~state treasurer~~ State of Vermont all inheritance and transfer taxes which the person appointed is required to pay by the provisions of 32 V.S.A. chapters 181 and 183 ~~of Title 32~~ and to perform all other duties required by those chapters; and

(5) ~~To~~ to perform all orders and decrees of the ~~probate division of the superior court~~ Probate Division.

§ 907. ~~RESIDUARY LEGATEE AS EXECUTOR, BOND; BOND~~
~~PROVISION IN WILL; FURTHER BOND~~

(a) ~~Instead of the bond required in section 906 of this title, an executor who~~

~~is residuary legatee may give a bond in a sum and with those sureties as the probate division of the superior court directs, with the conditions only to pay the debts and legacies of the testator, and to return to the probate division of the superior court within 30 days a true and perfect inventory under oath according to the executor's best knowledge, information and belief of the goods, chattels, rights, credits and estate of the deceased which shall come to the executor's possession or knowledge, or to the possession of any other person for the executor.~~

~~(b) If the testator by will directs that no bond, or only the individual bond of the executor be required, instead of the bond prescribed in section 906 of this title, an individual bond may be given as directed in the will. A bond shall also be given in a sum and with those sureties as the probate division of the superior court directs, with the conditions only to pay the debts of the testator and return to the probate division of the superior court a true inventory under oath, according to the executor's best knowledge, information and belief, of the real estate and all the goods, chattels, rights and credits of the deceased coming to the executor's possession or knowledge.~~

~~(c) The probate division of the superior court may require of the executor a further bond in case of a subsequent change in circumstances, and for other sufficient cause with the second, third, and fourth conditions named in section 906 of this title. [Repealed.]~~

§ 908. BONDS OF JOINT ADMINISTRATORS AND EXECUTORS

~~When two or more persons are appointed as executors or administrators, the probate court Probate Division of the Superior Court may take a separate bond from each, with or without sureties, or a joint bond with or without sureties from any or all.~~

§ 909. EXECUTOR REFUSING TRUST, OR NOT GIVING BOND

~~A person named as an executor in a will who refuses to accept the trust appointment or neglects for 20 days to give a bond for 20 days after the probate of such will shall not intermeddle or act as executor. In case of such refusal to accept or neglect to give a bond, the probate division of the superior court If the person refuses to accept or neglects to give a bond, the Probate Division of the Superior Court may grant letters testamentary to the other executors of administration to any other named executor who are is capable and willing to accept the trust the appointment and gives bond. If the other executors will not give a bond, administration, with the will annexed, shall be granted to the person who would have been entitled thereto had the testator died intestate named executors fail to accept the appointment or give a bond, the court shall grant letters of administration with the will annexed to one or more suitable persons who would have qualified to be appointed as~~

administrator had the testator died intestate.

§ 910. WHEN EXECUTOR IS A MINOR

When a person named as executor in a will is under age at the time of proving such the will, issuance of letters of administration with the will annexed shall be granted during the minority of the executor as in cases of intestacy, unless there is may be granted to another executor named in such the will, who accepts the trust and gives a bond. In such case, the executor who gives a bond shall have letters testamentary and shall administer the estate until the minor is of age, when he may be admitted, on giving a bond, as joint executor appointment and gives the required bond, or to another suitable person if he or she fails to accept appointment or to post bond. A minor who attains the age of legal majority during the estate administration shall not displace the incumbent executor or administrator, but if a vacancy occurs during administration, the former minor may apply to the court for appointment as successor executor or administrator.

§ 911. EXECUTOR OF EXECUTOR NOT TO ADMINISTER FIRST
ESTATE

~~The executor of an executor shall not, as such, administer the estate of the first testator. [Repealed.]~~

§ 912. MARRIED WOMAN

~~A married woman may be executrix or administratrix, and the marriage of a single woman shall not affect her authority to so act under a previous appointment. [Repealed.]~~

§ 913. DEATH OR REMOVAL OF EXECUTOR OR ADMINISTRATOR

When an executor or administrator dies, resigns, is removed or his or her the executor's or administrator's authority is otherwise extinguished, the any remaining executor or administrator may execute the trust complete the administration unless otherwise provided by the will. If there is no other executor or administrator then serving, the court may grant letters of administration may be granted to a another suitable person. The executor or administrator of an executor or administrator shall not administer the estate of the first decedent.

§ 914. POWER OF NEW ADMINISTRATOR

An administrator appointed in the place of a former executor or administrator shall have the same power authority in settling the estate not administered as the former executor or administrator had. He or she may, including the authority to prosecute or defend actions commenced by or against the former executor or administrator, and the new administrator may

revive actions and have execution on ~~judgment~~ judgments recovered in the name of the former executor or administrator on behalf of the estate.

§ 915. APPOINTMENT OF ADMINISTRATOR TO ACT WITH
SURVIVOR

When an executor or administrator dies, resigns, is removed or authority is otherwise extinguished, leaving a remaining executor or administrator, administration may be granted to some suitable person, to serve with the remaining executor or administrator, upon motion of any person interested in the estate of the deceased, ~~as widow, heir, creditor, devisee, legatee or their legal representatives.~~

§ 916. POWERS OF ADMINISTRATOR APPOINTED TO ACT
WITH SURVIVOR

An executor or administrator appointed under section 915 of this title shall have the same power authority as the remaining executor or administrator ~~has and with such executor or administrator~~ and may prosecute or defend actions commenced by or against the former ~~executors or administrators~~ executor or administrator and may revive actions and have execution on judgments recovered in the name of the former executor or administrator on behalf of the estate.

§ 917. POWER OF REGULATION

~~The probate division of the superior court~~ Probate Division of the Superior Court shall regulate the conduct of persons appearing in proceedings or involved in the administration of estates or other matters within the court's jurisdiction. When it appears to the court that a person has failed to comply with procedures required by law or the ~~rules of probate procedure~~ Rules of Probate Procedure, or that an estate is not being promptly and properly administered, or that a fiduciary is incapable or unsuitable to discharge the trust, the court may give notice of the complaint or omission together with a notice to correct the deficiency or complaint within a specified period of time or cause the party to appear and answer the matter. Notice shall be given as provided by the ~~rules of probate procedure~~ Rules of Probate Procedure. The court may restrain a person from performing specified acts or the exercise of any powers or discharge of any duties of office, or make any other order to secure proper performance of duty. It may exercise the powers of contempt, tax costs including surcharge, order a party to pay to other parties the amount of reasonable expenses, including reasonable attorney's fees, or losses incurred because of an act or omission, and remove or suspend a fiduciary.

§ 917a. TERMINATION OF APPOINTMENT

(a) Termination of appointment of ~~a fiduciary~~ an executor or administrator ends the rights and powers pertaining to the office as conferred by law, the ~~rules of probate procedure~~ Rules of Probate Procedure, or any will or trust. Termination does not discharge ~~a fiduciary~~ an executor or administrator from liability for transactions or omissions occurring before termination, or relieve the ~~fiduciary~~ executor or administrator of the duty to preserve assets subject to the ~~fiduciary's~~ executor's or administrator's control, ~~or to account therefor, and to~~ for and deliver assets. Termination does not affect the jurisdiction of the ~~probate division of the superior court~~ Probate Division of the Superior Court over the fiduciary, but terminates the estate fiduciary's authority.

(b) The appointment of ~~a fiduciary~~ an executor or administrator is terminated:

(1) upon death; ~~or~~

(2) when the estate is closed as provided by the ~~rules of probate procedure~~ Rules of Probate Procedure; ~~or~~

(3) after resignation upon the appointment of a successor estate fiduciary and delivery of the assets to the successor; or

(4) upon removal by the ~~probate division of the superior court~~ Probate Division of the Superior Court.

§ 918. ONE OF THE COEXECUTORS DISQUALIFIED, OTHERS MAY ACT

~~According to the provisions of this chapter, when executors~~ When ~~coexecutors~~ appointed in a will cannot act as such, those who can act may perform the duties and discharge the trusts required by the will be appointed to administer the estate.

§ 919. PERSONS UNHEARD FROM FOR FIVE YEARS; SETTLEMENT OF ESTATE

When a person is absent and unheard from for five years or when a certificate of presumed death of a person has been issued under 18 V.S.A. § 5219, that person's estate shall be subject to administration by the ~~probate division of the superior court~~ Probate Division of the Superior Court. If a will exists, the will shall be presented to the court and may be allowed and the estate closed thereunder. If no will is found, the court having jurisdiction of the estate may grant letters of administration thereof and proceed with the estate as in the settlement of intestate estates, ~~but distribution.~~ Distribution of the estate shall not be made until five years after the granting of administration or letters testamentary. Before granting an order for distribution or for payment of legacies named in any will which may have been allowed, the

court shall require from the legatees or distributees a bond or bonds with sufficient surety to the court, which may take into account the likelihood of the reappearance of the person presumed deceased, conditioned to return the amount distributed or paid with lawful interest thereon to the person so absent and unheard from upon reappearance and demand for the same. If the distributee or legatee is unable to give the security ~~aforsaid~~ required by this section, the same shall be placed at interest upon security approved by the court or by the executor or administrator, as the case may be, and the interest shall be paid annually to the distributee or legatee and the estate shall remain at interest until the ~~probate division of the superior court~~ Probate Division of the Superior Court by which the letters of administration or letters testamentary were granted shall order it paid to the legatees or distributees. Upon motion, an order shall not be made permitting payment or distribution without the security ~~hereinbefore provided for~~ required by this section until at least seven years have elapsed since the granting of letters testamentary or of administration on the estate of the supposed decedent.

§ 920. LIABILITY OF EXECUTOR; RIGHTS ON RETURN

After ~~such~~ the administration and distribution, the executor or administrator shall not be liable to the person so absent and unheard from in any action for the recovery of ~~such~~ the estate. If ~~such~~ the absent person proves to be alive, he or she shall be entitled to his or her estate notwithstanding ~~the a~~ a settlement and distribution ~~aforsaid~~ made pursuant to section 919 of this title, and may bring an action to recover in an action on this statute any portion thereof of the estate which anyone received in such as a result of the settlement and distribution.

§ 921. PROPERTY OF PERSONS SERVING IN ARMED FORCE –

ABSENT PERSONS, CONSERVATOR

When a person, hereinafter referred to as an absentee, who is serving in or with the ~~armed forces of the United States~~ U.S. Armed Forces, its allies, or as a crew member of a merchant vessel, has been reported or listed as missing, missing in action, interned, or beleaguered, besieged, or captured by an enemy, and has an interest in any property in this ~~state~~ State and has not provided an adequate power of attorney authorizing another to act on the absentee's behalf in regard to the absentee's property, the ~~probate division of the superior court~~ Probate Division of the Superior Court may appoint a conservator to take charge of the absentee's estate under the supervision and subject to the further orders of the court. The appointment may be made upon a petition alleging the foregoing facts, showing the necessity of providing for the care of property, and may be brought by any person who would have an interest in the property if the absentee were deceased, or on the court's own motion. The court shall schedule a hearing and notice shall be given as provided by the

~~rules of probate procedure~~ Rules of Probate Procedure.

§ 922. POWERS OF CONSERVATOR; BOND

The ~~probate division of the superior court~~ Probate Division of the Superior Court shall have full discretionary authority to appoint any suitable person as conservator and may require the conservator to post an adequate surety bond and to make reports the court may deem necessary. The conservator shall have the same powers and authority as the guardian of the property of a minor or incapacitated person.

§ 923. TERMINATION OF CONSERVATORSHIP

At any time upon motion signed by the absentee, or of an attorney-in-fact acting under an adequate power of attorney granted by the absentee, the ~~probate division of the superior court~~ Probate Division of the Superior Court shall direct the termination of the conservatorship and the transfer of all property held thereunder to the absentee or to the designated attorney-in-fact. Likewise, if at any time subsequent to the appointment of a conservator it shall appear that the absentee has died and an executor or administrator has been appointed for the absentee's estate, the court shall direct the termination of the conservatorship, an accounting therein and the transfer of all property of the deceased absentee held thereunder to the executor or administrator.

§ 924. REVOCATION OF LETTERS OF ADMINISTRATION-WHEN
WILL DISCOVERED

When, after granting letters of administration of the estate of a person as if dying intestate, a will of the deceased person is allowed, the letters of administration shall be revoked and the powers of the administrator cease, the letters of administration shall be surrendered and an accounting shall be filed as the ~~probate division of the superior court~~ Probate Division of the Superior Court directs.

§ 925. POWERS OF EXECUTOR OF DISCOVERED WILL

In such case, the executor of the will may demand, sue for and collect the goods, chattels, rights and credits of the deceased remaining unadministered, and may prosecute to final judgment actions commenced by the administrator before the revocation of his or her letters of administration.

§ 926. REVOCATION OF LETTERS NOT TO AVOID ACTS UNDER
THEM

Before the revocation of his or her letters testamentary or of administration, the acts of an executor or administrator shall be valid the same as if revocation had not been made.

§ 927. EXECUTOR OR ADMINISTRATOR OF DECEASED

PARTNER-ACCESS TO BOOKS

The executor or administrator of a deceased partner at all times shall have access to and make examination and take copies of the books and papers relating to the partnership business, and at all times shall have the right to examine and make invoices of the property belonging to ~~such~~ the partnership. The surviving partner or partners, on request, shall exhibit to him or her all ~~such~~ the books, papers, and property in their hands or control.

§ 928. PROBATE DIVISION OF THE SUPERIOR COURT MAY COMPEL

COMPLIANCE

~~The probate division of the superior court~~ Probate Division of the Superior Court in which is pending a proceeding for the settlement of the estate of a deceased partner, on motion of the executor or administrator, may cite a surviving partner or partners before it, and, by a proper order or decree, compel the granting of the rights given in section 927 of this title and may enforce an order or decree by issuing its warrant to commit the partner or partners to the custody of the ~~commissioner of corrections~~ Commissioner of Corrections until compliance is given.

§ 929. BUILDINGS TO BE KEPT IN REPAIR

An executor or administrator shall maintain in tenable repair the houses, buildings, and fences belonging to the estate and deliver the same in such repair to the heirs or devisees when directed by the ~~probate division of the superior court~~ Probate Division of the Superior Court.

§ 930. ESTATE NOT WILLED

An executor shall administer the estate of the testator not disposed of by will.

§ 931. LIMITATION ON CLAIMS OF CREDITORS

~~When a petition to open a decedent's estate is not filed in probate division of the superior court within 30 days of death, all~~ All claims against the decedent's estate which arose before the death of the decedent, including claims of the ~~state~~ State and any subdivision thereof, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the legal representative of the estate, and the heirs and devisees of the decedent, unless presented within ~~three years~~ one year after the decedent's death. Nothing in this section affects or prevents any proceeding to enforce any mortgage, pledge, or other lien upon the property of the estate.

Subchapter 2. Special Administrators

§ 961. SPECIAL ADMINISTRATOR; APPOINTMENT WHEN ESTATE JEOPARDIZED; CONDUCT OF BUSINESS

When the interests of the estate of a deceased person will be jeopardized by the delay intervening between death and the appointment of an administrator or executor, the ~~probate division of the superior court~~ Probate Division of the Superior Court may, upon motion of an heir or next of kin, appoint a special administrator to act until an administrator or executor is appointed and qualified. The special administrator may continue operation of the business conducted by the deceased, including application for and operating under the transfer of any license held by the deceased for the dispensing of alcoholic beverages.

§ 962. APPOINTMENT IN CASE OF DELAY

When there is delay in granting letters testamentary or of administration, occasioned by an appeal from the allowance or disallowance of a will, or from other cause, the ~~probate division of the superior court~~ Probate Division of the Superior Court may appoint a special administrator to act in collecting and taking charge of the estate of the deceased until the questions causing the delay are decided and an executor or administrator is appointed. An appeal shall not be allowed from the appointment of a special administrator.

§ 963. POWERS

A special administrator shall collect the goods, chattels, and credits of the deceased and preserve the same for the executor or administrator afterwards appointed and for that purpose may commence and maintain actions as an administrator and may sell perishable and other personal estate as the ~~probate division of the superior court~~ Probate Division of the Superior Court orders sold and may allow or deny claims against the estate as otherwise provided by law.

§ 964. LIABILITY FOR DEBTS

~~Such~~ A special administrator shall not be liable to an action by a creditor or to pay any debts of the deceased. With the consent of the ~~probate division of the superior court~~ Probate Division of the Superior Court, he or she may pay the expenses of the last sickness and the funeral expenses of the deceased and any bills against the estate of the deceased of his or her own contracting.

§ 965. BOND

Before entering upon the duties of his or her trust, ~~such~~ a special administrator shall give a bond as the court directs, conditioned that he or she will make and return a true inventory of the goods, chattels, rights, credits and

effects of the deceased which come to his or her possession or knowledge, and that he or she will truly account for such as are received by him or her, when required by the ~~probate division of the superior court~~ Probate Division of the Superior Court, and will deliver the same to the person afterwards appointed executor or administrator or to a person authorized to receive the same.

§ 966. POWERS TO CEASE, WHEN

Upon granting letters testamentary or of administration on the estate of the deceased, the powers of ~~such~~ the special administrator shall cease. He or she shall forthwith deliver to the executor or administrator the goods, chattels, ~~moneys monies~~, and effects of the deceased in his or her hands, and the executor or administrator may prosecute to final judgment actions commenced by ~~such~~ the special administrator.

Sec. 6. 14 V.S.A. chapter 63 is amended to read:

CHAPTER 63. INVENTORY, APPRAISAL, AND ACCOUNTS

§ 1051. INVENTORY

Within ~~30~~ 60 days after appointment, an executor or administrator, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any lien or encumbrance that may exist with reference to any item. The executor or administrator shall file the original of the inventory with the ~~probate division of the superior court~~ Probate Division of the Superior Court, and shall serve copies as provided by the ~~rules of probate procedure~~ Rules of Probate Procedure. The time for filing the inventory may be extended by the court for ~~a period not to exceed a total of 90 days~~ good cause.

§ 1052. APPRAISERS

(a) The executor or administrator may employ a one or more qualified and disinterested ~~appraiser~~ appraisers to assist in ascertaining the fair market value as of the date of the decedent's death of any assets the value of which may be subject to reasonable doubt. ~~Different persons may be employed to appraise different kinds of assets included in the estate.~~ The names and addresses of any ~~appraiser~~ appraisers shall be indicated on the inventory with the item or items appraised.

(b) ~~If any property not included in the original inventory comes to the knowledge of an executor or administrator or if an executor or administrator learns that the value or description indicated in the original inventory for any item is erroneous or misleading, a supplementary inventory or appraisal shall~~

~~be made showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisals or other data relied upon, if any, and file it with the court and serve copies of it as provided by the rules of probate procedure.~~

~~(c) Upon motion filed within 30 days of the filing of an inventory under section 1051 of this title or under subsection (b) of this section, by any creditor having a claim of more than \$500.00, or by any heir, devisee or legatee entitled to property or cash of value of more than \$500.00, on distribution of the estate, the court, after hearing, may appoint one or more special appraisers to reappraise any item of property reported in the inventory or supplementary inventory, or to appraise any property omitted from any inventory.~~

§ 1053. SUPPLEMENTAL INVENTORY

(a) If the executor or administrator learns of the existence of any property not included in the original inventory or learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the executor or administrator shall:

(1) make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisals or other data relied upon, if any; and

(2) file the supplementary inventory or appraisal with the court and serve copies of it as provided by the Rules of Probate Procedure.

(b) Upon motion filed within 30 days after the filing of an original or supplemental inventory by any creditor having a claim of more than \$1,000.00, or by any heir, devisee, or legatee entitled to property or cash of value of more than \$500.00 on distribution of the estate, the court shall hold a hearing and may appoint one or more special appraisers to reappraise any item of property reported in the inventory or to appraise any property omitted from the inventory.

§ 1054. ARTICLES ASSETS NOT INVENTORIED

~~Under the direction of the probate division of the superior court, the following items shall not be considered as assets of the estate, nor be administered as such, nor shall they be included in the inventory:~~

~~(1) The wearing apparel of the deceased;~~

~~(2) The wearing apparel of the widow according to the estate and degree of her husband, if the deceased leaves a widow;~~

~~(3) The wearing apparel of the minor children if the deceased leaves minor children;~~

~~(4) Such provisions and other articles as will necessarily be consumed or used in the subsistence of the family of the deceased. Wearing apparel of the deceased or any other member of the household, and provisions and other articles to be consumed or used in the subsistence of the household, shall not be considered as assets of the estate unless, after hearing upon motion, the court finds that an item has intrinsic value in addition to its value for wear or subsistence, or that its inclusion in inventory would otherwise benefit the estate.~~

§ 1055. ACCOUNTS OF EXECUTORS AND ADMINISTRATORS; TIME
OF RENDERING; EXAMINATION

An executor or administrator shall render an account of his or her administration within one year from the time of receiving letters testamentary or of administration, and annually thereafter, ~~and at such other times as the court may require,~~ or otherwise as ordered by the Probate Division of Superior Court until the estate is wholly settled, and he or she. The fiduciary may be examined on oath upon any matter relating to his the account.

§ 1056. LIABILITY ON BOND FOR NEGLECT

When an executor or administrator, being duly cited by the ~~probate division of the superior court~~ Probate Division of the Superior Court, neglects to render ~~his or her a required~~ account, he or she the fiduciary shall be liable on ~~his or her the~~ fiduciary's bond for the damages which accrue.

§ 1057. FOR WHAT TO ACCOUNT

~~An executor or administrator shall be chargeable in his or her account with the goods, chattels, rights and credits of the deceased which come to his or her possession, also with the proceeds of the real estate sold for the payment of debts and legacies and with the interest, profit and income which come to his or her hands from the estate of the deceased. The executor or administrator shall account for the personal estate of the deceased at its appraisal, except as hereinafter provided.~~

The accounting of the executor or administrator shall:

- (1) be done on a cash basis;
- (2) include the balance at the beginning of the period covered by the accounting, all receipts, all payments, and the balance at the end of the period covered by the accounting; and
- (3) be prepared on forms provided by the court, or on any spreadsheet or generally accepted software format accepted by the court that provides the required information.

§ 1058. NOT TO GAIN OR LOSE BY INCREASE OR DECREASE IN
VALUE

~~An executor or administrator shall not profit by the increase, nor suffer loss by the decrease or destruction, without his the fiduciary's fault, of any part of the personal estate. He The executor or administrator shall account for the excess when he sells any of the personal estate any gain or loss incurred when any property is sold for more or less than the appraisal inventory value. If he sells any for less than the appraisal, he shall not be responsible for the loss, if it appears to be beneficial to the estate to sell it.~~

§ 1059. TO ACCOUNT FOR SELLING PRICE, IF SOLD BY ORDER OF
COURT

~~When an executor or administrator sells personal estate under an order of the probate division of the superior court, he or she shall account for the same at the price for which it is sold. [Repealed.]~~

§ 1060. ACCOUNTABLE FOR PROCEEDS OF REALTY

~~The proceeds of real estate, sold for the payment of the debts and charges of administration, shall be assets in the hands of the administrator as if the same had been part of the goods and chattels of the deceased; and the executor or administrator and the sureties on his administration bond shall be accountable therefor. [Repealed.]~~

§ 1061. WHEN NOT ACCOUNTABLE FOR DEBTS DUE

An executor or administrator shall not be accountable for debts due the deceased if it appears that they remain uncollected without his or her fault.

§ 1062. ACCOUNTABLE FOR INCOME FROM REALTY USE BY
EXECUTOR OR ADMINISTRATOR

~~An executor or administrator shall account for the income of the real estate while it remains in his or her possession and if the executor or administrator uses or occupies any part of it, he or she shall account for it as may be agreed upon among the parties interested, or adjudged by the court with their consent. If the parties do not agree upon the sum to be allowed, the same may be ascertained by a master appointed under the rules of probate procedure. If an executor or administrator uses or occupies any asset of the estate, the executor or administrator shall account for the use or occupancy upon agreement of the interested parties. If the parties do not agree upon the amount to be allowed, the court shall determine the proper amount, with the assistance of a master at the court's discretion.~~

§ 1063. ACCOUNTABLE FOR LOSSES BY NEGLIGENCE

When an executor or administrator neglects or unreasonably delays to raise money by collecting the debts or selling the real or personal estate of the deceased, or neglects to pay over the money ~~he or she~~ the fiduciary has in his or her hands, and the value of the estate is thereby lessened, or unnecessary cost or interest accrues, or the persons interested suffer loss, the same shall be deemed waste, and the damages sustained may be charged and allowed against ~~him or her in his or her~~ the fiduciary in the fiduciary's account or ~~he or she~~ the fiduciary shall be liable therefor for the damages on his or her the fiduciary's bond.

§ 1064. COSTS TO BE ALLOWED

The amount paid by an executor or administrator for costs awarded against ~~him or her~~ him or her shall be allowed in ~~his or her administration~~ the fiduciary account, unless it appears that the action or proceeding in which the costs are taxed was prosecuted or resisted without just cause.

§ 1065. FEES AND EXPENSES

An executor or administrator shall be allowed necessary expenses in the care, management, and settlement of the estate and, ~~for his or her services, such fees as the law provides, with extra expenses~~ reasonable fees for services. When, by will, the deceased makes some other provisions for compensation to ~~his or her~~ the executor, that shall be a full satisfaction for his or her services, unless, by a written instrument filed in the ~~probate division of the superior court,~~ he or she Probate Division of the Superior Court, the executor renounces all claim to the compensation provided by the will, or unless otherwise ordered by the court.

§ 1066. VERIFICATION; RIGHT OF HEIR TO BE EXAMINED

~~The probate division of the superior court shall examine every executor and administrator on oath as to the correctness of his or her account before the same is allowed, except when objection is not made to the allowance of the account and its correctness is satisfactorily established by competent testimony. The heirs, legatees and distributees of an estate shall have the same privilege of being examined on oath upon any matter relating to an administration account that the executor or administrator has. An accounting that is consented to by all interested parties shall be allowed without hearing unless the Probate Division of the Superior Court sets a hearing upon the accounting. At the hearing, the executor or administrator may be examined under oath by the court or interested parties. Interested parties may be examined under oath. An account shall not be rejected for de minimis discrepancies unless the court finds good cause to reject the account on that basis.~~

§ 1067. NOTICE OF ACCOUNTING

Before an administration account of an executor or administrator is allowed, notice shall be given as provided by the Rules of Probate Procedure.

§ 1068. SURETY MAY INTERVENE AND APPEAL

Upon the settlement of the account of an executor, administrator, or other person, a person liable as surety in respect to the account, upon motion, may intervene as a party and may appeal as provided in other cases of appeals from the decision of the ~~probate division of the superior court~~ Probate Division of the Superior Court. ~~The surety in such case, before~~ Before the appeal is allowed, the surety shall give a bond to secure the principal from damages and costs and to secure the intervening damages and costs to the adverse party.

§ 1069. WAIVER OF FINAL ACCOUNTING

If an estate has been open for at least six months and the remaining assets include no real estate, a final accounting may be waived if the executor or administrator files with the court:

(1) the fiduciary's verified representation that all claims and all other obligations of the estate have been satisfied;

(2) a schedule of remaining assets to be distributed;

(3) a schedule of proposed distribution;

(4) a waiver of a final accounting and consent to the proposed distribution by all interested parties; and

(5) a tax clearance from the Vermont Department of Taxes.

Sec. 6a. 14 V.S.A. § 1203 is amended to read:

§ 1203. LIMITATIONS ON PRESENTATION OF CLAIMS

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the ~~state~~ State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, except claims for the possession of or title to, real estate and claims for injury to the person and damage to property suffered by the act or default of the deceased, if not barred earlier by other statute of limitations, are barred against the estate, the executor or administrator, and the heirs and devisees of the decedent, unless presented as follows:

(1) within four months after the date of the first publication of notice to creditors if notice is given in compliance with the ~~rules of probate procedure~~ Rules of Probate Procedure; provided, claims barred by the nonclaim statute of

the decedent's domicile before the first publication for claims in this ~~state~~ State are also barred in this ~~state~~ State;

(2) within ~~three years~~ one year after the decedent's death, if notice to creditors has not been published or otherwise given as provided by the ~~rules of probate procedure~~ Rules of Probate Procedure.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the ~~state~~ State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the executor or administrator, and the heirs and devisees of the decedent, unless presented as follows:

(1) a claim based on a contract with the executor or administrator, within four months after performance by the executor or administrator is due;

(2) any other claim, within four months after it arises.

(c) Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the executor or administrator for which he or she is protected by liability insurance;

(3) the enforcement of any tax liability.

Sec. 7. 14 V.S.A. chapter 71 is amended to read:

CHAPTER 71. ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS

Subchapter 1. General Provisions

§ 1401. EXECUTOR OR ADMINISTRATOR MAY SUE AND DEFEND

An executor or administrator may commence, prosecute, or defend, in the right of the deceased, actions which survive to ~~such~~ the executor or administrator and are necessary for the recovery and protection of the property or rights of the deceased and may prosecute or defend ~~such~~ the actions commenced in the lifetime of the deceased.

§ 1402. SUM RECOVERED PAID TO PERSON ENTITLED THERETO

When an executor or administrator commences or prosecutes an action founded on a debt, demand, or claim for damages, and is only a trustee of ~~such~~ the claim for the use of another person, and where the claim, although prosecuted in the name of the executor or administrator, belongs to another

person, the sum or property recovered shall not be assets in the hands of ~~such~~ the executor or administrator, but shall be paid over to the person entitled ~~thereto to them~~, after deducting or being paid the costs and expenses of the prosecution.

§ 1410. REPRESENTATIVE MAY ~~COMPOUND~~ COMPROMISE CLAIMS
OF THE ESTATE

With the approval of the ~~probate division of the superior court~~ Probate Division of the Superior Court, an executor or administrator may ~~compound~~ compromise with a debtor of the deceased for a debt due and may give a discharge of ~~such the~~ the debt on receiving a ~~just dividend~~ payment of the estate of ~~such debtor~~ compromised amount.

§ 1411. DISPUTED CLAIM MAY BE REFERRED

When there is a disputed claim between an executor or administrator on behalf of the estate and another person, ~~with the consent of the parties in writing~~, it may be referred to a master as provided by the ~~rules of probate procedure, whether an appeal has been granted or not, if an appeal has not been entered in superior court~~ Rules of Probate Procedure. The award, made in writing and returned to and accepted by the court, shall be final between the parties.

§ 1412. CLAIM BETWEEN EXECUTOR AND ESTATE

When a claim exists between an executor or administrator and the estate, a special administrator may be appointed solely for the purpose of acting upon that claim.

§ 1413. DEBT AS PERSONALTY; REPRESENTATIVE MAY
FORECLOSE MORTGAGE

A debt secured by mortgage belonging to the estate of a deceased person as mortgagee or assignee of the right of a mortgagee, when ~~such the~~ the mortgage was not foreclosed in the lifetime of the deceased, shall be personal assets in the hands of the executor or administrator and administered and accounted for as such. The executor or administrator may foreclose the mortgage and take possession of the mortgaged premises as the ~~mortgagee or assignee~~ decedent might have done in ~~his~~ the decedent's lifetime.

§ 1414. ~~EQUITY OF REDEMPTION TO BE HELD IN TRUST;~~
REDEMPTION

~~The executor or administrator shall hold the equity of redemption in mortgaged premises in trust for the creditors or other persons entitled to the same and on the redemption of such mortgaged premises and receipt of the~~

~~money paid therefor, he shall release and discharge the same. [Repealed.]~~

~~§ 1415. DISPOSAL OF LANDS HELD UNDER MORTGAGE OR TAKEN
ON EXECUTION~~

~~Real estate held under a mortgage by an executor or administrator may be sold for the payment of debts or legacies or the charges of administration, as any real estate of which the deceased person died seised, or may be assigned and set out to the person entitled to it as the other estate of the deceased. If more than one person is entitled to it, partition may be made between them, as in other cases. [Repealed.]~~

~~§ 1416. ESTATE NOT SUED WHEN MASTERS APPOINTED;
EXCEPTIONS~~

~~Nothing in this chapter shall authorize a claimant to commence or prosecute an action against an executor or administrator where a master is appointed in the proceeding, nor where a time is allowed by an order of the probate division of the superior court Probate Division of the Superior Court for the executor or administrator to pay the debts against the deceased. Such an action shall not be commenced or prosecuted except as provided by law for that purpose.~~

~~§ 1417. PROSECUTION OF ACTION~~

~~A person having a contingent or other claim against a deceased person may prosecute the same claim against the executor, administrator, heirs, devisees, or legatees. ~~In such case, an~~ An action commenced against the deceased before death may be prosecuted to final judgment. A claimant having a lien on the real or personal estate of the deceased, by attachment previous to death, on obtaining judgment, may have execution against ~~such~~ the real or personal estate.~~

~~§ 1418. COSTS NOT TO BE TAXED AGAINST ESTATE~~

~~When costs are allowed against an executor or administrator, execution shall not issue against the estate of the deceased in his hands, but shall be awarded against him as for his own debt. [Repealed.]~~

Subchapter 2. Survival of Causes

§ 1451. WHAT ACTIONS SURVIVE

Actions of ejectment or other proper actions to recover the seisin or possession of lands, tenements or hereditaments, actions of replevin, actions of on tort on account of the wrongful conversion of personal estate, and actions of on tort on account of a trespass or for damages done to real or personal estate shall survive, in addition to the actions which survive by common law, and may be commenced and prosecuted by the executor or administrator.

§ 1452. WHEN ACTIONS FOR PERSONAL INJURY SURVIVE

In an action for the recovery of damages for a bodily hurt or injury, occasioned to the plaintiff by the act or default of the defendant or defendants, if either party dies during the pendency of ~~such~~ the action, the action shall survive and may be prosecuted to final judgment by or against the executors or administrators of ~~such~~ the deceased party. When there are several defendants in ~~such~~ the action, and one or more, but not all, die, it shall be prosecuted against the surviving defendant or defendants, and against the estate of the deceased defendant or defendants.

§ 1453. SURVIVAL OF CAUSES OF ACTION

The causes of action mentioned in sections 1451 and 1452 of this title shall survive. Actions based thereon may be commenced and prosecuted by or against the executor or administrator. When ~~such~~ the actions are commenced in the lifetime of the deceased, after death the same may be prosecuted by or against the executor or administrator where by law that mode of prosecution is authorized.

§ 1454. TRESPASS; DAMAGES

In an action of ~~of~~ on tort on account of a trespass commenced or prosecuted against an executor or administrator, the plaintiff or claimant shall recover for the value of the goods taken, or the actual damage, and not vindictive or exemplary damages.

§ 1455. HEIR MAY NOT SUE UNTIL SHARE ASSIGNED

When an executor or administrator is appointed and assumes the trust, an action of ejectment or other action to recover the seisin or possession of lands, or for damage done to ~~such~~ the lands, shall not be maintained by an heir or devisee until there is a decree of the ~~probate division of the superior court~~ Probate Division of the Superior Court assigning ~~such~~ the lands to ~~such~~ the heir or devisee, or the time allowed for paying debts has expired, unless the executor or administrator surrenders the possession to ~~such~~ the heir or devisee.

Subchapter 3. Wrongful Death

§ 1491. RIGHT OF ACTION WHERE DEATH RESULTS FROM

WRONGFUL ACT

When the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act, neglect, or default is such as would have entitled the party injured to maintain an action and recover damages in respect thereof, if death had not ensued, the person or corporation liable to such action shall be liable to an action for damages, notwithstanding the death of the person injured and although the death is caused under such

circumstances as amount in law to a felony.

§ 1492. ACTION FOR DEATH FROM WRONGFUL ACT; PROCEDURE;
DAMAGES

(a) ~~Such~~ The action shall be brought in the name of the personal representative of ~~such the~~ deceased person and commenced within two years from the discovery of the death of the person, but if the person against whom ~~such the~~ action accrues is out of the ~~state~~ State, the action may be commenced within two years after ~~such the~~ person comes into the ~~state~~ State. After ~~such the~~ cause of action accrues and before ~~such the~~ two years have run, if the person against whom it accrues is absent from and resides out of the ~~state~~ State and has no known property within the ~~state~~ State which can by common process of law be attached, the time of his or her absence shall not be taken as part of the time limited for the commencement of the action. If the death of the decedent occurred under circumstances such that probable cause is found to charge a person with homicide, the action shall be commenced within seven years after the discovery of the death of the decedent or not more than two years after the judgment in that criminal action has become final, whichever occurs later.

(b) The court or jury before whom the issue is tried may give such damages as are just, with reference to the pecuniary injuries resulting from ~~such the~~ death, to the ~~wife and next of kin or husband~~ spouse and next of kin, as the case may be. In the case where the decedent is a minor child, the term pecuniary injuries shall also include the loss of love and companionship of the child and for destruction of the parent-child relationship in ~~such an~~ amount as under all the circumstances of the case, may be just.

(c) The amount recovered shall be for the benefit of ~~such wife and next of kin or husband~~ the spouse and next of kin, as the case may be and shall be distributed by ~~such the~~ personal representative as hereinafter provided. ~~Such~~ The distribution, whether of the proceeds of a settlement or of an action, shall be in proportion to the pecuniary injuries suffered, the proportions to be determined upon notice to all interested persons in such manner as the ~~superior court~~ Superior Court, or in the event ~~such the~~ court is not in session a ~~superior~~ Superior judge, shall deem proper and after a hearing at such time as ~~such the~~ court or judge may direct, upon application made by ~~such the~~ personal representative or by the ~~wife, husband~~ spouse or any next of kin. The distribution of the proceeds of a settlement or action shall be subject to the following provisions, ~~viz:~~

(1) In case the decedent shall have left a spouse surviving, but no children, the damages recovered shall be for the sole benefit of ~~such the~~ spouse;

(2) In case the decedent leaves neither spouse nor children, but leaves a mother and leaves a father who has abandoned the decedent or has left the maintenance and support of the decedent to the mother, the damages or recovery shall be for the sole benefit of ~~such~~ the mother;.

(3) In case the decedent leaves neither spouse nor children, but leaves a father and leaves a mother who has abandoned the decedent or has left the maintenance and support of the decedent to the father, the damages or recovery shall be for the sole benefit of ~~such~~ the father;.

(4) No share of ~~such~~ the damages or recovery shall be allowed in the estate of a child to a parent who has neglected or refused to provide for ~~such~~ the child during infancy or who has abandoned ~~said~~ the child whether or not ~~such~~ the child dies during infancy, unless the parental duties have been subsequently and continuously resumed until the death of the child;.

(5) No share of ~~such~~ the damages or recovery shall be allowed in the estate of a deceased spouse to his or her surviving spouse who has abandoned the decedent ~~or in the estate of a wife to a husband~~ who has persistently neglected to support ~~his wife~~ the decedent prior to ~~her~~ the decedent's death;.

(6) ~~The superior court or superior judge, as the case may be,~~ Superior Court shall have jurisdiction to determine the questions of abandonment and failure to support under subdivisions (2), (3), (4), and (5) of this subsection and the ~~probate division of the superior court~~ Probate Division of the Superior Court having jurisdiction of the decedent's estate shall decree the net amount recovered pursuant to the final judgment order of the ~~superior court or superior judge~~ Superior Court.

(d) A party may appeal from the findings and decision rendered pursuant to subsection (c) of this section as in causes tried by a court.

(e) Notwithstanding subsection (a) of this section, if the death of the decedent was caused by an intentional act constituting murder, the action may be commenced within seven years after the discovery of the death of the decedent.

Sec. 8. 14 V.S.A. chapter 73 is amended to read:

CHAPTER 73. PROCEEDINGS FOR RECOVERY OF
PROPERTY EMBEZZLED AND FRAUDULENTLY CONVEYED

§ 1551. PERSON SUSPECTED OF EMBEZZLEMENT, CONCEALING
PAPERS OR CONVEYING DECEDENT'S PROPERTY

~~If an executor or administrator, heir, legatee, creditor or other person interested in the estate of a deceased person files a motion in the probate~~

~~division of the superior court alleging that a person is suspected of having concealed, embezzled or conveyed away any of the money, goods or chattels of the deceased, or has possession or knowledge of any deed, conveyance, bond, contract or other writing which contains evidence of, or tends to disclose, the right, title, interest or claim of the deceased to real or personal estate, or the last will and testament of the deceased, the probate division of the superior court may subpoena or otherwise order that person to appear before it to be examined on oath upon the matter. If the person so cited refuses to appear and submit to examination or to answer interrogatories, the court may issue a warrant committing the person to the custody of the commissioner of corrections until compliance is given. Such interrogatories and answers shall be in writing, signed by the party examined and filed in the court.~~

(a) An executor or administrator, heir, legatee, creditor, or other person interested in the estate of a deceased person may file a motion for discovery in the Probate Division of the Superior Court alleging that a person is suspected of having concealed, embezzled, or conveyed any of the deceased's property, or has possession or knowledge of any deed, conveyance, bond contract, or other writing which contains evidence of, or tends to disclose, the right, title, interest, or claim of the deceased to real or personal estate, or the last will and testament of the deceased.

(b) The court may subpoena or otherwise order a person to appear before it to be examined under oath upon the matter or to answer interrogatories or requests to produce to be filed with the court. If the person so ordered refuses to appear and submit to examination or to answer interrogatories, the person may be subject to proceedings for civil contempt under 12 V.S.A. § 122. Interrogatories and answers to interrogatories shall be in writing, signed under oath by the party examined, and filed with the court.

§ 1552. PERSON ENTRUSTED WITH ESTATE MAY BE COMPELLED TO RENDER ACCOUNT

~~On motion of an executor or administrator, the court may cite a person who is entrusted by an executor or administrator with any part of the estate of the deceased person to appear before it, and may require the person to render a full account, on oath, of the money, goods, chattels, bonds, accounts or other papers belonging to the estate which have come into the person's possession, in trust for the executor or administrator, and of any proceedings thereon. If the person so cited refuses to appear and render an account, the court may proceed as provided in section 1551 of this title. On motion of an executor or administrator, the court may order a person who is entrusted by an executor or administrator with any part of the estate of the deceased person to appear under oath and render a full accounting of the property. If the person so~~

ordered refuses to appear and render an account, the person may be subject to proceedings for civil contempt under 12 V.S.A. § 122.

§ 1553. FORFEITURE BY PERSON EMBEZZLING BEFORE LETTERS
ISSUED

If a person embezzles or alienates any of the moneys, goods, chattels or effects of a decedent before the granting of letters testamentary or of administration on his estate, such person shall be liable to an action in favor of the executor or administrator of such estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of such estate. If a person embezzles or converts any of the property of a decedent before the appointment of the executor or administrator, the person shall be liable to the executor or administrator of the estate for double the value of the property embezzled or converted, to be recovered for the benefit of the estate.

§ 1554. RECOVERY OF ESTATE FRAUDULENTLY CONVEYED BY
DECEASED

If it appears to the probate division of the superior court on the settlement of the estate of a deceased person that the avails of the real and personal estate, chargeable with the payment of the debts of the deceased, have been expended and are insufficient to pay such debts, and it is shown to the court that the deceased, in his or her lifetime, conveyed real estate or a right or interest therein with intent to defraud his or her creditors, or to avoid a right, debt or duty of a person, or had so conveyed such estate that by law the conveyance is void as against his or her creditors, and the estate attempted to be conveyed would be liable to attachment or execution by a creditor of the deceased in his or her lifetime, the probate division of the superior court may license the executor or administrator to sell so much of the real estate so fraudulently conveyed as is necessary to make up the deficiency of assets in his or her hands to pay the debts of the deceased.

(a) If the executor or administrator determines there is a deficiency of assets in the estate, the fiduciary may bring an action in the Probate Division of the Superior Court for the benefit of the creditors to recover any property fraudulently conveyed by the deceased in his or her lifetime.

(b) The court may license the executor or administrator to sell so much of the property fraudulently conveyed as is necessary to make up the deficiency of assets in the estate to pay the debts of the decedent if it appears to the court that:

- (1) there are insufficient assets to pay the debts of the deceased;
- (2) the deceased conveyed property or a right or interest therein:

(A) with the intent to defraud creditors;

(B) to avoid a debt or duty; or

(C) with respect to real estate, in a manner that by law renders the conveyance void as against his or her creditor; and

(3) the estate attempted to be conveyed would be subject to attachment or execution by a creditor of the deceased in his or her lifetime.

§ 1555. SALE, HOW CONDUCTED

The license to sell ~~such~~ the real estate shall be granted and the sale conducted as provided for the sale of real estate for the payment of the debts of a deceased person. The sale and conveyance so made by the executor or administrator shall be valid and effectual to convey ~~such~~ the real estate.

§ 1556. ~~REPRESENTATIVE MAY SUE FOR ESTATE SO CONVEYED~~

~~When there is a deficiency of assets in the hands of an executor or administrator, and when the deceased person made such fraudulent conveyance of real estate in his lifetime, the executor or administrator may commence and prosecute to final judgment an action for the recovery of, and may recover for the benefit of the creditors, such real estate; and also, for the benefit of the creditors, may sue and recover for goods, chattels, rights or credits fraudulently conveyed by the deceased in his lifetime. [Repealed.]~~

§ 1557. SALE OF FRAUDULENTLY CONVEYED ESTATE; MOTION OF CREDITORS

(a) An executor or administrator shall not be bound to make sale of estate, so fraudulently conveyed, under a license from the ~~probate division of the superior court~~ Probate Division of the Superior Court, nor sue for the estate for the benefit of the creditors unless on motion of creditors of the deceased, nor unless the creditors filing the motion pay that part of the costs and expenses, or give security to the executor or administrator as the court judges equitable.

(b) An executor or administrator shall not be required to sell fraudulently conveyed property under a license from the Probate Division of the Superior Court, or sue for the fraudulently conveyed property for the benefit of the creditors unless the creditors of the deceased file a motion to do so and comply with any court requirements to pay associated costs and expenses or give security to the executor or administrator.

§ 1558. CREDITOR MAY ACT

~~When there is a deficiency of assets in the hands of an executor or administrator, and when the deceased person made, in his or her lifetime, such fraudulent conveyance of his or her real estate or of a right or interest therein,~~

~~by license of the probate division of the superior court, any creditor of the estate may commence and prosecute to final judgment an action, for the recovery of the same in the name of the executor or administrator. Such creditor may recover for the benefit of the creditors such real estate or interest therein, so conveyed, and for the benefit of the creditors, by license of the probate division of the superior court, may sue and recover, in the name of the executor or administrator, for all goods, chattels, rights or credits conveyed by the deceased in his or her lifetime by a fraudulent or void conveyance. Such action shall not be commenced until the creditor files in the probate division of the superior court a bond with sufficient sureties conditioned to indemnify the executor or administrator against the costs of such action.~~

(a) If there is a deficiency of assets in the estate, any creditor of the estate who obtains a license to do so from the Probate Division of the Superior Court may bring an action in the name of the executor or administrator in the Probate Division to recover any property fraudulently conveyed by the deceased in his or her lifetime. The action shall be for the benefit of the creditors and shall be brought in the same manner as an action by the executor or administrator under section 1554 of this title. A creditor licensed by the court to bring an action under this section may recover any property conveyed by the deceased in his or her lifetime by a fraudulent or void conveyance.

(b) An action under this section shall not be commenced until the creditor files with the court a bond with sufficient sureties conditioned to indemnify the executor or administrator against the costs of the action.

(c) A creditor who brings an action under this section shall have a lien upon the judgment recovered by him or her for the costs incurred and any other expenses the court deems equitable.

§ 1559. CREDITOR'S LIEN

~~Such creditor shall have a lien upon the judgment so recovered by him or her for the costs incurred and such other expenses as the probate division of the superior court deems equitable. [Repealed.]~~

Sec. 9. 14 V.S.A. chapter 75 is amended to read:

CHAPTER 75: LICENSE TO SELL AND CONVEY REAL AND PERSONAL PROPERTY

Subchapter 1. General Provisions

§ 1611. COURT MAY ORDER ~~PERSONALTY~~ PERSONAL AND REAL ESTATE SOLD

~~On the motion of the executor or administrator, the probate division of the superior court~~ The Probate Division of the Superior Court may order the

~~personal estate, sale of all or part of it, to be sold the personal or real estate of the estate when it appears necessary or beneficial for the purpose of paying debts, legacies or expenses of administration or for the preservation of the property estate.~~

§ 1612. REALTY MAY BE SOLD, THOUGH PERSONALTY NOT
EXHAUSTED

~~When the personal estate of the deceased is not sufficient to pay the debts and charges of administration without injuring the business of those interested in the estate, or otherwise prejudicing their interests, and where a testator has not otherwise made sufficient provision for the payment of debts and charges, the probate division of the superior court, on motion of the executor or administrator, with the written consent of the heirs, devisees, and legatees, may grant license for that purpose to the executor or administrator to sell real in lieu of personal estate, if it clearly appears that a sale of real estate would be beneficial to the persons interested and will not defeat any devise of lands; in which case, the consent of the devisee shall be required. [Repealed.]~~

§ 1613. WHEN WHOLE OF REAL ESTATE MAY BE SOLD

~~When an executor or administrator makes application to the probate division of the superior court for license to sell real estate for payment of debts or charges of administration, and it appears that a part of such estate is sufficient for that purpose, and that such part cannot be sold without injury to those interested in the remainder, the court may grant license to sell the whole of such estate or such part as is necessary or beneficial to those concerned therein. [Repealed.]~~

§ 1614. PERSONS INTERESTED PERSONS MAY PREVENT SALE;
BOND

~~Such A license to sell real estate shall not be granted if any of the persons interested person in the estate gives a bond in such sum and with such sureties as the probate division of the superior court Probate Division of the Superior Court directs, conditioned to pay the debts and expenses of administration within such time as the court directs. Such The bond shall be for the security and may be prosecuted for the benefit of the creditors as well as of the executor or administrator.~~

§ 1615. CLAIMS MAY BE SOLD OR ASSIGNED

~~Claims belonging to an estate remaining in the hands of an executor or administrator before final settlement of such estate, which, in the opinion of the probate division of the superior court, cannot be collected by the executor or administrator without unreasonable or inconvenient delay, may be sold or~~

~~assigned by the executor or administrator, under the direction of the probate division of the superior court. [Repealed.]~~

§ 1616. PURCHASER OF CLAIMS MAY SUE

~~Actions upon claims sold by an executor or administrator as provided in section 1615 of this title shall be brought in the name of the purchaser. The fact of the sale and purchase by the plaintiff shall be set forth in the complaint, and the defendant may avail himself of any defense of which he could have availed himself in an action upon such claim by the deceased. [Repealed.]~~

Subchapter 2. Licenses To Sell—Procedure

§ 1651. LICENSE TO SELL ESTATE; PROCEDURE

When an executor or administrator considers it necessary or beneficial to sell real or personal estate, the ~~probate division of the superior court~~ Probate Division of the Superior Court may grant license, when it appears necessary or beneficial, under the following regulations:

(1) ~~The executor or administrator shall present to the court~~ file a motion setting forth the amount of debts due from the deceased, the charges of administration, the value of personal estate and the situation of the estate to be sold, ~~or those other facts as that show that the sale is necessary or beneficial;~~

(2) In cases where the consent of the heirs, devisees and legatees interested persons is required, the executor or administrator shall ~~produce to the court~~ file their consent in writing; written consents with the court.

(3) ~~The probate division of the superior court~~ In the event that the consent of interested persons is required but cannot be obtained, the court shall schedule a hearing and notice shall be given as provided in the ~~rules of probate procedure;~~ Rules of Probate Procedure.

(4) ~~If the probate division of the superior court requires it, before~~ Before license is granted, the court may require the executor or administrator ~~shall to~~ give a new bond in an amount and with sureties as the court directs, conditioned that the executor or administrator shall account for the proceeds of the sale;

(5) The executor or administrator shall be sworn before the ~~probate division of the superior court,~~ or before some other person authorized to administer oaths, and a certificate thereof shall be returned to the court before sale under the order granting license;

(6) If the ~~proof produced~~ evidence satisfies the court, ~~and if the regulations in the first four subdivisions of this section are complied with,~~ the court, ~~by decree,~~ may authorize the executor or administrator to sell that part of the estate deemed necessary or beneficial, either at public or private sale, ~~as~~

~~will be most beneficial to all parties concerned, and furnish the executor or administrator a certificate or copy of the license to sell or order of sale;~~

(7) ~~If the order is to sell the estate at auction, the court shall designate the mode manner of giving notice of the time and place of sale, which shall be stated in the copy or certificate of the license to sell or order of sale furnished to the executor or administrator;~~

(8) ~~The record copy of the license to sell or the order of sale in the probate division of the superior court and the copy of certificate of the order furnished to the executor or administrator shall state the regulations prescribed in the first four subdivisions include findings addressing the requirements of subdivisions (1) through (4) of this section with which the sale must comply. The certificate or. A certified copy of the license to sell real estate or order of sale shall be recorded in the office where a deed of the lands real property to be sold is required to be recorded;~~

(9) ~~The If ordered by the court, the executor or administrator shall submit to the probate division of the superior court reports file a report with the Probate Division of the Superior Court on the action authorized by the each license granted under this section within 60 days from the date of the sale of any real or personal property.~~

(10) ~~If the power to sell all or part of the testator's real or personal estate is expressly conferred by the will, the court shall issue a license to sell to the executor or administrator without requiring notice or hearing with respect to any property subject to the testamentary power, except a dwelling house in which the surviving spouse or an heir, devisee, or legatee is residing.~~

(11) ~~Notwithstanding any provision of this section, no beneficial license to sell that is inconsistent with the provisions or intent of a will shall be issued.~~

(12) ~~If an executor or administrator enters into a listing agreement, purchase and sales agreement, or any other agreement concerning the sale of real property, the agreement is not void ab initio and may be validated by the subsequent issuance of a license or order to sell.~~

§ 1652. DEED OF EXECUTOR OR ADMINISTRATOR

~~The deed of an executor or administrator, who has such certificate or obtained a certified copy of an order of sale or license to sell real estate from the probate division of the superior court Probate Division of the Superior Court, shall be as valid to convey the real estate of a deceased person, thereby authorized to be sold, as if the deed had been executed by the deceased in his or her lifetime.~~

§ 1653. LICENSE TO SELL; WHEN BENEFICIAL

~~(a) When it appears to the probate division of the superior court that it will be beneficial to interested persons, that a part or the whole of the estate, except the part thereof which passes to the surviving spouse, should be sold, on motion of the executor or administrator, the court may grant license to sell a part or the whole of the estate although not necessary to pay debts, legacies or charges of administration. The court shall schedule a hearing and notice shall be given as provided by the rules of probate procedure. With the consent in writing of the surviving spouse of the deceased or the legal representative of the surviving spouse, the license may include authority to sell the interest of the surviving spouse, as the case may be, in such real estate.~~

~~(b) If the power to sell all or part of the testator's real or personal estate is expressly conferred by the will, the court shall issue a license to the executor or administrator c.t.a., without notice or hearing, as to any property subject to the testamentary power except a dwelling house in which the surviving spouse or an heir, devisee or legatee is residing.~~

~~(c) Notwithstanding any provision of this section no beneficial license to sell inconsistent with the provisions or intent of a will shall be issued. [Repealed.]~~

§ 1654. DISPOSAL OF PROCEEDS OF BENEFICIAL SALE

In case of such the sale of property for the benefit of interested persons, the proceeds shall be decreed ~~and assigned to the those persons~~ otherwise entitled to the estate and in the same proportions the property.

§ 1655. REALTY TAKEN ON EXECUTION MAY BE SOLD

~~(a) When it appears that such sale will be beneficial to all persons interested in such real estate, the probate division of the superior court may grant license to an executor or administrator to sell real estate taken by the executor or administrator on execution or held by him or her under a mortgage, although not necessary for the payment of debts, legacies or charges of administration.~~

~~(b) Such license shall be granted under the same regulations as provided in this chapter for the sale of other real estate. [Repealed.]~~

§ 1656. ESTATE SOLD TO PAY DEBTS AND LEGACIES IN OTHER STATES

When the sale of real or personal estate is not necessary to pay the debts against of the deceased person in this state State, and it appears to the ~~probate division of the superior court,~~ Probate Division of the Superior Court by the records and proceedings of a probate court in another state that the estate of the deceased in such the other state is not sufficient to pay the debts and

legacies in that state, the ~~probate division of the superior court~~ Probate Division of the Superior Court in this state State may license the executor or administrator to sell the real or personal estate for the payment of debts and legacies in the other state, in the same manner as provided for the payment of debts and legacies in this state State.

§ 1657. REALTY REAL ESTATE SOLD TO PAY LEGACY

When the personal property of the estate is insufficient to satisfy a legacy is given by will ~~which, for want of sufficient personal estate or otherwise, is chargeable upon the real estate of the deceased,~~ the executor may be licensed by the ~~probate division of the superior court~~ Probate Division of the Superior Court to sell such real estate of the estate for the purpose of paying such the legacy as provided in the sale of real estate for the payment of debts.

§ 1658. ADMINISTRATOR DYING DEATH, RESIGNATION, OR REMOVAL OF FIDUCIARY; NEW LICENSE

In case of the death, resignation, or removal of an executor or administrator before the completion of a sale of real estate under a license granted by the ~~probate division of the superior court~~ Probate Division of the Superior Court, on motion at any time within two years after issuing a prior license, the court may issue a new license to the successor fiduciary without further notice or hearing.

§ 1659. LICENSE WHEN DECEASED UNDER CONTRACT TO CONVEY; COURT MAY GRANT; EFFECT OF DEED

(a) When a deceased person in his or her lifetime was under decedent had contracted to convey real estate and the party contracted with has performed or is ready to perform the conditions of the contract, binding at law or in equity, to deed lands, on application motion for that purpose, the probate division of the superior court Probate Division of the Superior Court may grant license to the executor or administrator of the deceased person estate to convey such the lands according to such the contract, or with such including any modifications as are agreed upon by to it. If the parties and approved by executor or administrator is the court; and, if transferee under the contract is to convey lands to the executor or administrator, the judge of the court shall execute the deed. The deed, executed by the executor, administrator, or judge, or special administrator or master appointed by the court shall be as effectual valid to convey such lands as if executed by the deceased person in his or her lifetime the real estate authorized to be conveyed under the contract.

(b) The Probate Division of the Superior Court shall not grant a license to convey the real estate of a deceased person under contract if it appears to the court after hearing that the assets in the hands of the executor or administrator

will be reduced by the conveyance in an amount that prevents a creditor from receiving the whole debt and the value of the real estate to be sold is materially greater than the contract price.

§ 1660. ~~LICENSE GRANTED BY COURT, WHEN; NOTICE; HEARING~~

~~A probate division of the superior court shall not grant such license to deed the lands of a deceased person until notice has been given if it appears to the court upon a hearing that the assets in the hands of the executor or administrator will thereby be so reduced as to prevent a creditor from receiving his or her whole debt, or diminish his or her dividend. [Repealed.]~~

§ 1661. REAL ESTATE HELD IN TRUST LANDS; LICENSE TO CONVEY TO BENEFICIARY

When a person dies seized of lands real estate held in trust for another person or seized of lands real estate by virtue of a decree of foreclosure or sale on execution to the deceased or to an executor or administrator on a debt nominally owed to the deceased but actually owed to another person, after notice, the ~~probate division of the superior court~~ Probate Division of the Superior Court may grant license to the executor or administrator to ~~deed those lands convey the real estate to the person, or to an executor or administrator, for whose use and benefit they are holden held,~~ and the court may decree the execution of the trust, whether created by deed or by law.

§ 1662. SALE OF ENCUMBERED PROPERTY OF DECEASED; DISPOSITION OF SURPLUS

~~The~~ When the executor or administrator is licensed to sell real or personal estate of a deceased person, which the decedent that is mortgaged or pledged or has a lien thereon for the security of a debt, on motion of the executor, administrator or creditor, may be sold under the order of the probate division of the superior court. The net subject to any mortgage or other lien, the net sale proceeds shall be first applied towards to the payment of the secured debt which shall be reduced by the amount of the net proceeds of such sale. An executor or administrator may be licensed or ordered to sell any such real or personal estate under the same regulations as are provided in this chapter for the sale of real estate for the payment of debts. If the property sold is subject to a devise under the will of the decedent, any surplus sale proceeds shall be distributed to the devisee of the property. If the property sold is not subject to a devise under the will of the decedent, any surplus sale proceeds shall be administered by the executor or administrator as property of the estate.

§ 1663. ~~MANNER OF SALE OF ENCUMBERED PROPERTY; DEED~~

~~Such sale shall be made in such manner as the court directs. The sale of~~

~~such real estate shall be at public auction unless it can otherwise be sold for a sum sufficient to satisfy the mortgage secured thereon. The executor or administrator and creditor shall execute the necessary deeds and papers for effecting the conveyance. [Repealed.]~~

§ 1664. ENCUMBERED PROPERTY; DISPOSITION OF SURPLUS

~~After payment of the debts secured, the surplus of such sale shall be administered by the executor or administrator as such property would be if it were not held as security. A certificate of such sale, filed by the executor or administrator in the office of the clerk where by law a deed of such property is required to be recorded, shall operate as a discharge of such mortgage or lien. [Repealed.]~~

§ 1665. EXCEPTION; APPLICATION OF LAW

~~Sections 1662–1664~~ Section 1662 of this title shall not affect the rights of a widow surviving spouse, but shall apply to the application of the net proceeds of a sale of mortgaged real estate sold pursuant to a license granted by the ~~probate division of the superior court~~ Probate Division of the Superior Court after February 1, 1901, ~~under other provisions of this chapter, and to the certificate of such sale filed by the executor or administrator in the office where by law a deed of such real estate is required to be recorded.~~

Sec. 10. 14 V.S.A. chapter 77 is amended to read:

CHAPTER 77. DECREES OF DISTRIBUTION OR PARTITION OF ESTATES

§ 1721. DISTRIBUTION; COURT TO ORDER; PERSONS ENTITLED TO SHARES MAY RECOVER

(a) After payment of or provision for the debts, funeral charges, and expenses of administration ~~and after the allowance, allowances made for the maintenance of the family of the deceased and for the support of his or her the minor children under seven years of age, and after the assignment of to the surviving spouse of his her interest in the real estate and of his or her the elective or intestate share in the personal estate, or when sufficient effects are reserved in the hands of the~~ of decedent's estate:

(1) the executor or administrator for the above purposes may distribute without court order personal estate in partial or full satisfaction of legacies, bequests, and residuary interests in an aggregate amount not to exceed one-half of the remaining estate;

(2) the court, upon motion of the executor or administrator, may order partial distribution of devises, legacies, bequests, and residual shares, or order other payments, before a final accounting and distribution; and

(3) after the Probate Division of the Superior Court approves a final accounting and the Department of Taxes provides a notice of clearance, the probate division of the superior court shall assign order the residue distribution of the remaining estate to the persons entitled to the same.

(b) In its order orders of distribution, the court shall name the persons and proportions or parts to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator or any other person having the same in his possession. The court may decline to make such distribution until suitable gravestones are erected at the grave of the deceased, if buried in this state, or the court may appropriate sufficient funds to supply such gravestones. The court may provide for the care of the burial lot of the deceased as hereinafter provided, before making such distribution possession of them. In the event that the assets remaining in the hands of the executor or administrator after one or more partial distributions are insufficient to satisfy the ultimate expenses and charges against the estate, those persons having received the distributions shall be liable to repay the executor or administrator on a pro rata basis. If the executor or administrator cannot collect against one or more of the persons to whom the distributions were made, the amount not recoverable shall be equitably apportioned by the court among the other persons subject to apportionment. The court may assign the claim for recovery of previously distributed assets to persons directed by the court to repay a disproportionate amount of the total.

(c) On final settlement of a solvent estate, the probate division of the superior court may set aside funds of such estate not to exceed \$500.00 for the perpetual care of the burial lot of the deceased, and may order that the funds shall be kept in trust for the purpose of this subsection. If the burial lot of the deceased is in the cemetery of an incorporated cemetery association, the funds shall be deposited with such association. The executor or administrator shall include in its application for distribution of the residue that the decedent has been cremated and decedent's remains properly disposed of, or that a suitable gravestone has been erected or provided for at the grave of the deceased if buried in this State, and that perpetual care has been provided for the burial lot, if any.

§ 1722. PARTIES INTERESTED MAY HAVE ORDER ON GIVING BOND

An order for distribution may be made on motion of the executor or administrator or of a ~~person~~ one or more persons interested in the estate. The heirs, devisees, or legatees shall not be entitled to an order for distribution of their shares until the payment of the debts and allowances mentioned conditions for distribution described in section 1721 of this title and the several expenses there mentioned have been made or provided for satisfied, unless they give a bond, with a such surety or sureties as the court directs, to

secure the payment of such debts and expenses, or such part thereof as remains unprovided for the amounts necessary to satisfy the conditions and to indemnify the executor or administrator against the same.

§ 1723. ADVANCEMENT; HOW ASSERTED; WHAT CONSTITUTES

An interested party may assert a claim that the decedent made a transfer during life that was an advancement. The party making the claim shall have the burden of proving it. Real or personal estate given by a decedent during the intestate in his decedent's lifetime to his or her child or other lineal descendant shall be reckoned toward the share of such heir the decedent's estate otherwise allocable to the person to whom the lifetime gift was made as an advancement, and for that purpose shall be considered a part of the estate, if any of the intestate. Such estate shall be deemed to be given in advancement only when, following apply:

(1) The decedent declares in a writing, signed in the presence of and subscribed by two disinterested persons, that a gift or grant, it is expressed to be in was made as an advancement or is for the consideration of love and affection, or when such estate is charged as such by the deceased in writing, or when such estate is acknowledged as such by the heir in writing, or when personal estate is delivered, expressly as advancement, before two witnesses requested to take notice of it.

(2) The gift or grant is acknowledged in a signed writing as an advancement by the recipient of the gift or grant.

§ 1724. ADVANCEMENT RECKONED TOWARD HEIR'S SHARE

If the amount so advanced exceeds the share of the heir, he or she other estate beneficiary, he or she shall be excluded from any further share in the estate and he or she but shall not be liable to refund any part of the amount so advanced. If the advancement is less than the share of such the heir, he or she other estate beneficiary, he or she shall receive such a further sum that, with such the advancement as, will be equal to equals his or her legal share in the estate.

§ 1725. APPLICATION OF ADVANCEMENT

(a) If the amount so advanced an advancement is in real estate property, the same shall be set off, first, toward against the heir's or other beneficiary's share of real estate, and property in the estate, including the real property so advanced, and the excess value, if it is more than his or her share of real estate, the balance any, shall be set off toward his against the heir's or her other beneficiary's share of the decedent's personal estate.

(b) If the an advancement is in personal estate, the same shall be set off, first, toward against the heir's or other beneficiary's share in the personal

estate, and ~~then toward his or her~~ the excess value, if any, shall be offset against the heir's or other beneficiary's share in the real property of the estate.

(c) If the heirs or beneficiaries consent, a different application of the advancement may be made.

§ 1726. ADVANCEMENT RECKONED TOWARD SHARE OF
REPRESENTATIVE OF DECEASED HEIR

If the ~~child or other lineal descendant, to whom such~~ recipient of an advancement is made, dies before the ~~intestate decedent,~~ the advancement shall be reckoned ~~toward~~ against the share of those interested in the representative estate by right of representation of the recipient, as it would be reckoned toward the share of the ~~heir~~ recipient, if living.

§ 1727. VALUATION OF ADVANCEMENT

Where the value of an advancement is expressed in the conveyance or in the charge thereof made by the ~~intestate, or in the acknowledgment of the person receiving it~~ decedent, or by the ~~intestate~~ decedent at the time of ~~delivering it~~ declaration before two witnesses, ~~such~~ the advancement shall be taken to be of the value so expressed or declared; otherwise it shall be estimated according to the value at the time of ~~making it was made.~~

§ 1728. COURT TO DETERMINE QUESTIONS OF ADVANCEMENT

Questions as to an advancement made or alleged to have been made by the ~~deceased to an heir~~ may be heard and determined by the ~~probate division of the superior court~~ Probate Division of the Superior Court and shall be specified in the decree assigning the estate, regardless of whether the subject of a prior court order. The final decree of the ~~probate division,~~ Probate Division of the Superior Court or of the ~~supreme court~~ Supreme Court on appeal, shall be binding on the all persons interested in the estate.

§ 1729. PARTITION

When the real or personal estate assigned to two or more heirs, devisees, or legatees is in common and undivided, and their respective shares are not separated and distinguished, partition and distribution of the ~~same estate~~ shall be made pursuant to 12 V.S.A. chapter 179 or, if the court consents, by the ~~probate division of the superior court~~ Probate Division of the Superior Court upon application by any interested heir, devisee, or legatee, and shall be conclusive on ~~the heirs and devisees and persons claiming under them and upon~~ all persons interested.

§ 1730. PARTITION OF REAL ESTATE IN DIFFERENT COUNTIES

If the real estate lies in different counties, the ~~probate division of the~~

~~superior court~~ Probate Division of the Superior Court may appoint different commissioners for each county. ~~In such case, the~~ The estate in each county shall be divided separately as though there were no other estate to be divided.

§ 1731. PARTITION UNNECESSARY WHEN PARTIES AGREE

When the ~~probate division of the superior court~~ Probate Division of the Superior Court distributes ~~the residue~~ assets of an estate to one or more persons entitled to the same, it shall not be necessary to make partition of the estate, ~~assets distributed~~ if the parties to whom the assignment is made agree to ~~dispense with~~ an allocation of assets without partition.

§ 1734. PARTITION WHEN OWNERSHIP HAS CHANGED

Partition of ~~the~~ real estate may be made although some of the original heirs or devisees have conveyed their shares to other persons. ~~Such~~ The shares shall be set out to the persons holding the same, as they would have been to the heirs or devisees.

§ 1735. SHARES, HOW SET OUT IN PARTITION

The shares in the real and personal estate shall be set out to each individual, in proportion to his or her right, by ~~such~~ metes and bounds or other description that ~~the same can~~ permits the shares to be easily distinguished, ~~unless except to the extent that~~ two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

§ 1736. SEVERANCE FROM ESTATE OF THIRD PERSONS

When partition of real estate among heirs or devisees is required and the real estate lies in common and undivided with the real estate of another person, the court shall ~~first~~ have jurisdiction over the real estate and the other person, and shall divide and sever the estate of the deceased from the estate ~~with which it lies in common~~ of the other person. A division made pursuant to this section by the ~~probate division of the superior court~~ Probate Division of the Superior Court shall be binding on persons interested.

§ 1737. WHEN ESTATE CANNOT BE DIVIDED WITHOUT INJURY; TO BE SOLD; PROCEDURE

When the real estate of a decedent, or any part ~~thereof~~ of it greater than the share ~~therein~~ in it of any one of the heirs, cannot be divided without prejudice or inconvenience to the owners, proceedings may be had for the assignment or sale of the real estate in the ~~probate division of the superior court for the assignment or sale thereof~~ Probate Division of the Superior Court.

§ 1739. FINAL DECREE OF DISTRIBUTION OR PARTITION; BOND

The ~~probate division of the superior court~~ Probate Division of the Superior

~~Court shall not make a final decree of distribution or partition in an estate against which a person engaged in the military service of the United States and without outside this state State has a claim, until a bond is filed in such the court by the creditors, heirs, legatees, or devisees or some one or more of them, in such a sum and with such sureties as the court directs, conditioned to pay such the claimant such the sum of money as that is finally allowed him or her against such the estate.~~

§ 1740. PAYMENT OF EXPENSES; FROM ESTATE, IF SUFFICIENT

~~At the time of partition or distribution of an estate, if the executor or administrator has retained sufficient effects in his hands which assets that may lawfully be applied for that purpose, the expenses of such partition or distribution may be paid by the executor or administrator when it appears to the court equitable and not inconsistent with the intention of a testator.~~

§ 1741. PARTIES TO PAY COST OF PARTITION, WHEN

~~If there are no effects insufficient assets in the hands of the executor or administrator which that may be lawfully applied to that purpose the costs of partition, the expenses and charges of partition, being ascertained in the probate division of the superior court, determined by the Probate Division of the Superior Court shall be paid by the parties interested in the partition in proportion to their respective shares or interests in the premises and the proportions shall be settled and allowed by the probate division of the superior court. If a person interested in the partition does not pay his or her proportion or share, the court may issue an execution a judgment order for the sum assessed, in for the name benefit of the executor or administrator against the party not paying, returnable in 60 days from the date thereof of the order.~~

§ 1742. RECORD OF DECREES RELATING TO REAL ESTATE; WHERE RECORDED

~~Certified copies of final orders or decrees of a probate division of the superior court Probate Division of the Superior Court relating to real estate shall be recorded in the office where by law a deed of such the real estate is required to be recorded.~~

§ 1743. PARTIAL DISTRIBUTIONS

~~Probate divisions of the superior courts are hereby authorized to issue orders directing payment of devises, legacies, bequests and partial payment of distributions or shares upon motion of the executor or an administrator for this purpose. An order shall issue when the court is satisfied that sufficient assets have been reserved by the executor or administrator in order to satisfy the several expenses mentioned in section 1721 of this title along with the anticipated administrative expenses and taxes that may be charged to the~~

~~estate. In the event that the assets remaining in the hands of the executor or administrator thereafter are insufficient to satisfy the ultimate expenses and charges against the estate, those persons having received these distributions shall be liable to repay the executor or administrator on a pro rata basis. However, if the executor or administrator cannot collect against a person, the amount not recoverable shall be equitably apportioned by the court among the other persons subject to apportionment. [Repealed.]~~

Sec. 11. 14 V.S.A. chapter 79 is amended to read:

CHAPTER 79. CONVEYANCE WHEN RECORD HOLDER DECEASED

§ 1801. TITLE IN DECEASED PERSONS; PETITION TO PROBATE

DIVISION OF THE SUPERIOR COURT

When the record title to real estate or an interest therein stands in the name of a person who has been deceased for more than seven years and the estate of ~~such the~~ such the person has not been probated and the interest of the heirs in that real estate has not been conveyed or has been defectively conveyed, the ~~probate division of the superior court~~ Probate Division of the Superior Court where venue lies, upon verified petition and after notice and hearing as provided by the ~~rules of probate procedure~~ Rules of Probate Procedure, shall determine whether the deceased person or the decedent's heirs are possessed of an existing enforceable title or interest in that real estate.

§ 1802. DETERMINATION BY COURT OF PERSONS ENTITLED TO ESTATE

If the court ~~shall determine~~ determines that the heirs or personal representatives of the deceased person are not at the time of ~~such the~~ such the hearing in possession of the real estate and are not entitled to re-enter ~~the same~~ it or to institute and maintain a suit to recover possession ~~thereof of it~~, the court shall adjudge and decree that the real estate constitutes no beneficial part of the estate of ~~such the~~ such the deceased person and may appoint an administrator to convey the record title of the real estate to the person or persons adjudged by ~~it~~ the court to be legally entitled ~~thereto~~ to it.

§ 1803. PETITION

A petition under this chapter may be brought by any person in possession or who claims the right to possession of the real estate. It shall recite the facts upon which it is based and shall specify the names and addresses of the heirs and representatives of the deceased person, and of all claimants so far as each class is known to the petitioner.

§ 1804. APPEARANCE; APPEAL

A person not so served may become a party defendant by entering his or her appearance with the probate division of the superior court Probate Division of the Superior Court before the expiration of the time herein limited provided by this section for appeal. An appeal may be taken by any person in interest within 30 days from any final decree of the probate division of the superior court hereunder by any person in interest issued under this chapter by the Probate Division of the Superior Court.

Sec. 12. 14 V.S.A. chapter 80 is added to read:

CHAPTER 80. WAIVER OF ADMINISTRATION

§ 1851. APPLICABILITY

This chapter shall apply to all estates, testate, and intestate, other than small estates administered under chapter 81 of this title.

§ 1852. MOTION FOR WAIVER OF ADMINISTRATION; ORDER

(a) A motion for waiver of administration may be submitted to the Probate Division of the Superior Court with the petition to open the estate or at any time before an accounting is due. The motion shall be made under oath and shall state that:

(1)(A) if the decedent died testate, the moving party is the sole beneficiary of the decedent's estate, and has been nominated and proposes to serve as sole executor; or

(B) if the decedent died intestate, the moving party is the sole heir of the decedent's estate and proposes to serve as sole administrator;

(2) the moving party is the sole fiduciary of the estate;

(3) the decedent owned no real property in the State of Vermont; and

(4) the administration of the estate will be complete without supervision by the Probate Division of the Superior Court in accordance with the decedent's will and applicable law.

(b) The court may grant the motion to waive further administration if it finds that:

(1) the moving party is the only estate beneficiary under the will of a decedent or the only heir of a decedent who died intestate;

(2) the moving party is the sole fiduciary of the estate; and

(3) the decedent owned no real property in the State of Vermont.

(c) If the court grants a motion to waive further administration filed under subsection (a) of this section, it shall issue an order waiving the duty to file an inventory, waiving or discharging the fiduciary bond, and dispensing with

further filing with the court other than the final affidavit of administration.

§ 1853. ADMINISTRATION

(a) Administration of an estate under this chapter may be completed upon the court's approval of the executor's or administrator's affidavit of administration. Unless extended by the court, the affidavit shall be filed not less than six months or more than one year after the date of appointment of the executor or administrator.

(b)(1) The affidavit of administration shall state that to the best of the knowledge and belief of the executor or administrator:

(A) there are no outstanding expenses of administration, or unpaid or unsatisfied debts, obligations, or claims attributable to the decedent's estate; and

(B) no taxes are due to the State of Vermont, and tax clearance has been received from the Department of Taxes.

(2) If the executor or administrator fails to file the affidavit of administration within the time prescribed by subsection (a) of this section, the executor or administrator shall be in default. If he or she fails to file the affidavit or a request for additional time within 15 days after receiving notice of default, the court may impose sanctions it deems appropriate, including an order that waiver of administration is no longer available. The court shall provide notice of the default to the executor or administrator by first-class mail or other means allowed by the Rules of Probate Procedure.

§ 1854. DISCHARGE OF EXECUTOR OR ADMINISTRATOR

Upon the submission of an affidavit of administration, the Probate Division of the Superior Court may close the estate and discharge the executor or administrator if it determines that the provisions of sections 1851 and 1852 of this title have been met.

Sec. 13. 14 V.S.A. chapter 101 is amended to read:

CHAPTER 101. PROBATE BONDS; EXECUTORS, ADMINISTRATORS, TRUSTEES, GUARDIANS

§ 2101. PROBATE BONDS; AMOUNT; SURETIES; FOR WHOSE BENEFIT; TO WHOM TAKEN

Bonds required to be taken by order of the ~~probate division of the superior court~~ Probate Division of the Superior Court shall be for such sum and with such surety or sureties as the court directs, except where the law otherwise prescribes. ~~Such~~ The bonds shall be for the security and benefit of all persons interested and shall be taken to the ~~probate division of the superior court~~

Probate Division of the Superior Court except where they are to be taken to the adverse party.

§ 2102. FOREIGN COMPANY; CERTIFICATE OF AUTHORITY; FEE

A Probate Division of the Superior Court shall not accept a foreign fidelity insurance company as surety on a bond required to be filed in ~~such the~~ court, unless ~~such the~~ company is authorized to do business in this State and has filed in ~~such Court~~ the court a certificate of the Commissioner of Financial Regulation that ~~such the~~ company is so authorized. A fee of \$1.00 for each certificate so issued shall be paid to the Commissioner of Financial Regulation for the benefit of the State by the company requesting its issuance.

§ 2103. RECORD; EVIDENCE

Upon acceptance and approval of bonds required to be given to a ~~probate division of the superior court~~ Probate Division of the Superior Court, ~~such the~~ bonds shall be filed and docketed in the office of ~~such the~~ court to which they are given. A copy ~~thereof of the bond~~ duly certified by ~~such the~~ court shall be evidence in all cases as to the facts ~~therein~~ stated in it, as though the original were produced.

§ 2104. MOTION, WHEN BOND IS INSUFFICIENT

If a surviving spouse, heir, creditor, devisee, or legatee of a decedent or their legal representatives, or a person interested in a trust estate, considers the bond given to the ~~probate division of the superior court~~ Probate Division of the Superior Court by a fiduciary insufficient, they may file a motion for an additional bond. The court shall ~~thereupon~~ schedule a hearing and notice shall be given as provided by the ~~rules of probate procedure~~ Rules of Probate Procedure. If it appears to the court that the bond is not sufficient, it shall order the fiduciary to give a new and sufficient bond within the time limited. If the new bond is not filed within that new time, the court shall remove the fiduciary and fill the vacancy.

§ 2105. SURETY MAY MOVE FOR NEW BOND AND SETTLEMENT;
REMOVAL

If the surety for a fiduciary considers himself or herself in danger of being injured thereby, a motion may be filed to order the fiduciary to settle the account and give a new bond. Upon notice and hearing, if it appears to the ~~probate division of the superior court~~ Probate Division of the Superior Court that the surety is in danger of being injured, it shall order the fiduciary to settle the account and give a new bond. When a new bond is filed and approved, the surety shall be discharged. If the fiduciary does not settle the accounts and give a new bond when so ordered, the ~~probate division of the superior court~~ shall remove the fiduciary and fill the vacancy.

§ 2106. NEW BOND

When a fiduciary desires to file a new bond with sureties in substitution for the bond then on file, the ~~probate division of the superior court~~ Probate Division of the Superior Court, in its discretion and upon notice, may allow a new bond to be filed. Upon approving the new bond, the court may accept ~~the same~~ it in substitution for any and all bonds previously filed by the fiduciary and discharge the sureties on the former bond or bonds from liability accruing after the substituted bond is filed.

§ 2107. DISCHARGE OF EXECUTOR, ADMINISTRATOR, TRUSTEE,
GUARDIAN; ACCOUNT; EXONERATION OF SURETY

When an executor, administrator, trustee, or guardian has paid and delivered over to the persons entitled ~~thereto~~ to it the money or other property in his or her hands as required by a decree of the ~~probate division of the superior court~~ Probate Division of the Superior Court, he or she may perpetuate the evidence thereof by presenting to ~~such the~~ the court within one year after the decree is made or within ~~such a~~ a time thereafter as ~~that~~ the court ~~may allow~~ allows, an account of ~~such the~~ the payment or the delivery over of ~~such the~~ the property. If it is proved to the satisfaction of the court and verified by the oath of the accountant, ~~such the~~ the account shall be allowed as his or her final discharge and ordered to be recorded. ~~Such~~ The discharge shall forever exonerate the accountant and his or her sureties from liability under ~~such the~~ the decree, unless his or her account is impeached for fraud or manifest error.

§ 2108. HOW PROSECUTED

Bonds given to the ~~probate division of the superior court~~ Probate Division of the Superior Court shall be prosecuted in the ~~superior court~~ Superior Court of the county in which they were given for the benefit of those injured by the breach of their conditions, in the following manner:

(1) A person claiming to be injured by a breach of the condition of a bond may file a motion for permission to prosecute the ~~same~~ bond and shall give a bond to the adverse party to the satisfaction of the ~~probate division of the superior court~~ Probate Division of the Superior Court, on the condition that he or she will prosecute ~~the same~~ it to effect and pay the costs awarded if recovery is not obtained;

(2) The ~~probate division of the superior court~~ Probate Division of the Superior Court shall grant permission to prosecute the bond, and ~~on paying the fees,~~ when the fees have been paid, shall furnish to the applicant a certified copy of the bond, with a certificate that leave to prosecute it has been granted, and the name and residence of the applicant;

(3) The applicant shall cause his or her name to be indorsed as

prosecutor upon the writ and shall file the copy of the bond and the certificate furnished by the ~~probate division of the superior court~~ Probate Division of the Superior Court, with the writ, in the ~~superior court~~ Superior Court to which and when it is returnable; and ~~such~~ the applicant shall be deemed to be the prosecutor of ~~such~~ the bond;.

(4) The complaint on the bond shall definitely assign and set forth the breaches of the conditions on which the prosecutor relies;.

(5) The ~~superior court~~ Superior Court to which the writ is returned shall render judgment, as on ~~nihil-dicit~~ default, for the penalty of the bond in favor of the ~~probate division of the superior court~~ Probate Division of the Superior Court and against the defendants, or ~~such of them as~~ those defendants who do not comply with the terms ~~mentioned~~ provided in subdivision (6) of this section, but costs shall not be taxed on ~~such~~ the judgment;.

(6) The defendants who ~~may~~ wish to resist ~~such~~ the judgment shall, on or before 21 days after ~~the~~ service of ~~such~~ the writ, plead a general denial, and, with their plea, file their affidavit, stating that they believe or are advised that they did not execute or deliver ~~such~~ the bond; or they shall demur to the complaint;.

(7) On trial, if the issue on ~~such~~ the plea or demurrer is found in favor of the plaintiff, judgment shall be rendered for the penalty of the bond, as ~~mentioned~~ provided in subdivision (5) of this section, and the prosecutor shall recover against the defendants entering ~~such~~ the plea or demurrer the costs ~~occasioned thereby~~ of the action, and ~~forthwith~~ have execution for ~~the same~~ them in his or her own name;.

(8) When judgment is rendered for the penalty of the bond against all the defendants, the ~~same~~ judgment shall remain in force as security for other breaches of the conditions of the bond, which may be afterwards assigned and proved;.

(9) The action shall thereafter proceed and be prosecuted in the name of the prosecutor, on the breaches assigned. Upon prevailing, the prosecutor shall have judgment in his or her own name for damages and costs, but if judgment is rendered for the defendants on an issue joined in ~~such~~ the action or on nonsuit, they shall recover double costs against the prosecutor.

§ 2109. PERSON INJURED; ACTION ON BOND OR JUDGMENT

After a person is injured by the breach of the condition of the bond, he or she may bring from time to time an action in his or her own name on the judgment rendered for the penalty of the bond. In that action, he or she shall assign and set forth the breaches on which he or she relies and may recover ~~such damage as~~ the damages that he or she proves, with costs.

§ 2110. CLAIMS FOR BREACH MAY BE PROSECUTED BY
REPRESENTATIVES

Claims for damages for breach of the conditions of a bond may be prosecuted by an executor, administrator, or guardian in behalf of those he or she represents, in the same manner as by persons living. ~~Such~~ The claims may be prosecuted against the representatives of deceased persons as other claims against decedents.

Sec. 14. 14 V.S.A. chapter 103 is amended to read:

CHAPTER 103. MORTGAGES AND LEASES BY EXECUTORS,
ADMINISTRATORS, TRUSTEES, OR GUARDIANS

§ 2201. MORTGAGE OF PROPERTY BY FIDUCIARY; MOTION;
ORDER; LICENSE

~~If on (a) On motion and after notice and hearing it appears to be for with the benefit written consent of the estate interested persons, or after hearing, the probate division of the superior court~~ Probate Division of the Superior Court may authorize a fiduciary to mortgage any of the real estate or to mortgage, pledge, or assign any of the personalty of the estate for the ~~following purposes: to prevent a sacrifice benefit of the estate; to make repairs and improvements upon the estate; to pay debts, legacies or charges of administration; to pay an existing mortgage, lien or tax on the estate, or to support a ward.~~ The probate division of the superior court court may authorize a fiduciary to make enter into an agreement for the extension or renewal of that an existing mortgage or lien or of any other mortgage, lien, pledge, or assignment created under the provisions of this chapter.

(b) A motion filed under this section shall describe the property to be mortgaged, pledged, or assigned and shall include the purpose of the obligation, the limits of the principal amount, the interest rate, and the term of the note to be secured by the mortgage. A license issued by the Probate Division pursuant to this section shall fix the terms and conditions under which the property may be mortgaged, pledged, or assigned. The court may order all or any part of the obligation secured by the mortgage to be paid from time to time out of the income of the property mortgaged. A certified copy of the license shall be recorded in the office where the mortgage is recorded.

§ 2202. ~~MOTION; DECREE~~

~~The motion shall set forth a description of the property to be mortgaged, pledged or assigned, the amount of money necessary to be raised, the nature and amount of the obligation to be secured and the purpose for which the money or security is required. The decree of the probate division of the~~

~~superior court shall fix the amount for which the mortgage, pledge or assignment may be given, the terms thereof and the rate of interest which may be paid thereon, and the court may order the whole or any part of the money secured by the mortgage to be paid from time to time out of the income of the property mortgaged. [Repealed.]~~

§ 2203. LEASE; ~~WHEN AUTHORIZED OF PROPERTY BY FIDUCIARY;~~
~~ORDER; LICENSE~~

~~Upon (a) On motion of and with the written consent of the interested parties, or after hearing, the Probate Division of the Superior Court may authorize a fiduciary describing to lease all or part of the real or personal property of the estate which the for the benefit of the estate. The court may authorize a fiduciary considers necessary or expedient to lease, therein stating the length of the term and the reason for executing a to enter into an agreement for the extension or renewal of an existing lease, after notice and hearing, if it appears to be necessary or expedient, the probate division of the superior court may authorize the petitioner to execute a written lease of a part or all of the property, and the order of the court or of any other lease created under the provisions of this chapter. A lease for a period of less than seven consecutive months shall not require a license.~~

~~(b) A motion filed under this section shall describe the property to be leased and shall include the prospective lessee, if known, the proposed use of the leased property, the limits of the proposed term of the lease, and the proposed rental. A license issued by the Probate Division of the Superior Court pursuant to this section shall fix the terms and conditions under which it the property may be leased.~~

Sec. 15. 14 V.S.A. chapter 105 is amended to read:

CHAPTER 105. TRUSTS AND TRUSTEES

§ 2303. FILED; HOW SUED

~~A bond shall be filed in the probate division of the superior court and when the superior court upon application so orders, the bond may be sued in the name of the probate division of the superior court to which the same is taken for the benefit of persons interested. [Repealed.]~~

§ 2305. TRUSTEES OF ABSENT PERSONS—DEFINITION

~~For the purposes of sections 2306-2310 of this title, an absent person is defined as one having a domicile, property, or evidences of property in this State who suddenly or mysteriously disappears under such circumstances as to satisfy the Probate Division of the Superior Court of the proper district that there is reasonable ground to believe that he or she is lost, dead, or lacks~~

~~capacity due to a mental condition or psychiatric disability, or is one who, having a domicile, property, or evidences of property in this State, remains beyond the sea or absents himself or herself in this State or elsewhere and is unheard of for three years. [Repealed.]~~

~~§ 2306. TRUSTEES; APPOINTMENT OVER ABSENT PERSON'S
ESTATE~~

~~(a) In the case of an absent person, the probate division of the superior court shall appoint one or more trustees of the absent person's estate on application by petition, the appointment to take precedence and apply to all property belonging to such absent person wherever the same may be located.~~

~~(b) A petition to appoint one or more trustees of an absent person's estate shall be made by:~~

~~(1) One or more of his or her nearest relatives; or~~

~~(2) The executor or administrator aforesaid; or~~

~~(3) The town service officer of the town where the absent person had a last known domicile in the state, or in case he or she had no domicile in the state, then where his or her property or any portion thereof is located. [Repealed.]~~

~~§ 2307. NOTICE OF APPOINTMENT; ACCOUNT; PAYMENT TO
TRUSTEE; APPEAL~~

~~(a) Upon the petition of an executor or administrator for the appointment of a trustee under the provisions of sections 2305 and 2306 of this title, notice shall be given as provided by the rules of probate procedure and the same proceedings shall be had as upon the allowance of an administrator's account.~~

~~(b) The executor or administrator shall render to the probate division of the superior court an account of the moneys or securities representing the legacy or distributive share of the absent person in the hands of the executor or administrator, and all reasonable charges and expenses pertaining to the care and management thereof. On order of the probate division of the superior court, the executor or administrator shall turn over and pay to the trustee so appointed by the court to receive the same the sums due the absent person, and thereupon the executor or administrator shall be discharged from further liability in the premises.~~

~~(c) The same appeal may be had from the appointment of a trustee as from the appointment of administrators and upon the settlement of their accounts. [Repealed.]~~

~~§ 2308. POWERS OF TRUSTEES FOR ABSENT PERSONS~~

~~The trustees shall be vested with all the property, real and personal, rights, choses in action and evidences of property or indebtedness belonging to such absent person, and may take possession of such property and collect the demands, pay the debts of such person and may maintain or defend an action necessary to protect the property or rights of such person. [Repealed.]~~

§ 2309. CLAIMS AGAINST ESTATE OF ABSENT PERSON;

PROCEDURE

~~If claims against such person are disputed, the same proceedings shall be had for ascertaining the amount due and its payment as provided in the case of disputed claims against wards. [Repealed.]~~

§ 2310. APPEARANCE OF ABSENT PERSON; SURRENDER OF

PROPERTY

~~If the person so absent proves to be alive, the trustees shall surrender to him or her all property, or the proceeds of the same, which shall have come into their hands. If administration has been or shall be granted on his or her estate, the trustees shall surrender to the executor or administrator all property, effects and estate of such absent person, upon rendering an account of their trusteeship in the same manner and upon the same notice as in case of settlement of an administrator's account. [Repealed.]~~

§ 2318. OTHER TRUSTEES, WHEN

~~The probate division of the superior court may appoint trustees in cases not otherwise provided for when the use of property, real or personal, descends to a person for life or for a term of years, and shall have the same power to enforce such trust which such court has in case of guardians of minor children. [Repealed.]~~

§ 2327. FURTHER POWERS OF COURT; EQUITY POWERS

~~The probate division of the superior court may further hear and determine in equity all other matters relating to the trusts mentioned in this chapter. [Repealed.]~~

§ 2329. TESTAMENTARY ADDITIONS TO TRUSTS; POUR OVER

TRUSTS

~~A devise or bequest, the validity of which is determinable by the law of this state State, may be made by a will to the trustee or trustees of a trust established or to be established by the testator or by the testator and some other person or persons or by some other person or persons (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts), if the trust is identified in the~~

testator's will and its terms are set forth in a written instrument (, other than a will), executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (, regardless of the existence, size, or character of the corpus of the trust). The devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised or bequeathed: (a) shall not be deemed to be held under a testamentary trust of the testator, but shall become a part of the trust to which it is given; and (b) shall be administered and disposed of in accordance with the provisions of the instrument or a will of a person other than the testator setting forth the terms of the trust, including any amendments thereto made before the death of the testator (, regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator shall cause the devise or bequest to lapse. However, when the testator's will specifically sets forth the terms of the trust, whether or not ~~such~~ the trust is subsequently amended, revoked, or terminated, the property devised or bequeathed under the will shall be deemed to be held under a testamentary trust of the testator and shall be administered and disposed of in accordance with the provision of the testator's will.

Sec. 16. 14 V.S.A. chapter 107 is amended to read:

CHAPTER 107. CONVEYANCES AND DEVICES TO
UNCERTAIN BENEFICIARIES

§ 2401. UNCERTAIN BENEFICIARIES; ~~GOVERNOR~~ PROBATE
DIVISION OF THE SUPERIOR COURT MAY APPOINT AGENT
OR ATTORNEY

When a devise, legacy, gift, or trust is made to or for the benefit of a class or classes of beneficiaries in this ~~state~~ State, whose members are not all ascertained or definitely ascertainable, ~~in his discretion, the governor~~ the Probate Division of the Superior Court may in its discretion appoint a person or persons as agent or attorney to represent ~~such~~ the beneficiaries, who shall act for them and their interests, without expense to the ~~state~~ State, in any litigation, contest, or compromise in relation to ~~such~~ the devise, legacy, gift, trust, will, contract, or instrument by which the same is given.

§ 2402. PROBATE DIVISION OF THE SUPERIOR COURT MAY
APPOINT TRUSTEES; DUTIES

(a) When, under the provisions of a will probated in another state or country, or of a decree of a court of another state or country, a devise, legacy, gift, or trust belongs to or for the benefit of a class or classes of beneficiaries in this state State, whose members are not all ascertained or definitely ascertainable, or is appropriated or devoted to any purpose or benefit in which the public or a class of the public in this state State is interested, the Probate Division of the Superior Court may appoint one or more trustees to take charge of the payment and distribution of the devise, legacy, gift, or trust under the will or decree.

(b) The trustee or trustees shall give bonds and render accounts annually of all transactions to the ~~probate division of the superior court~~ Probate Division of the Superior Court and shall be subject to the same liabilities, and the court shall have the same power as in case of other trustees appointed by the ~~probate division of the superior court~~ Probate Division of the Superior Court.

§ 2403. TRUSTEES, WHEN APPOINTED

A trustee may be appointed by the ~~probate division of the superior court~~ Probate Division of the Superior Court upon petition of any person, class, or beneficiary coming within the provision of the will or decree, or upon petition of a corporation representing beneficiaries under the will or decree.

§ 2404. ~~DUTIES OF EXECUTOR OR TRUSTEE UNDER WILL OR DECREE~~

~~The executor or trustee under such will or decree shall pay over to such trustee or trustees named in section 2402 of this title, the amount to be given or distributed to such beneficiaries under such will or decree and take a receipt for the same, and such trustee or trustees shall pay out and distribute the same according to the provisions of such will or decree. [Repealed.]~~

Sec. 17. 14 V.S.A. chapter 109 is amended to read:

CHAPTER 109. ~~PHILANTHROPIC TRUSTS~~

§ 2501. ~~CHARITABLE, CEMETERY, AND PHILANTHROPIC TRUSTS; ANNUAL REPORTS~~

~~Every trustee or board of trustees, incorporated or unincorporated, who holds in trust, within this state, property given, devised, or bequeathed to cemetery associations or societies and towns which hold funds for cemetery purposes, and who administers or is under a duty to administer the same in whole or in part for such purposes, annually, on or before the first day of September, shall make a written report to the probate division of the superior court showing the property so held and administered, the receipts and expenditures in connection therewith, the whole number of beneficiaries~~

thereof and such other information as the probate division of the superior court may require.

~~§ 2502. PENALTY~~

~~Failure for two successive years to file such report shall constitute a breach of trust and shall be reported by such probate division of the Superior Court to the attorney general or state's attorney, who shall take such action as may be appropriate to compel compliance with this chapter.~~

~~§ 2503. EXEMPTION~~

~~A trustee or board of trustees who makes a printed annual report that is satisfactory to a town, city, incorporated village or town school district interested in a trust fund shall be exempt from the provisions of this chapter. [Repealed.]~~

Sec. 18. 14 V.S.A. § 2659 is amended to read:

§ 2659. FINANCIAL GUARDIANSHIP; MINORS

* * *

(e) The duties of a financial guardian shall include the duty to:

(1) pursue, receive, and manage any property right of the minor's, including inheritances, insurance benefits, litigation proceeds, or any other real or personal property, provided the benefits or property shall not be expended without prior court approval;

(2) deposit any cash resources of the minor in accounts established for the guardianship, provided the cash resources of the minor shall not be comingled with the guardian's assets;

(3) responsibly invest and ~~re-invest~~ reinvest the cash resources of the minor;

(4) obtain court approval for expenditures of funds to meet extraordinary needs of the minor which cannot be met with other family resources;

(5) establish ~~special needs trusts~~ with court approval:

(A) special needs trusts;

(B) trusts for the benefit of the minor payable over the minor's lifetime or for such shorter periods as deemed reasonable; or

(C) structured settlements providing for payment of litigation proceeds over the minor's lifetime or for such shorter periods as deemed reasonable; and

(6) file an annual financial accounting with the Probate Division of the Superior Court stating the funds received, managed, and spent on behalf of the minor.

Sec. 19. EFFECTIVE DATE

This act shall take effect on July 1, 2018 and shall apply to wills executed or offered for admission on or after that date.

(Committee vote: 11-0-0)

(For text see Senate Journal January 26, 31, February 1, 2018)

S. 101

An act relating to the conduct of forestry operations

Rep. Higley of Lowell, for the Committee on Agriculture and Forestry, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. chapter 196 is added to read:

CHAPTER 196. VERMONT RIGHT TO CONDUCT FORESTRY
OPERATIONS

§ 5755. FINDINGS

The General Assembly finds that:

(1) Private and public forestlands:

(A) constitute unique and irreplaceable resources, benefits, and values of statewide importance;

(B) contribute to the protection and conservation of wildlife, wildlife habitat, air, water, and soil resources of the State;

(C) provide a resource for the State constitutional right to hunt, fish, and trap;

(D) mitigate the effects of climate change; and

(E) result in general benefit to the health and welfare of the people of the State.

(2) The forest products industry, including maple sap collection:

(A) is a major contributor to and is valuable to the State's economy by providing jobs to its citizens;

(B) is essential to the manufacture of forest products that are used and enjoyed by the people of the State; and

(C) benefits the general welfare of the people of the State.

(3) Private and public forestlands are critical for and contribute significantly to the State's outdoor recreation and tourism economies.

(4) The economic management of public and private forestlands contributes to sustaining long-term forest health, integrity, and productivity.

(5) Forestry operations are adversely impacted by the encroachment of urban, commercial, and residential land uses throughout the State that result in forest fragmentation and conversion and erode the health and sustainability of remaining forests.

(6) As a result of encroachment on forests, conflicts have arisen between traditional forestry land uses and urban, commercial, and residential land uses that threaten to permanently convert forestland to other uses, resulting in an adverse impact to the economy and natural environment of the State.

(7) The encouragement, development, improvement, and continuation of forestry operations will result in a general benefit to the health and welfare of the people of the State and the State's economy.

(8) The forest products industry, in order to survive, likely will need to change, adopt new technologies, and diversify into new products.

(9) Conventional forestry practices, including logging, transportation, and processing of forest products may be subject to unnecessary or adversarial lawsuits based on the theory of nuisance. Nuisance suits could encourage and result in the conversion of forestland and loss of the forest products industry.

(10) It is in the public interest of the people of the State to ensure that lawfully conducted conventional forestry practices are protected and encouraged and are not subject to public and private nuisance actions arising out of conflicts between forestry operations and urban, commercial, and residential uses.

§ 5756. DEFINITIONS

As used in this chapter:

(1) "Commissioner" means the Commissioner of Forests, Parks and Recreation.

(2) "Conventional forestry practices" means:

(A) forestry operations;

(B) a change in ownership or size of a parcel on which a forestry operation is being conducted;

(C) cessation or interruption of a forestry operation or a change in a forestry operation, including a change in the type of a forestry operation;

(D) enrollment in governmental forestry or conservation programs;

(E) adoption of new forestry technology;

(F) construction, maintenance, and repair of log landings, logging roads, and skid trails;

(G) visual changes due to the removal, storage, or stockpiling of vegetation or forest products;

(H) noise from forestry equipment used as part of a forestry operation; or

(I) the transport or trucking of forest products or of equipment on, to, or from the site of a forestry operation.

(3) “Forest product” means logs; pulpwood; veneer; bolt wood; wood chips; stud wood; poles; pilings; biomass; fuel wood; maple sap; or bark.

(4) “Forestry operation” means activities related to the management of forests, including timber harvests; removal, storage, or stockpiling of vegetation or timber; pruning; planting; lumber processing with portable sawmills; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. “Forestry operation” includes one or both of the following:

(A) the primary processing of forest products on a parcel where a timber harvest occurs; and

(B) the primary processing of forest products at a site that is not the harvest site, provided that:

(i) the person conducting the forestry operations owns or has permission to use the site for the forestry operation;

(ii) the forestry operation was established prior to surrounding activities that are not forestry operations;

(iii) the site is used by the forestry operation for 12 or fewer months in any two-year period or 24 or fewer months in any five-year period;

(iv) the forestry operation complies with all applicable law; and

(v) only portable, nonpermanent equipment is used to process the forest products at the site.

(5) “Timber” means trees, saplings, seedlings, and sprouts from which trees of every size, nature, kind, and description may grow.

(6) “Timber harvest” means a forestry operation involving the harvesting of timber.

§ 5757. FORESTRY OPERATIONS; PROTECTION FROM NUISANCE

LAWSUITS

(a) Except as provided for under subsections (b) and (c) of this section, a person conducting a conventional forestry practice shall be entitled to a rebuttable presumption that the conventional forestry practice does not constitute a public or private nuisance if the person conducts the conventional forestry practice in compliance with the following:

(1) the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont as adopted by the Commissioner under 10 V.S.A. § 2622; and

(2) other applicable law.

(b) The presumption under subsection (a) of this section that a person conducting a conventional forestry practice does not constitute a nuisance may be rebutted by showing that a nuisance resulted from:

(1) the negligent operation of the conventional forestry practice; or

(2) a violation of State, federal, or other applicable law during the conduct of the conventional forestry practice.

(c) Nothing in this section shall be construed to limit the authority of State or local boards of health to abate nuisances affecting the public health.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 9-0-2)

(For text see Senate Journal January 18, 23, 2018)

S. 234

An act relating to adjudicating all teenagers in the Family Division, except those charged with a serious violent felony

Rep. Rachelson of Burlington, for the Committee on Judiciary, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Findings * * *

Sec. 1. 33 V.S.A. § 5101a is added to read:

§ 5101a. JUVENILE JUSTICE LEGISLATIVE FINDINGS

(a) The General Assembly finds and declares as public policy that an effective juvenile justice system: protects public safety; connects youths and young adults to age-appropriate services that reduce the risk of reoffense; and, when appropriate, shields youths from the adverse impact of a criminal record.

(b) In order to accomplish these goals, the system should be based on the implementation of data-driven evidence-based practices that offer a broad range of alternatives, such that the degree of intervention is commensurate with the risk of reoffense.

(c) High-intensity interventions with low-risk offenders not only decrease program effectiveness, but are contrary to the goal of public safety in that they increase the risk of recidivism. An effective youth justice system includes pre-charge options that keep low-risk offenders out of the criminal justice system altogether.

* * * Expungement * * *

Sec. 2. 13 V.S.A. § 7609 is added to read:

§ 7609. EXPUNGEMENT OF CRIMINAL HISTORY RECORDS OF AN
INDIVIDUAL 18-21 YEARS OF AGE

(a) Procedure. Except as provided in subsection (b) of this section, the record of the criminal proceedings for an individual who was 18-21 years of age at the time the individual committed a qualifying crime shall be expunged within 30 days after the date on which the individual successfully completed the terms and conditions of the sentence for the conviction of the qualifying crime, absent a finding of good cause by the court. The court shall issue an order to expunge all records and files related to the arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation related to the sentence. A copy of the order shall be sent to each agency, department, or official named in the order. Thereafter, the court, law enforcement officers, agencies, and departments shall reply to any request for information that no record exists with respect to such individual. Notwithstanding this subsection, the record shall not be expunged until restitution has been paid in full.

(b) Exceptions.

(1) A criminal record that includes both qualifying and nonqualifying offenses shall not be eligible for expungement pursuant to this section.

(2) The Vermont Crime Information Center shall retain a special index of sentences for sex offenses that require registration pursuant to chapter 167, subchapter 3 of this title. This index shall only list the name and date of birth of the subject of the expunged files and records, the offense for which the

subject was convicted, and the docket number of the proceeding that was the subject of the expungement. The special index shall be confidential and shall be accessed only by the Director of the Vermont Crime Information Center and an individual designated for the purpose of providing information to the Department of Corrections in the preparation of a presentence investigation in accordance with 28 V.S.A. §§ 204 and 204a.

Sec. 3. 13 V.S.A. § 7606 is amended to read:

§ 7606. EFFECT OF EXPUNGEMENT

* * *

(d)(1) The court ~~may~~ shall keep a special index of cases that have been expunged together with the expungement order and the certificate issued pursuant to ~~section 7602 or 7603 of this title~~ this chapter. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(2) The special index and related documents specified in subdivision (1) of this subsection shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(3) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case ~~or by the court if the court finds that inspection of the documents is necessary to serve the interest of justice.~~ The Administrative Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(4) All other court documents in a case that are subject to an expungement order shall be destroyed.

(5) The Court Administrator shall establish policies for implementing this subsection.

(e) Upon receiving an inquiry from any person regarding an expunged record, an entity shall respond that "NO RECORD EXISTS."

Sec. 4. 33 V.S.A. § 3309 is added to read:

§ 3309. COMPLIANCE WITH THE JUVENILE JUSTICE AND
DELINQUENCY PREVENTION ACT

The Department for Children and Families, within the Agency of Human Services, is the State agency designated for supervising the preparation and administration of the Juvenile Justice and Delinquency Prevention Act State

Plan and is also designated as the State agency responsible for monitoring and data collection for purposes of compliance with the Juvenile Justice and Delinquency Prevention Act.

Sec. 5. 33 V.S.A. § 5103 is amended to read:

§ 5103. JURISDICTION

(a) The Family Division of the Superior Court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

* * *

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child ~~who has been adjudicated delinquent~~ with a pending delinquency may be extended until six months beyond the child's 19th birthday if the child was 16 or 17 years of age when he or she committed the offense.

(B) In no case shall custody of a child 18 years of age or older be retained by or transferred to the Commissioner for Children and Families.

(C) Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.

(D) [Repealed.]

* * *

* * * Juvenile Delinquency Proceedings * * *

Sec. 6. 33 V.S.A. § 5225 is amended to read:

§ 5225. PRELIMINARY HEARING; RISK ASSESSMENT

(a) Preliminary hearing. A preliminary hearing shall be held at the time and date specified on the citation or as otherwise ordered by the court. If a child is taken into custody prior to the preliminary hearing, the preliminary hearing shall be at the time of the temporary care hearing. Counsel for the child shall be assigned prior to the preliminary hearing.

(b) Risk and needs screening.

(1) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the

Department to provide risk and need screenings for children alleged to have committed delinquent acts.

(2) If the child participates in such a screening, the Department or the community provider shall report the risk level result of the screening, the number and source of the collateral contacts made, and the recommendation for charging or other alternatives to the State's Attorney. The State's Attorney shall consider the results of the risk and needs screening in determining whether to file a charge. In lieu of filing a charge, the State's Attorney may refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subsection shall not require the State's Attorney to file a charge. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child's case shall return to the State's Attorney for charging consideration.

(3) If a charge is brought in the Family Division, the risk level result shall be provided to the child's attorney. ~~Except on agreement of the parties, the results shall not be provided to the court until after a merits finding has been made.~~

~~(c) Counsel for the child shall be assigned prior to the preliminary hearing.~~ Referral to diversion. Based on the results of the risk and needs screening, if a child presents a low to moderate risk to reoffend, the State's Attorney shall refer the child directly to court diversion unless the State's Attorney states on the record why a referral to court diversion would not serve the ends of justice. If the court diversion program does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child's case shall return to the State's Attorney for charging consideration.

(d) Guardian ad litem. At the preliminary hearing, the court shall appoint a guardian ad litem for the child. The guardian ad litem may be the child's parent, guardian, or custodian. On its own motion or motion by the child's attorney, the court may appoint a guardian ad litem other than a parent, guardian, or custodian.

(e) Admission; denial. At the preliminary hearing, a denial shall be entered to the allegations of the petition, unless the juvenile, after adequate consultation with the guardian ad litem and counsel, enters an admission. If the juvenile enters an admission, the disposition case plan required by section 5230 of this title may be waived and the court may proceed directly to disposition, provided that the juvenile, the custodial parent, the State's

Attorney, the guardian ad litem, and the Department agree.

(f) Conditions. The court may order the child to abide by conditions of release pending a merits or disposition hearing.

Sec. 7. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a Criminal Division of the Superior Court that the defendant was under 18 years of age at the time the offense charged was alleged to have been committed and the offense charged is a misdemeanor, ~~that court shall forthwith transfer the case to the Family Division of the Superior Court under the authority of this chapter~~ an offense not specified in subsection 5204(a) of this title, that court shall forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall then be considered to be subject to this chapter as a child charged with a delinquent act.

(b) If it appears to a Criminal Division of the Superior Court that the defendant was under 18 years of age at the time a felony offense not specified in subsection 5204(a) of this title was alleged to have been committed, ~~that court shall forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act~~ had attained 14 years of age but not 18 years of age at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed, that court may forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall then be considered to be subject to this chapter as a child charged with a delinquent act.

* * *

* * * Youthful Offender Proceedings * * *

Sec. 8. 33 V.S.A. § 5280 is amended to read:

§ 5280. COMMENCEMENT OF YOUTHFUL OFFENDER

PROCEEDINGS IN THE FAMILY DIVISION

(a) A proceeding under this chapter shall be commenced by:

(1) the filing of a youthful offender petition by a State's Attorney; or

(2) transfer to the Family Court of a proceeding from the Criminal Division of the Superior Court as provided in section 5281 of this title.

(b) A State's Attorney may commence a proceeding in the Family Division

of the Superior Court concerning a child who is alleged to have committed an offense after attaining 16 years of age but not 22 years of age that could otherwise be filed in the Criminal Division.

(c) If a State's Attorney files a petition under subdivision (a)(1) of this section, the case shall proceed as provided under subsection 5281(b) of this title.

(d) Within 15 days after the commencement of a youthful offender proceeding pursuant to subsection (a) of this section, the youth shall be offered a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and needs screenings. The risk and needs screening shall be completed prior to the youthful offender status hearing held pursuant to section 5283 of this title. Unless the court extends the period for the risk and needs screening for good cause shown, the Family Division shall reject the case for youthful offender treatment if the youth does not complete the risk and needs screening within 15 days.

(1) The Department or the community provider shall report the risk level result of the screening, the number and source of the collateral contacts made, and the recommendation for charging or other alternatives to the State's Attorney.

(2) Information related to the present alleged offense directly or indirectly derived from the risk and needs screening or other conversation with the Department or community-based provider shall not be used against the youth in the youth's criminal or juvenile case for any purpose, including impeachment or cross-examination. However, the fact of participation in risk and needs screening may be used in subsequent proceedings.

(e) If a youth presents a low to moderate risk to reoffend based on the results of the risk and needs screening, the State's Attorney shall refer a youth directly to court diversion unless the State's Attorney states on the record at the hearing held pursuant to section 5283 of this title why a referral would not serve the ends of justice. If the court diversion program does not accept the case or if the youth fails to complete the program in a manner deemed satisfactory and timely by the provider, the youth's case shall return to the State's Attorney for charging consideration.

Sec. 9. 33 V.S.A. § 5282 is amended to read:

§ 5282. REPORT FROM THE DEPARTMENT

(a) Within 30 days after the case is transferred to the Family Division or a youthful offender petition is filed in the Family Division, youth has completed the risk and needs screening pursuant to section 5280 of this title, unless the

court extends the period for good cause shown, the Department for Children and Families shall file a report with the Family Division of the Superior Court.

* * *

Sec. 10. 33 V.S.A. § 5285(d) is amended to read:

(d) If a youth's status as a youthful offender is revoked and the case is transferred to the Criminal Division pursuant to subdivision (c)(2) of this section, the court shall hold a sentencing hearing and impose sentence. Unless it serves the interest of justice, the case shall not be transferred back to the Family Division pursuant to section 5203 of this title. When determining an appropriate sentence, the court may take into consideration the youth's degree of progress toward or regression from rehabilitation while on youthful offender status. The Criminal Division shall have access to all Family Division records of the proceeding.

Sec. 11. 33 V.S.A. § 5801 is amended to read:

§ 5801. WOODSIDE JUVENILE REHABILITATION CENTER

(a) The Woodside Juvenile Rehabilitation Center in the town of Essex shall be operated by the Department for Children and Families as a residential treatment facility that provides in-patient psychiatric, mental health, and substance abuse services in a secure setting for adolescents who have been adjudicated or charged with a delinquency or criminal act.

(b) The total capacity of the facility shall not exceed 30 beds.

(c) The purpose or capacity of the Woodside Juvenile Rehabilitation Center shall not be altered except by act of the General Assembly following a study recommending any change of use by the Agency of Human Services.

(d) No person who has reached his or her 18th birthday may be placed at Woodside. Notwithstanding any other provision of law, a person under ~~the age of 18~~ years of age may be placed at Woodside, provided that he or she meets the admissions criteria for treatment as established by the Department for Children and Families. Any person already placed at Woodside may voluntarily continue receiving treatment at Woodside beyond his or her 18th birthday, provided that he or she continues to meet the criteria established by the Department for continued treatment. The Commissioner shall ensure that a child placed at Woodside has the same or equivalent due process rights as a child placed at Woodside in its previous role as a detention facility ~~prior to the enactment of this act.~~

Sec. 12. DEPARTMENT FOR CHILDREN AND FAMILIES; EXPANDING JUVENILE JURISDICTION; REPORT

(a) The Department for Children and Families, in consultation with the Department of State's Attorneys and Sheriffs, the Office of the Defender General, the Court Administrator, and the Commissioner of Corrections, shall:

(1) consider the implications, including necessary funding, of expanding juvenile jurisdiction under 33 V.S.A. chapter 52 to encompass 18- and 19-year-olds beginning in fiscal year 2021;

(2) on or before November 1, 2018, report to the Joint Legislative Justice Oversight Committee and the Joint Legislative Child Protection Committee on the status and plan for the expansion, including necessary funding and specific milestones related to operations and policy; and

(3) provide status update reports to the Joint Legislative Justice Oversight Committee and the Joint Legislative Child Protection Committee on or before November 1, 2019 and November 1, 2020.

(b) The Joint Legislative Justice Oversight Committee and Joint Legislative Child Protection Committee shall review the November 1, 2018 report, the plan for expansion, the necessary funding and the subsequent status reports as required by subsection (a) of this section to determine whether adequate funding and supports are in place to implement the expansion of juvenile jurisdiction to encompass 18- and 19-year-olds in accordance with the effective dates of this act. To the extent that inadequate funding and supports are available for the expansion, the Committees shall, on or before December 1, 2018, December 1, 2019, and December 1, 2021, recommend legislation to address the inadequacies or amend the timeline for the rollout of the expansion.

* * * Effective July 1, 2020 * * *

Sec. 13. 33 V.S.A. § 5201 is amended as follows:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

(a) Proceedings under this chapter shall be commenced by:

(1) transfer to the court of a proceeding from another court as provided in section 5203 of this title; or

(2) the filing of a delinquency petition by a State's Attorney.

(b) If the proceeding is commenced by transfer from another court, no petition need be filed; however, the State's Attorney shall provide to the court the name and address of the child's custodial parent, guardian, or custodian and the name and address of any noncustodial parent if known.

(c) Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining 14 years of

age, but not 18 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

(d) Any proceeding concerning a child who is alleged to have committed a ~~misdemeanor~~ any offense other than those specified in subsection 5204(a) of this title before attaining ~~18~~ 19 years of age shall originate in the Family Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

~~(e) Any proceeding concerning a child who is alleged to have committed a felony offense other than those specified in subsection 5204(a) of this title before attaining 18 years of age shall originate in the Family Division of the Superior Court provided that jurisdiction may be transferred in accordance with this chapter. [Repealed.]~~

(f) If the State requests that custody of the child be transferred to the Department, a temporary care hearing shall be held as provided in subchapter 3 of this chapter.

(g) A petition may be withdrawn by the State's Attorney at any time prior to the hearing thereon, in which event the child shall be returned to the custodial parent, guardian, or custodian, the proceedings under this chapter terminated, and all files and documents relating thereto sealed under section 5119 of this title.

Sec. 14. 33 V.S.A. § 5202 is amended as follows:

§ 5202. ORDER OF ADJUDICATION; NONCRIMINAL

(a)(1) An order of the Family Division of the Superior Court in proceedings under this chapter shall not:

(A) be deemed a conviction of crime;

(B) impose any civil disabilities sanctions ordinarily resulting from a conviction; or

(C) operate to disqualify the child in any civil service application or appointment.

(2) Notwithstanding subdivision (1) of this subsection, an order of delinquency in proceedings ~~transferred under subsection 5203(b) of this title, where the offense charged in the initial criminal proceedings was concerning a child who is alleged to have committed~~ a violation of those sections of Title 23 specified in ~~subdivision 23 V.S.A. § 801(a)(1);~~ shall be an event in addition to those specified therein, enabling the Commissioner of Motor Vehicles to require proof of financial responsibility under 23 V.S.A. chapter 11.

(b) The disposition of a child and evidence given in a hearing in a juvenile proceeding shall not be admissible as evidence against the child in any case or proceeding in any other court except after a subsequent conviction of a felony in proceedings to determine the sentence.

Sec. 15. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a Criminal Division of the Superior Court that the defendant was under 18 19 years of age at the time the offense charged was alleged to have been committed and the offense charged is an offense not specified in subsection 5204(a) of this title, that court shall forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall then be considered to be subject to this chapter as a child charged with a delinquent act.

(b) If it appears to a Criminal Division of the Superior Court that the defendant had attained 14 years of age but not 18 years of age at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed, that court may forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall then be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the State's Attorney that the defendant was under 18 19 years of age at the time the felony offense charged was alleged to have been committed and the felony charged is not an offense specified in subsection 5204(a) of this title, the State's Attorney shall file charges in the Family Division of the Superior Court, pursuant to section 5201 of this title. The Family Division may transfer the proceeding to the Criminal Division pursuant to section 5204 of this title.

(d) A transfer under this section shall include a transfer and delivery of a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. Upon any such transfer, that court shall order that the defendant be taken forthwith to a place of detention designated by the Family Division of the Superior Court or to that court itself, or shall release the child to the custody of his or her parent or guardian or other person legally responsible for the child, to be brought before the Family Division of the Superior Court at a time designated by that court. The Family Division of the Superior Court shall then proceed as provided in this chapter as if a petition alleging delinquency had been filed with the court under section 5223 of this title on the effective date of such transfer.

(e) Motions to transfer a case to the Family Division of the Superior Court

for youthful offender treatment shall be made under section 5281 of this title.

Sec. 16. 33 V.S.A. § 5204 is amended as follows:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR
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(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court, if the child had attained 16 years of age but not ~~18~~ 19 years of age at the time the act was alleged to have occurred and the delinquent act set forth in the petition is a felony not specified in subdivisions (1)-(12) of this subsection or if the child had attained 12 years of age but not 14 years of age at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The State's Attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

* * *

* * * Effective July 1, 2022 * * *

Sec. 17. 33 V.S.A. § 5201 is amended as follows:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

(a) Proceedings under this chapter shall be commenced by:

(1) transfer to the court of a proceeding from another court as provided in subsection (c) of this section; or

(2) the filing of a delinquency petition by a State's Attorney.

(b) If the proceeding is commenced by transfer from another court, no petition need be filed; however, the State's Attorney shall provide to the court the name and address of the child's custodial parent, guardian, or custodian and the name and address of any noncustodial parent if known.

(c) Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining 14 years of age, but not 18 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

(d) Any proceeding concerning a child who is alleged to have committed any offense other than those specified in subsection 5204(a) of this title before attaining ~~19~~ 20 years of age shall originate in the Family Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

* * *

Sec. 18. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a Criminal Division of the Superior Court that the defendant was under ~~19~~ 20 years of age at the time the offense charged was alleged to have been committed and the offense charged is an offense not specified in subsection 5204(a) of this title, that court shall forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall then be considered to be subject to this chapter as a child charged with a delinquent act.

(b) If it appears to a Criminal Division of the Superior Court that the defendant had attained 14 years of age but not 18 years of age at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed, that court may forthwith transfer the proceeding to the Family

Division of the Superior Court under the authority of this chapter, and the minor shall then be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the State's Attorney that the defendant was under ~~19~~ 20 years of age at the time the felony offense charged was alleged to have been committed and the felony charged is not an offense specified in subsection 5204(a) of this title, the State's Attorney shall file charges in the Family Division of the Superior Court, pursuant to section 5201 of this title. The Family Division may transfer the proceeding to the Criminal Division pursuant to section 5204 of this title.

(d) A transfer under this section shall include a transfer and delivery of a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. Upon any such transfer, that court shall order that the defendant be taken forthwith to a place of detention designated by the Family Division of the Superior Court or to that court itself, or shall release the child to the custody of his or her parent or guardian or other person legally responsible for the child, to be brought before the Family Division of the Superior Court at a time designated by that court. The Family Division of the Superior Court shall then proceed as provided in this chapter as if a petition alleging delinquency had been filed with the court under section 5223 of this title on the effective date of such transfer.

(e) Motions to transfer a case to the Family Division of the Superior Court for youthful offender treatment shall be made under section 5281 of this title.

Sec. 19. 33 V.S.A. § 5204 is amended as follows:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court, if the child had attained 16 years of age but not ~~19~~ 20 years of age at the time the act was alleged to have occurred and the delinquent act set forth in the petition is a felony not specified in subdivisions (1)-(12) of this subsection or if the child had attained 12 years of age but not 14 years of age at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The State's Attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

* * *

* * * Appropriation * * *

Sec. 20. FUNDING

To the extent the sum of \$200,000.00 is appropriated in fiscal year 2019 from the General Fund to the Department for Children and Families, the Department shall prepare for the expansion of services to juvenile offenders 18 and 19 years of age pursuant to 33 V.S.A. chapters 52 and 52A beginning in fiscal year 2021, and shall carry forward any unexpended funds.

* * * Effective Dates * * *

Sec. 21. EFFECTIVE DATES

(a) This section and Secs. 4 (compliance with the juvenile justice and delinquency prevention act), 5 (jurisdiction), 7 (transfer from other courts), and 20 (funding) shall take effect on passage.

(b) Secs. 1–3, 6, and 8–12 shall take effect on July 1, 2018.

(c) Secs. 13–16 shall take effect on July 1, 2020.

(d) Secs. 17–19 shall take effect on July 1, 2022.

(Committee vote: 10-0-1)

(For text see Senate Journal February 23, 2018)

Senate Proposal of Amendment

H. 562

An act relating to parentage proceedings

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

First: In Sec. 1, Title 15C, in § 307(a)(2)(B), by striking out “, provided there is no acknowledgment or denial prior to such hearing”

Second: In Sec.1, Title 15C, in § 308(a)(2), by striking out the following: “one year” and inserting in lieu thereof the following: two years

Third: In Sec. 1, Title 15C, in § 401, by adding a new subsection (c) to read as follows:

(c) If a person files a petition alleging he or she is a presumed parent pursuant to subdivision (a)(4) of this section, the petition shall include an affidavit disclosing whether the petitioner has been convicted of domestic assault, sexual assault, or sexual exploitation of the child or another parent of the child, was subject to a final abuse protection order pursuant to 15 V.S.A. chapter 21 because the person was found to have committed abuse against the child or another parent of the child, or was substantiated for abuse against the child or another parent of the child and placed on either the Child Protection Registry pursuant to 33 V.S.A. chapter 49 or the Adult Abuse Registry pursuant to 33 V.S.A. chapter 69.

Fourth: In Sec. 1, Title 15C, in § 402(b)(3), by striking out the last sentence and inserting in lieu thereof the following: Evidence of duress, coercion, or threat of harm may include whether within the prior ten years, the person presumed to be a parent pursuant to subdivision 401(a)(4) of this title has been convicted of domestic assault, sexual assault, or sexual exploitation of the child or another parent of the child, was subject to a final abuse protection order pursuant to 15 V.S.A. chapter 21 because the person was found to have committed abuse against the child or another parent of the child, or was substantiated for abuse against the child or another parent of the child and placed on either the Child Protection Registry pursuant to 33 V.S.A. chapter 49 or the Adult Abuse Registry pursuant to 33 V.S.A. chapter 69.

Fifth: In Sec. 1, Title 15C, in § 501(a)(2), by striking out the last sentence and inserting in lieu thereof the following: Such evidence may include whether within the prior ten years, the person seeking to be adjudicated a de facto

parent has been convicted of domestic assault, sexual assault, or sexual exploitation of the child or another parent of the child, was subject to a final abuse protection order pursuant to 15 V.S.A. chapter 21 because the person was found to have committed abuse against the child or another parent of the child, or was substantiated for abuse against the child or another parent of the child and placed on either the Child Protection Registry pursuant to 33 V.S.A. chapter 49 or the Adult Abuse Registry pursuant to 33 V.S.A. chapter 69.

Sixth: In Sec. 1, Title 15C, in § 502, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a)(1) A person seeking to be adjudicated a de facto parent of a child shall file a petition with the Family Division of the Superior Court before the child reaches 18 years of age. Both the person seeking to be adjudicated a de facto parent and the child must be alive at the time of the filing.

(2) The petition shall include:

(A) an affidavit disclosing whether the petitioner has been convicted of domestic assault, sexual assault, or sexual exploitation of the child or another parent of the child, was subject to a final abuse protection order pursuant to 15 V.S.A. chapter 21 because the person was found to have committed abuse against the child or another parent of the child, or was substantiated for abuse against the child or another parent of the child and placed on either the Child Protection Registry pursuant to 33 V.S.A. chapter 49 or the Adult Abuse Registry pursuant to 33 V.S.A. chapter 69; and

(B) a verified affidavit alleging facts to support the existence of a de facto parent relationship with the child.

Seventh: In Sec. 1, Title 15C, in § 803, by striking out subdivision (a)(3) and inserting in lieu thereof the following:

(3) Notwithstanding subdivisions (1) and (2) of this subsection, if genetic testing indicates a genetic relationship between the gestational carrier and the child, parentage shall be determined by the Family Division of the Superior Court pursuant to chapters 1 through 6 of this title.

(For text see House Journal February 2, 6, 2018)

Ordered to Lie

H. 167

An act relating to alternative approaches to addressing low-level illicit drug use.

Pending Question: Shall the House concur in the Senate proposal of amendment?

H. 219

An act relating to the Vermont spaying and neutering program.

Pending Question: Shall the House concur in the Senate proposal of amendment?

S. 267

An act relating to timing of a decree nisi in a divorce proceeding.

Pending Question: Second reading?