

House Calendar

Wednesday, April 18, 2018

106th DAY OF THE ADJOURNED SESSION

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Action Postponed Until April 18, 2018

Senate Proposal of Amendment

H. 906

An act relating to professional licensing for service members and veterans

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

First: In Sec. 1, 26 V.S.A. § 906(c)(3), after the following: “has completed a minimum of 8,000 hours and four years of active duty field work” by inserting the following: as a 12R Electrician or equivalent

Second: In Sec. 3, 26 V.S.A. § 2194(b)(3), after the following: “has completed a minimum of 8,000 hours and four years of active duty field work” by inserting the following: as a 12K Plumber or equivalent

Third: After Sec. 7, by inserting a Sec. 8 to read as follows:

Sec. 8. REPORTING; UTILIZATION BY SERVICE MEMBERS AND
VETERANS

(a) The Executive Director of the Division of Fire Safety shall, on or before February 1 of each year, report to the House Committees on Commerce and Economic Development, on General, Housing, and Military Affairs, and on Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations regarding:

(1) the number of journeyman electrician licenses issued to service members and veterans pursuant to 26 V.S.A. § 906(c) during the previous calendar year;

(2) the number of journeyman plumber licenses issued to service members and veterans pursuant to 26 V.S.A. § 2194(b) during the previous calendar year; and

(3) the number of instances during the previous calendar year in which the Electrician’s Licensing Board, in determining the qualifications of a service member or veteran for a master electrician license, gave recognition to an applicant’s experience as a 12R Electrician or equivalent in the U.S. Armed Forces as required by 26 V.S.A. § 907(b).

(b) The Director of the Office of Professional Regulation shall, on or before February 1 of each year, report to the House Committees on Commerce and Economic Development, on General, Housing, and Military Affairs, and

on Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations regarding:

(1) the number of licenses to practice as a registered nurse issued to service members and veterans pursuant to 26 V.S.A. § 1622(b) during the previous calendar year; and

(2) the number of licenses to practice as a nursing assistant issued to service members and veterans pursuant to 26 V.S.A. § 1643(b) during the previous calendar year.

(c) The Commissioner of Motor Vehicles shall, on or before February 1 of each year, report to the House Committees on Commerce and Economic Development, on General, Housing, and Military Affairs, and on Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations regarding the number of service members and veterans who, during the previous calendar year, were certified to perform inspections without being required to pass an examination as provided pursuant to 23 V.S.A. § 1227(b)(2).

(d) The Commissioner of Health shall, on or before February 1 of each year, report to the House Committees on Commerce and Economic Development, on General, Housing, and Military Affairs, and on Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations regarding the number of service members and veterans who, during the previous calendar year, were deemed to have knowledge of the prevention of food-borne disease, be able to apply the Hazard Analysis Critical Control Point principles, and have met the criteria for “demonstration of knowledge” requirements set forth by the Department of Health in rule for the purposes of obtaining a food establishment license as provided pursuant to 18 V.S.A. § 4303(b) and the total number of food establishment licenses issued to those service members and veterans.

And by renumbering the remaining section to be numerically correct.

(For text see House Journal March 13, 14, 2018)

ACTION CALENDAR

Called Up

S. 267

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

Pending Action: Second Reading

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

Sec. 1. 13 V.S.A. chapter 85 is amended to read:

CHAPTER 85. WEAPONS

Subchapter 1. Generally

* * *

Subchapter 2. Extreme Risk Protection Orders

§ 4051. DEFINITIONS

As used in this subchapter:

(1) “Court” means the Family Division of the Superior Court.

(2) “Dangerous weapon” means an explosive or a firearm.

(3) “Explosive” means dynamite, or any explosive compound of which nitroglycerin forms a part, or fulminate in bulk or dry condition, or blasting caps, or detonating fuses, or blasting powder or any other similar explosive. The term does not include a firearm or ammunition therefor or any components of ammunition for a firearm, including primers, smokeless powder, or black gunpowder.

(4) “Federally licensed firearms dealer” means a licensed importer, licensed manufacturer, or licensed dealer required to conduct national instant criminal background checks under 18 U.S.C. § 922(t).

(5) “Firearm” shall have the same meaning as in subsection 4017(d) of this title.

(6) “Law enforcement agency” means the Vermont State Police, a municipal police department, or a sheriff’s department.

§ 4052. JURISDICTION AND VENUE

(a) The Family Division of the Superior Court shall have jurisdiction over proceedings under this subchapter.

(b) Emergency orders under section 4054 of this title may be issued by a judge of the Criminal, Civil, or Family Division of the Superior Court.

(c) Proceedings under this chapter shall be commenced in the county where the law enforcement agency is located, the county where the respondent resides, or the county where the events giving rise to the petition occur.

§ 4053. PETITION FOR EXTREME RISK PROTECTION ORDER

(a) A State's Attorney or the Office of the Attorney General may file a petition requesting that the court issue an extreme risk protection order prohibiting a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control. The petitioner shall submit an affidavit in support of the petition.

(b) Except as provided in section 4054 of this title, the court shall grant relief only after notice to the respondent and a hearing. The petitioner shall have the burden of proof by a preponderance of the evidence.

(c)(1) A petition filed pursuant to this section shall allege that the respondent poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control.

(2)(A) An extreme risk of harm to others may be shown by establishing that:

(i) the respondent has inflicted or attempted to inflict bodily harm on another; or

(ii) by his or her threats or actions the respondent has placed others in reasonable fear of physical harm to themselves; or

(iii) by his or her actions or inactions the respondent has presented a danger to persons in his or her care.

(B) An extreme risk of harm to himself or herself may be shown by establishing that the respondent has threatened or attempted suicide or serious bodily harm.

(3) The affidavit in support of the petition shall state:

(A) the specific facts supporting the allegations in the petition;

(B) any dangerous weapons the petitioner believes to be in the respondent's possession, custody, or control; and

(C) whether the petitioner knows of an existing order with respect to the respondent under 15 V.S.A. chapter 21 (abuse prevention orders) or 12 V.S.A. chapter 178 (orders against stalking or sexual assault).

(d) The court shall hold a hearing within 14 days after a petition is filed under this section. Notice of the hearing shall be served pursuant to section 4056 of this title concurrently with the petition and any ex parte order issued under section 4054 of this title.

(e)(1) The court shall grant the petition and issue an extreme risk protection order if it finds by a preponderance of the evidence that the respondent poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control.

(2) An order issued under this subsection shall prohibit a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control for a period of up to one year. The order shall be signed by the judge and include the following provisions:

(A) A statement of the grounds for issuance of the order.

(B) The name and address of the court where any filings should be made, the names of the parties, the date of the petition, the date and time of the order, and the date and time the order expires.

(C) A description of how to appeal the order.

(D) A description of the requirements for relinquishment of dangerous weapons under section 4059 of this title.

(E) A description of how to request termination of the order under section 4055 of this title. The court shall include with the order a form for a motion to terminate the order.

(F) A statement directing the law enforcement agency, approved federally licensed firearms dealer, or other person in possession of the firearm to release it to the owner upon expiration of the order.

(G) A statement in substantially the following form:

"To the subject of this protection order: This order shall be in effect until the date and time stated above. If you have not done so already, you are required to surrender all dangerous weapons in your custody, control, or possession to [insert name of law enforcement agency], a federally licensed firearms dealer, or a person approved by the court. While this order is in effect, you are not allowed to purchase, possess, or receive a dangerous weapon; attempt to purchase, possess, or receive a dangerous weapon; or have a dangerous weapon in your custody or control. You have the right to request one hearing to terminate this order during the period that this order is in effect, starting from the date of this order. You may seek the advice of an attorney

regarding any matter connected with this order.”

(f) If the court denies a petition filed under this section, the court shall state the particular reasons for the denial in its decision.

(g) No filing fee shall be required for a petition filed under this section.

(h) Form petitions and form orders shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

(i) When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.

(j) Every final order issued under this section shall bear the following language: “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”

(k) Affidavit forms required pursuant to this section shall bear the following language: “MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058.”

§ 4054. EMERGENCY RELIEF; TEMPORARY EX PARTE ORDER

(a)(1) A State’s Attorney or the Office of the Attorney General may file a motion requesting that the court issue an extreme risk protection order ex parte, without notice to the respondent. A law enforcement officer may notify the court that an ex parte extreme risk protection order is being requested pursuant to this section, but the court shall not issue the order until after the motion is submitted.

(2) The petitioner shall submit an affidavit in support of the motion alleging that the respondent poses an imminent and extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent’s custody or control. The affidavit shall state:

(A) the specific facts supporting the allegations in the motion, including the imminent danger posed by the respondent; and

(B) any dangerous weapons the petitioner believes to be in the respondent’s possession, custody, or control.

(b)(1) The court shall grant the motion and issue a temporary ex parte extreme risk protection order if it finds by a preponderance of the evidence that at the time the order is requested the respondent poses an imminent and extreme risk of causing harm to himself or herself or another person by

purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. The petitioner shall cause a copy of the order to be served on the respondent pursuant to section 4056 of this title, and the court shall deliver a copy to the holding station.

(2)(A) An extreme risk of harm to others may be shown by establishing that:

(i) the respondent has inflicted or attempted to inflict bodily harm on another; or

(ii) by his or her threats or actions the respondent has placed others in reasonable fear of physical harm to themselves; or

(iii) by his or her actions or inactions the respondent has presented a danger to persons in his or her care.

(B) An extreme risk of harm to himself or herself may be shown by establishing that the respondent has threatened or attempted suicide or serious bodily harm.

(c)(1) Unless the petition is voluntarily dismissed pursuant to subdivision (2) of this subsection, the court shall hold a hearing within 14 days after the issuance of a temporary ex parte extreme risk protection order to determine if a final extreme risk protection order should be issued. If not voluntarily dismissed, the temporary ex parte extreme risk protection order shall expire when the court grants or denies a motion for an extreme risk protection order under section 4053 of this title.

(2) The prosecutor may voluntarily dismiss a motion filed under this section at any time prior to the hearing if the prosecutor determines that the respondent no longer poses an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. If the prosecutor voluntarily dismisses the motion pursuant to this subdivision, the court shall vacate the temporary ex parte extreme risk protection order and direct the person in possession of the dangerous weapon to return it to the respondent consistent with section 4059 of this title.

(d)(1) An order issued under this section shall prohibit a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control for a period of up to 14 days. The order shall be in writing and signed by the judge and shall include the following provisions:

(A) A statement of the grounds for issuance of the order.

(B) The name and address of the court where any filings should be made, the names of the parties, the date of the petition, the date and time of the order, and the date and time the order expires.

(C) The date and time of the hearing when the respondent may appear to contest the order before the court. This opportunity to contest shall be scheduled as soon as reasonably possible, which in no event shall be more than 14 days after the date of issuance of the order.

(D) A description of the requirements for relinquishment of dangerous weapons under section 4059 of this title.

(E) A statement in substantially the following form:

“To the subject of this protection order: This order shall be in effect until the date and time stated above. If you have not done so already, you are required to surrender all dangerous weapons in your custody, control, or possession to [insert name of law enforcement agency], a federally licensed firearms dealer, or a person approved by the court. While this order is in effect, you are not allowed to purchase, possess, or receive a dangerous weapon; attempt to purchase, possess, or receive a dangerous weapon; or have a dangerous weapon in your custody or control. A hearing will be held on the date and time noted above to determine if a final extreme risk prevention order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for up to 60 days. You may seek the advice of an attorney regarding any matter connected with this order.”

(2)(A) The court may issue an ex parte extreme risk protection order by telephone or by reliable electronic means pursuant to this subdivision if requested by the petitioner.

(B) Upon receipt of a request for electronic issuance of an ex parte extreme risk protection order, the judicial officer shall inform the petitioner that a signed or unsigned motion and affidavit may be submitted electronically. The affidavit shall be sworn to or affirmed by administration of the oath over the telephone to the petitioner by the judicial officer. The administration of the oath need not be made part of the affidavit or recorded, but the judicial officer shall note on the affidavit that the oath was administered.

(C) The judicial officer shall decide whether to grant or deny the motion and issue the order solely on the basis of the contents of the motion and the affidavit or affidavits provided. If the motion is granted, the judicial officer shall immediately sign the original order, enter on its face the exact date and time it is issued, and transmit a copy to the petitioner by reliable electronic means. The petitioner shall cause a copy of the order to be served on the respondent pursuant to section 4056 of this title.

(D) On or before the next business day after the order is issued:

(i) the petitioner shall file the original motion and affidavit with the court; and

(ii) the judicial officer shall file the signed order, the motion, and the affidavit with the clerk. The clerk shall enter the documents on the docket immediately after filing.

(e) Form motions and form orders shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

(f) Every order issued under this section shall bear the following language: “VIOLATION OF THIS ORDER IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058, AND MAY ALSO BE PROSECUTED AS CRIMINAL CONTEMPT PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.”

(g) Affidavit forms required pursuant to this section shall bear the following language: “MAKING A FALSE STATEMENT IN THIS AFFIDAVIT IS A CRIME SUBJECT TO A TERM OF IMPRISONMENT OR A FINE, OR BOTH, AS PROVIDED BY 13 V.S.A. § 4058.”

(h) If the court denies a petition filed under this section, the court shall state the particular reasons for the denial in its decision.

§ 4055. TERMINATION AND RENEWAL MOTIONS

(a)(1) The respondent may file a motion to terminate an extreme risk protection order issued under section 4053 of this title or an order renewed under subsection (b) of this section. A motion to terminate shall not be filed more than once during the effective period of the order. The State shall have the burden of proof by a preponderance of the evidence.

(2) The court shall grant the motion and terminate the extreme risk protection order unless it finds by a preponderance of the evidence that the respondent continues to pose an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent’s custody or control.

(b)(1) A State’s Attorney or the Office of the Attorney General may file a motion requesting that the court renew an extreme risk protection order issued under this section or section 4053 of this title for an additional period of up to one year. The motion shall be accompanied by an affidavit and shall be filed not more than 30 days and not less than 14 days before the expiration date of the order. The motion and affidavit shall comply with the requirements of subsection 4053(c) of this title, and the moving party shall have the burden of

proof by a preponderance of the evidence.

(2) The court shall grant the motion and renew the extreme risk protection order for an additional period of up to one year if it finds by a preponderance of the evidence that the respondent continues to pose an extreme risk of causing harm to himself or herself or another person by purchasing, possessing, or receiving a dangerous weapon or by having a dangerous weapon within the respondent's custody or control. The order shall comply with the requirements of subdivision 4053(f)(2) and subsections 4053(j) and (k) of this title.

(c) The court shall hold a hearing within 14 days after a motion to terminate or a motion to renew is filed under this section. Notice of the hearing shall be served pursuant to section 4056 of this title concurrently with the motion.

(d) If the court denies a motion filed under this section, the court shall state the particular reasons for the denial in its decision.

(e) Form termination and form renewal motions shall be provided by the Court Administrator and shall be maintained by the clerks of the courts.

(f) When findings are required under this section, the court shall make either written findings of fact or oral findings of fact on the record.

§ 4056. SERVICE

(a) A petition, ex parte temporary order, or final order issued under this subchapter shall be served in accordance with the Vermont Rules of Civil Procedure and may be served by any law enforcement officer. A court that issues an order under this chapter during court hours shall promptly transmit the order electronically or by other means to a law enforcement agency for service, and shall deliver a copy to the holding station.

(b) A respondent who attends a hearing held under section 4053, 4054, or 4055 of this title at which a temporary or final order under this subchapter is issued and who receives notice from the court on the record that the order has been issued shall be deemed to have been served. A respondent notified by the court on the record shall be required to adhere immediately to the provisions of the order. However, even when the court has previously notified the respondent of the order, the court shall transmit the order for additional service by a law enforcement agency.

(c) Extreme risk protection orders shall be served by the law enforcement agency at the earliest possible time and shall take precedence over other summonses and orders. Orders shall be served in a manner calculated to ensure the safety of the parties. Methods of service that include advance notification to the respondent shall not be used. The person making service

shall file a return of service with the court stating the date, time, and place at which the order was delivered personally to the respondent.

(d) If service of a notice of hearing issued under section 4053 or 4055 of this title cannot be made before the scheduled hearing, the court shall continue the hearing and extend the terms of the order upon request of the petitioner for such additional time as it deems necessary to achieve service on the respondent.

§ 4057. PROCEDURE

(a) Except as otherwise specified, proceedings commenced under this subchapter shall be in accordance with the Vermont Rules for Family Proceedings and shall be in addition to any other available civil or criminal remedies.

(b) The Court Administrator shall establish procedures to ensure access to relief after regular court hours or on weekends and holidays. The Court Administrator is authorized to contract with public or private agencies to assist petitioners to seek relief and to gain access to Superior Courts. Law enforcement agencies shall assist in carrying out the intent of this section.

(c) The Court Administrator shall ensure that the Superior Court has procedures in place so that the contents of orders and pendency of other proceedings can be known to all courts for cases in which an extreme risk protection order proceeding is related to a criminal proceeding.

§ 4058. ENFORCEMENT; CRIMINAL PENALTIES

(a) Law enforcement officers are authorized to enforce orders issued under this chapter. Enforcement may include collecting and disposing of dangerous weapons pursuant to section 4059 of this title and making an arrest in accordance with the provisions of Rule 3 of the Vermont Rules of Criminal Procedure.

(b)(1) A person who intentionally commits an act prohibited by a court or fails to perform an act ordered by a court, in violation of an extreme risk protection order issued pursuant to section 4053, 4054, or 4055 of this title, after the person has been served with notice of the contents of the order as provided for in this subchapter, shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(2) A person who files a petition for an extreme risk protection order under this subchapter knowing that information in the petition is false or with the intent to harass the respondent shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(c) In addition to the provisions of subsections (a) and (b) of this section,

violation of an order issued under this subchapter may be prosecuted as criminal contempt under Rule 42 of Vermont Rules of Criminal Procedure. The prosecution for criminal contempt may be initiated by the State's Attorney in the county in which the violation occurred. The maximum penalty that may be imposed under this subsection shall be a fine of \$1,000.00 or imprisonment for six months, or both. A sentence of imprisonment upon conviction for criminal contempt may be stayed, in the discretion of the court, pending the expiration of the time allowed for filing notice of appeal or pending appeal if any appeal is taken.

§ 4059. RELINQUISHMENT, STORAGE, AND RETURN OF
DANGEROUS WEAPONS

(a) A person who is required to relinquish a dangerous weapon other than a firearm in the person's possession, custody, or control by an extreme risk protection order issued under section 4053, 4054, or 4055 of this title shall upon service of the order immediately relinquish the dangerous weapon to a cooperating law enforcement agency. The law enforcement agency shall transfer the weapon to the Bureau of Alcohol, Tobacco, Firearms and Explosives for proper disposition.

(b)(1) A person who is required to relinquish a firearm in the person's possession, custody, or control by an extreme risk protection order issued under section 4053, 4054, or 4055 of this title shall, unless the court orders an alternative relinquishment pursuant to subdivision (2) of this subsection, upon service of the order immediately relinquish the firearm to a cooperating law enforcement agency or an approved federally licensed firearms dealer.

(2)(A) The court may order that the person relinquish a firearm to a person other than a cooperating law enforcement agency or an approved federally licensed firearms dealer unless the court finds that relinquishment to the other person will not adequately protect the safety of any person.

(B) A person to whom a firearm is relinquished pursuant to subdivision (A) of this subdivision (2) shall execute an affidavit on a form approved by the Court Administrator stating that the person:

(i) acknowledges receipt of the firearm;

(ii) assumes responsibility for storage of the firearm until further order of the court and specifies the manner in which he or she will provide secure storage;

(iii) is not prohibited from owning or possessing firearms under State or federal law; and

(iv) understands the obligations and requirements of the court

order, including the potential for the person to be subject to civil contempt proceedings pursuant to subdivision (C) of this subdivision (2) if the person permits the firearm to be possessed, accessed, or used by the person who relinquished the item or by any other person not authorized by law to do so.

(C) A person to whom a firearm is relinquished pursuant to subdivision (A) of this subdivision (2) shall be subject to civil contempt proceedings under 12 V.S.A. chapter 5 if the person permits the firearm to be possessed, accessed, or used by the person who relinquished the item or by any other person not authorized by law to do so. In the event that the person required to relinquish the firearm or any other person not authorized by law to possess the relinquished item obtains access to, possession of, or use of a relinquished item, all relinquished items shall be immediately transferred to the possession of a law enforcement agency or approved federally licensed firearms dealer pursuant to subdivision (b)(1) of this section.

(b) A law enforcement agency or an approved federally licensed firearms dealer that takes possession of a firearm pursuant to subdivision (b)(1) of this section shall photograph, catalogue, and store the item in accordance with standards and guidelines established by the Department of Public Safety pursuant to 20 V.S.A. § 2307(i)(3).

(c) Nothing in this section shall be construed to prohibit the lawful sale of firearms or other items.

(d) An extreme risk protection order issued pursuant to section 4053 of this title or renewed pursuant to section 4055 of this title shall direct the law enforcement agency, approved federally licensed firearms dealer, or other person in possession of a firearm under subsection (b) of this section to release it to the owner upon expiration of the order.

(e)(1) A law enforcement agency, an approved federally licensed firearms dealer, or any other person who takes possession of a firearm for storage purposes pursuant to this section shall not release it to the owner without a court order unless the firearm is to be sold pursuant to subdivision (2)(A) of this subsection. If a court orders the release of a firearm stored under this section, the law enforcement agency or firearms dealer in possession of the firearm shall make it available to the owner within three business days after receipt of the order and in a manner consistent with federal law.

(2)(A)(i) If the owner fails to retrieve the firearm within 90 days after the court order releasing it, the firearm may be sold for fair market value. Title to the firearm shall pass to the law enforcement agency or firearms dealer for the purpose of transferring ownership.

(ii) The law enforcement agency or firearms dealer shall make a

reasonable effort to notify the owner of the sale before it occurs. In no event shall the sale occur until after the court issues a final extreme risk protection order pursuant to section 4053 of this title.

(iii) As used in this subdivision (2)(A), “reasonable effort” shall mean notice shall be served as provided for by Rule 4 of the Vermont Rules of Civil Procedure.

(B) Proceeds from the sale of a firearm pursuant to subdivision (A) of this subdivision (2) shall be apportioned as follows:

(i) associated costs, including the costs of sale and of locating and serving the owner, shall be paid to the law enforcement agency or firearms dealer that incurred the cost; and

(ii) any proceeds remaining after payment is made to the law enforcement agency or firearms dealer pursuant to subdivision (i) of this subdivision (2)(B) shall be paid to the original owner.

(f) A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of a firearm stored or transported pursuant to this section. This subsection shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

(g) This section shall be implemented consistent with the standards and guidelines established by the Department of Public Safety under 20 V.S.A. § 2307(i).

(h) Notwithstanding any other provision of this chapter:

(1) A dangerous weapon shall not be returned to the respondent if the respondent’s possession of the weapon would be prohibited by state or federal law.

(2) A dangerous weapon shall not be taken into possession pursuant to this section if it is being or may be used as evidence in a pending criminal matter.

§ 4060. APPEALS

An extreme risk protection order issued by the court under section 4053 or 4055 of this title shall be treated as a final order for the purposes of appeal. Appeal may be taken by either party to the Supreme Court under the Vermont Rules of Appellate Procedure, and the appeal shall be determined forthwith.

§ 4061. EFFECT ON OTHER LAWS

This chapter shall not be construed to prevent a court from prohibiting a person from possessing firearms under any other provision of law.

Sec. 2. FINDINGS

The General Assembly finds:

(1) The State of Vermont has a compelling interest in preventing domestic abuse.

(2) Domestic violence is often volatile, escalates rapidly, and is possibly fatal. The victim has a substantial interest in obtaining immediate relief because any delay may result in further injury or death. The State's compelling interest in protecting domestic violence victims from actual or threatened harm and safeguarding children from the effects of exposure to domestic violence justifies providing law enforcement officers with the authority to undertake immediate measures to stop the violence. For these reasons the State has a special need to remove firearms from a home where law enforcement has probable cause to believe domestic violence has occurred.

(3) The General Assembly recognizes that it is current practice for law enforcement to remove firearms from a domestic violence scene if the firearms are contraband or evidence of the offense. However, given the potential harm of delay during a domestic violence incident, this legislation authorizes law enforcement officers to temporarily remove other dangerous firearms from persons arrested or cited for domestic violence, while protecting rights guaranteed by the Vermont and U.S. Constitutions, and insuring that those firearms are returned to the owner as soon as doing so would be safe and lawful.

Sec. 3. 13 V.S.A. § 1048 is added to read:

§ 1048. REMOVAL OF FIREARMS

(a)(1) When a law enforcement officer arrests, cites, or obtains an arrest warrant for a person for domestic assault in violation of this subchapter, the officer may remove any firearm obtained pursuant to a search warrant or a judicially recognized exception to the warrant requirement if the removal is necessary for the protection of the officer or any other person.

(2) As used in this section, "judicially recognized exception to the warrant requirement" includes a search incident to a lawful arrest, a search with consent, a search under exigent circumstances, a search of objects in plain view, and a search pursuant to a regulatory statute.

(b) A person cited for domestic assault shall be arraigned on the next business day after the citation is issued except for good cause shown.

(c)(1) At arraignment, the court shall issue a written order releasing any firearms removed pursuant to subsection (a) of this section unless:

(A) the firearm is being or may be used as evidence in a pending

criminal or civil proceeding;

(B) a court orders relinquishment of the firearm pursuant to 15 V.S.A. chapter 21 (abuse prevention) or any other provision of law consistent with 18 U.S.C. § 922(g)(8), in which case the weapon shall be stored pursuant to 20 V.S.A. § 2307;

(C) the person requesting the return is prohibited by law from possessing a firearm; or

(D) the court imposes a condition requiring the defendant not to possess a firearm.

(2) If the court under subdivision (1) of this subsection orders the release of a firearm removed under subsection (a) of this section, the law enforcement agency in possession of the firearm shall make it available to the owner within three business days after receipt of the written order and in a manner consistent with federal law.

(d)(1) A law enforcement officer shall not be subject to civil or criminal liability for acts or omissions made in reliance on the provisions of this section. This section shall not be construed to create a legal duty to a victim or to any other person, and no action may be filed based upon a claim that a law enforcement officer removed or did not remove a firearm as authorized by this section.

(2) A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms removed, stored, or transported pursuant to this section. This subdivision shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.

(3) This section shall not be construed to limit the authority of a law enforcement agency to take any necessary and appropriate action, including disciplinary action, regarding an officer's performance in connection with this section.

Sec. 4. 15 V.S.A. § 554 is amended to read:

§ 554. DECREES NISI

(a) A decree of divorce from the bonds of matrimony in the first instance, shall be a decree nisi and shall become absolute at the expiration of ~~three months~~ 90 days from the entry thereof but, in its discretion, the court ~~which~~ that grants the divorce may fix an earlier date upon which the decree shall become absolute. If one of the parties dies prior to the expiration of the nisi period, the decree shall be deemed absolute immediately prior to death.

(b) Either party may file any post-trial motions under the Vermont Rules of

Civil Procedure. The time within which any such motion shall be filed shall run from the date of entry of the decree of divorce and not from the date the nisi period expires. The court shall retain jurisdiction to hear and decide the motion after expiration of the nisi period. A decree of divorce shall constitute a civil judgment under the Vermont Rules of Civil Procedure.

(c) If the stated term at which the decree nisi was entered has adjourned when a motion is filed, the presiding judge of the stated term shall have power to hear and determine the matter and make new decree therein as fully as the court might have done in term time; but, in the judge's discretion, the judge may strike off the decree and continue the cause to the next stated term.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage, except that Sec. 4 shall take effect on July 1, 2018.

(Committee vote: 7-0-4)

Third Reading

H. 482

An act relating to consumer protection

Favorable with Amendment

S. 92

An act relating to interchangeable biological products

Rep. Houghton of Essex, for the Committee on Health Care, 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:

* * * Interchangeable Biological Products * * *

Sec. 1. 18 V.S.A. § 4601 is amended to read:

§ 4601. DEFINITIONS

~~For the purposes of this chapter, unless the context otherwise clearly requires~~ As used in this chapter:

(1) ~~“Brand name” means the registered trademark name given to a drug product by its manufacturer or distributor;~~ “Biological product” means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition in human beings.

~~(2) “Generic name” means the official name of a drug product as established by the United States Adopted Names Council (USAN) or its successor, if applicable; “Brand name” means the registered trademark name given to a drug product by its manufacturer or distributor.~~

~~(3) “Pharmacist” means a natural person licensed by the state board of pharmacy to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons;~~

~~(4) “Generic drug” means a drug listed by generic name and considered to be chemically and therapeutically equivalent to a drug listed by brand name, as both names are identified in the most recent edition of or supplement to the federal U.S. Food and Drug Administration’s “Orange Book” of approved drug products; Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book).~~

~~(4) “Generic name” means the official name of a drug product as established by the U. S. Adopted Names Council (USAN) or its successor, if applicable.~~

~~(5) “Interchangeable biological product” means a biological product that the U.S. Food and Drug Administration has:~~

~~(A) licensed and determined, pursuant to 42 U.S.C. § 262(k)(4), to be interchangeable with the reference product against which it was evaluated; or~~

~~(B) determined to be therapeutically equivalent as set forth in the latest edition of or supplement to the U.S. Food and Drug Administration’s Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book).~~

~~(6) “Pharmacist” means a natural person licensed by the State Board of Pharmacy to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons.~~

~~(5)(7) “Prescriber” means any duly licensed physician, dentist, veterinarian, or other practitioner licensed to write prescriptions for the treatment or prevention of disease in man or animal.~~

~~(8) “Proper name” means the non-proprietary name of a biological product.~~

~~(9) “Reference product” means the single biological product licensed pursuant to 42 U.S.C. § 262(a) against which the interchangeable biological product was evaluated by the U.S. Food and Drug Administration pursuant to 42 U.S.C. § 262(k).~~

Sec. 2. 18 V.S.A. § 4605 is amended to read:

§ 4605. ALTERNATIVE DRUG OR BIOLOGICAL PRODUCT
SELECTION

(a)(1) When a pharmacist receives a prescription for a drug which that is listed either by generic name or brand name in the most recent edition of or supplement to the U.S. Department of Health and Human Services' publication Approved Drug Products With Therapeutic Equivalence Evaluations (the "Orange Book") of approved drug products, the pharmacist shall select the lowest priced drug from the list which is equivalent as defined by the "Orange Book," unless otherwise instructed by the prescriber, or by the purchaser if the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug.

(2) When a pharmacist receives a prescription for a biological product, the pharmacist shall select the lowest priced interchangeable biological product unless otherwise instructed by the prescriber, or by the purchaser if the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced biological product.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, when a pharmacist receives a prescription from a Medicaid beneficiary, the pharmacist shall select the preferred brand-name or generic drug or biological product from the Department of Vermont Health Access's preferred drug list.

(b) The purchaser shall be informed by the pharmacist or his or her representative that an alternative selection as provided under subsection (a) of this section will be made unless the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug or biological product.

(c) When refilling a prescription, pharmacists shall receive the consent of the prescriber to dispense a drug or biological product different from that originally dispensed, and shall inform the purchaser that a ~~generic~~ substitution shall be made pursuant to this section unless the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug or biological product.

(d) Any pharmacist substituting a generically equivalent drug or interchangeable biological product shall charge no more than the usual and

customary retail price for that selected drug or biological product. This charge shall not exceed the usual and customary retail price for the prescribed brand.

(e)(1) Except as described in subdivision (4) of this subsection, within five business days following the dispensing of a biological product, the dispensing pharmacist or designee shall communicate the specific biological product provided to the patient, including the biological product's name and manufacturer, by submitting the information in a format that is accessible to the prescriber electronically through one of the following:

- (A) an interoperable electronic medical records system;
- (B) an electronic prescribing technology;
- (C) a pharmacy benefit management system; or
- (D) a pharmacy record.

(2) Entry into an electronic records system as described in subdivision (1) of this subsection shall be presumed to provide notice to the prescriber.

(3)(A) If a pharmacy does not have access to one or more of the electronic systems described in subdivision (1) of this subsection, the pharmacist or designee shall communicate to the prescriber the information regarding the biological product dispensed using telephone, facsimile, electronic transmission, or other prevailing means.

(B) If a prescription is communicated to the pharmacy by means other than electronic prescribing technology, the pharmacist or designee shall communicate to the prescriber the information regarding the biological product dispensed using the electronic process described in subdivision (1) of this subsection unless the prescriber requests a different means of communication on the prescription.

(4) Notwithstanding any provision of this subsection to the contrary, a pharmacist shall not be required to communicate information regarding the biological product dispensed in the following circumstances:

(A) the U.S. Food and Drug Administration has not approved any interchangeable biological products for the product prescribed; or

(B) the pharmacist dispensed a refill prescription in which the product dispensed was unchanged from the product dispensed at the prior filling of the prescription.

(f) The Board of Pharmacy shall maintain a link on its website to the current lists of all biological products that the U.S. Food and Drug Administration has determined to be interchangeable biological products.

Sec. 3. 18 V.S.A. § 4606 is amended to read:

§ 4606. BRAND CERTIFICATION

If the prescriber has determined that the generic equivalent of a drug or the interchangeable biological product for the biological product being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall indicate "brand necessary," "no substitution," "dispense as written," or "DAW" in the prescriber's own handwriting on the prescription blank or shall indicate the same using electronic prescribing technology and the pharmacist shall not substitute the generic equivalent or interchangeable biological product. If a prescription is unwritten and the prescriber has determined that the generic equivalent of the drug or the interchangeable biological product for the biological product being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall expressly indicate to the pharmacist that the brand-name drug or biological product is necessary and substitution is not allowed and the pharmacist shall not substitute the generic equivalent drug or interchangeable biological product.

Sec. 4. 18 V.S.A. § 4607 is amended to read:

§ 4607. INFORMATION; LABELING

(a) Every pharmacy in the state State shall have posted a sign in a prominent place that is in clear unobstructed view which shall read: "Vermont law requires pharmacists in some cases to select a less expensive generic equivalent drug or interchangeable biological product for the drug or biological product prescribed unless you or your physician direct otherwise. Ask your pharmacist."

(b) The label of the container of all drugs and biological products dispensed by a pharmacist under this chapter shall indicate the generic or proper name using an abbreviation if necessary, the strength of the drug or biological product, if applicable, and the name or number of the manufacturer or distributor.

Sec. 5. 18 V.S.A. § 4608 is amended to read:

§ 4608. LIABILITY

(a) Nothing in this chapter shall affect a licensed hospital with the development and maintenance of a hospital formulary system in accordance with that institution's policies and procedures that pertain to its drug distribution system developed by the medical staff in cooperation with the hospital's pharmacist and administration.

(b) The substitution of a generic drug or interchangeable biological product by a pharmacist under the provisions of this chapter does not constitute the practice of medicine.

Sec. 6. 8 V.S.A. § 4089i is amended to read:

§ 4089i. PRESCRIPTION DRUG COVERAGE

* * *

(g) A health insurance or other health benefit plan offered by a health insurer or by a pharmacy benefit manager on behalf of a health insurer that provides coverage for prescription drugs shall apply the same cost-sharing requirements to interchangeable biological products as apply to generic drugs under the plan.

(h) As used in this section:

* * *

(6) “Interchangeable biological products” shall have the same meaning as in 18 V.S.A. § 4601.

~~(h)~~(i) The Department of Financial Regulation shall enforce this section and may adopt rules as necessary to carry out the purposes of this section.

* * * Health Insurance Plan Reporting * * *

Sec. 7. 8 V.S.A. § 4062 is amended to read:

§ 4062. FILING AND APPROVAL OF POLICY FORMS AND PREMIUMS

* * *

(b)(1) In conjunction with a rate filing required by subsection (a) of this section, an insurer shall file a plain language summary of the proposed rate. All summaries shall include a brief justification of any rate increase requested, the information that the Secretary of the U.S. Department of Health and Human Services (HHS) requires for rate increases over 10 percent, and any other information required by the Board. The plain language summary shall be in the format required by the Secretary of HHS pursuant to the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and shall include notification of the public comment period established in subsection (c) of this section. In addition, the insurer shall post the summaries on its website.

(2)(A) In conjunction with a rate filing required by subsection (a) of this section, an insurer shall disclose to the Board:

(i) for all covered prescription drugs, including generic drugs,

brand-name drugs excluding specialty drugs, and specialty drugs dispensed at a pharmacy, network pharmacy, or mail-order pharmacy for outpatient use:

(I) the percentage of the premium rate attributable to prescription drug costs for the prior year for each category of prescription drugs;

(II) the year-over-year increase or decrease, expressed as a percentage, in per-member, per-month total health plan spending on each category of prescription drugs; and

(III) the year-over-year increase or decrease in per-member, per-month costs for prescription drugs compared to other components of the premium rate; and

(ii) the specialty tier formulary list.

(B) The insurer shall provide, if available, the percentage of the premium rate attributable to prescription drugs administered by a health care provider in an outpatient setting that are part of the medical benefit as separate from the pharmacy benefit.

(C) The insurer shall include information on its use of a pharmacy benefit manager, if any, including which components of the prescription drug coverage described in subdivisions (A) and (B) of this subdivision (2) are managed by the pharmacy benefit manager, as well as the name of the pharmacy benefit manager or managers used.

(c)(1) The Board shall provide information to the public on the Board's website about the public availability of the filings and summaries required under this section.

(2)(A) ~~Beginning no later than January 1, 2014, the~~ The Board shall post the rate filings pursuant to subsection (a) of this section and summaries pursuant to subsection (b) of this section on the Board's website within five calendar days of following filing. The Board shall also establish a mechanism by which members of the public may request to be notified automatically each time a proposed rate is filed with the Board.

* * *

Sec. 8. 18 V.S.A. § 4636 is added to read:

§ 4636. IMPACT OF PRESCRIPTION DRUG COSTS ON HEALTH

INSURANCE PREMIUMS; REPORT

(a)(1) Each health insurer with more than 1,000 covered lives in this State shall report to the Green Mountain Care Board, for all covered prescription drugs, including generic drugs, brand-name drugs, and specialty drugs

provided in an outpatient setting or sold in a retail setting:

(A) the 25 most frequently prescribed drugs and the average wholesale price for each drug;

(B) the 25 most costly drugs by total plan spending and the average wholesale price for each drug; and

(C) the 25 drugs with the highest year-over-year price increases and the average wholesale price for each drug.

(2) A health insurer shall not be required to provide to the Green Mountain Care Board the actual price paid, net of rebates, for any prescription drug.

(b) The Green Mountain Care Board shall compile the information reported pursuant to subsection (a) of this section into a consumer-friendly report that demonstrates the overall impact of drug costs on health insurance premiums. The data in the report shall be aggregated and shall not reveal information as specific to a particular health benefit plan.

(c) The Board shall publish the report required pursuant to subsection (b) of this section on its website on or before January 1 of each year.

* * * Prescription Drug Price Transparency and Notice of
New High-Cost Drugs * * *

Sec. 9. 18 V.S.A. § 4635 is amended to read:

§ 4635. PHARMACEUTICAL PRESCRIPTION DRUG COST TRANSPARENCY

(a) As used in this section:

(1) “Manufacturer” shall have the same meaning as “pharmaceutical manufacturer” in section 4631a of this title.

(2) “Prescription drug” means a drug as defined in 21 U.S.C. § 321.

(b)(1)(A) The Green Mountain Care Board, in collaboration with the Department of Vermont Health Access, shall identify create annually up to 15 a list of 10 prescription drugs on which the State spends significant health care dollars and for which the wholesale acquisition cost has increased by 50 percent or more over the past five years or by 15 percent or more over the past 12 months during the previous calendar year, creating a substantial public interest in understanding the development of the drugs’ pricing. The drugs identified shall represent different drug classes. The list shall include at least one generic and one brand-name drug and shall indicate each of the drugs on the list that the Department considers to be specialty drugs. The Department

shall include the percentage of the wholesale acquisition cost increase for each drug on the list; rank the drugs on the list from those with the largest increase in wholesale acquisition cost to those with the smallest increase; indicate whether each drug was included on the list based on its cost increase over the past five years or during the previous calendar year, or both; and provide the Department's total expenditure for each drug on the list during the most recent calendar year.

(B) The Department of Vermont Health Access shall create annually a list of 10 prescription drugs on which the State spends significant health care dollars and for which the cost to the Department of Vermont Health Access, net of rebates and other price concessions, has increased by 50 percent or more over the past five years or by 15 percent or more during the previous calendar year, creating a substantial public interest in understanding the development of the drugs' pricing. The list shall include at least one generic and one brand-name drug and shall indicate each of the drugs on the list that the Department considers to be specialty drugs. The Department shall rank the drugs on the list from those with the greatest increase in net cost to those with the smallest increase and indicate whether each drug was included on the list based on its cost increase over the past five years or during the previous calendar year, or both.

(C)(i) Each health insurer with more than 5,000 covered lives in this State for major medical health insurance shall create annually a list of 10 prescription drugs on which its health insurance plans spend significant amounts of their premium dollars and for which the cost to the plans, net of rebates and other price concessions, has increased by 50 percent or more over the past five years or by 15 percent or more during the previous calendar year, or both, creating a substantial public interest in understanding the development of the drugs' pricing. The list shall include at least one generic and one brand-name drug and shall indicate each of the drugs on the list that the health insurer considers to be specialty drugs.

(ii) A health insurer shall not be required to identify the exact percentage by which the net cost to its plans for any prescription drug increased over any specific period of time, but shall rank the drugs on its list in order from the largest to the smallest cost increase and shall provide the insurer's total expenditure, net of rebates and other price concessions, for each drug on the list during the most recent calendar year.

(2) The ~~Board~~ Department of Vermont Health Access and the health insurers shall provide to the Office of the Attorney General and the Green Mountain Care Board the list lists of prescription drugs developed pursuant to this subsection and ~~the percentage of the wholesale acquisition cost increase for each drug and~~ annually on or before June 1. The Office of the Attorney

General and the Green Mountain Care Board shall make all of the information available to the public on the Board's website their respective websites.

(c)(1)(A) For each prescription drug identified Of the prescription drugs listed by the Department of Vermont Health Access and the health insurers pursuant to subsection (b) subdivisions (b)(1)(B) and (C) of this section, the Office of the Attorney General shall identify 15 drugs as follows:

(i) of the drugs appearing on more than one payer's list, the Office of the Attorney General shall identify the top 15 drugs on which the greatest amount of money was spent across all payers during the previous calendar year, to the extent information is available; and

(ii) if fewer than 15 drugs appear on more than one payer's list, the Office of the Attorney General shall rank the remaining drugs based on the amount of money spent by any one payer during the previous calendar year, in descending order, and select as many of the drugs at the top of the list as necessary to reach a total of 15 drugs.

(B) For the 15 drugs identified by the Office of the Attorney General pursuant to subdivision (A) of this subdivision (1), the Office of the Attorney General shall require the drug's manufacturer of each such drug to provide a justification all of the following:

(i) Justification for the increase in the wholesale acquisition net cost of the drug to the Department of Vermont Health Access, to one more health insurers, or both, which shall be provided to the Office of the Attorney General in a format that the Office of the Attorney General determines to be understandable and appropriate and shall be provided in accordance with a timeline specified by the Office of the Attorney General. The manufacturer shall submit to the Office of the Attorney General all relevant information and supporting documentation necessary to justify the manufacturer's wholesale acquisition net cost increase over to the Department of Vermont Health Access, to one more health insurers, or both during the identified period of time, which may include including:

(A)(I) all factors that have contributed to the wholesale acquisition each factor that specifically caused the net cost increase over to the Department of Vermont Health Access, to one more health insurers, or both during the specified period of time;

(B)(II) the percentage of the total wholesale acquisition cost increase attributable to each factor; and

(C)(III) an explanation of the role of each factor in contributing to the wholesale acquisition cost increase.

(ii) A separate version of the information submitted pursuant to

subdivision (i) of this subdivision (1)(B), which shall be made available to the public by the Office of the Attorney General and the Green Mountain Care Board pursuant to subsection (d) of this section. In the event that the manufacturer believes it necessary to redact certain information in the public version as proprietary or confidential, the manufacturer shall provide an explanation for each such redaction to the Office of the Attorney General. The information, format, and any redactions shall be subject to approval by the Office of the Attorney General.

(iii) Additional information in response to all requests for such information by the Office of the Attorney General.

(2) Nothing in this section shall be construed to restrict the legal ability of a prescription drug manufacturer to change prices to the extent permitted under federal law.

~~(d)(1) The Attorney General, in consultation with the Department of Vermont Health Access, shall provide a report to the General Assembly on or before December 1 of each year based on the information received from manufacturers pursuant to this section. The Attorney General shall also post the report and the public version of each manufacturer's information submitted pursuant to subdivision (c)(1)(B)(ii) of this section on the Office of the Attorney General's website.~~

(2) The Green Mountain Care Board shall post on its website the report prepared by the Attorney General pursuant to subdivision (1) of this subsection and the public version of each manufacturer's information submitted pursuant to subdivision (c)(1)(B)(ii) of this section, and may inform the public of the availability of the report and the manufacturers' justification information.

(e) Information provided to the Office of the Attorney General pursuant to this section is exempt from public inspection and copying under the Public Records Act and shall not be released in a manner that allows for the identification of an individual drug or manufacturer or that is likely to compromise the financial, competitive, or proprietary nature of the information, except for the information prepared for release to the public pursuant to subdivision (c)(1)(B)(ii) of this section.

(f) The Attorney General may bring an action in the Civil Division of the Superior Court, Washington County for injunctive relief, costs, and attorney's fees, and to impose on a manufacturer that fails to provide any of the information required by subsection (c) of this section, in the format requested by the Office of the Attorney General and in accordance with the timeline specified by the Office of the Attorney General, a civil penalty of ~~no~~ not more than \$10,000.00 per violation. Each unlawful failure to provide information shall constitute a separate violation. In any action brought pursuant to this

section, the Attorney General shall have the same authority to investigate and to obtain remedies as if the action were brought under the Consumer Protection Act, 9 V.S.A. chapter 63.

Sec. 10. 18 V.S.A. § 4637 is added to read:

§ 4637. NOTICE OF INTRODUCTION OF NEW HIGH-COST

PRESCRIPTION DRUGS

(a) As used in this section:

(1) “Manufacturer” shall have the same meaning as “pharmaceutical manufacturer” in section 4631a of this title.

(2) “Prescription drug” means a drug as defined in 21 U.S.C. § 321.

(b) A prescription drug manufacturer shall notify the Office of the Attorney General in writing if it is introducing a new prescription drug to market at a wholesale acquisition cost that exceeds the threshold set for a specialty drug under the Medicare Part D program. The manufacturer shall provide the written notice within three calendar days following the release of the drug in the commercial market. A manufacturer may make the notification pending approval by the U.S. Food and Drug Administration (FDA) if commercial availability is expected within three calendar days following the approval.

(c) Not later than 30 calendar days following notification pursuant to subsection (b) of this section, the manufacturer shall provide all of the following information to the Office of the Attorney General in a format that the Office prescribes:

(1) a description of the marketing and pricing plans used in the launch of the new drug in the United States and internationally;

(2) the estimated volume of patients who may be prescribed the drug;

(3) whether the drug was granted breakthrough therapy designation or priority review by the FDA prior to final approval; and

(4) the date and price of acquisition if the drug was not developed by the manufacturer.

(d) The manufacturer may limit the information reported pursuant to subsection (c) of this section to that which is otherwise in the public domain or publicly available.

(e) The Office of the Attorney General shall publish on its website at least quarterly the information reported to it pursuant to this section. The information shall be published in a manner that identifies the information that

is disclosed on a per-drug basis and shall not be aggregated in a manner that would not allow identification of the drug.

(f) The Attorney General may bring an action in the Civil Division of the Superior Court, Washington County for injunctive relief, costs, and attorney's fees and to impose on a manufacturer that fails to provide the information required by subsection (c) of this section a civil penalty of not more than \$1,000.00 per day for every day after the notification period described in subsection (b) of this section that the required information is not reported. In any action brought pursuant to this section, the Attorney General shall have the same authority to investigate and to obtain remedies as if the action were brought under the Consumer Protection Act, 9 V.S.A. chapter 63.

* * * Disclosures by Pharmacists * * *

Sec. 11. 18 V.S.A. § 9473(b) is amended to read:

(b) A pharmacy benefit manager or other entity paying pharmacy claims shall not:

(1) impose a higher co-payment for a prescription drug than the co-payment applicable to the type of drug purchased under the insured's health plan;

(2) impose a higher co-payment for a prescription drug than the maximum allowable cost for the drug; or

(3) require a pharmacy to pass through any portion of the insured's co-payment to the pharmacy benefit manager or other payer;

(4) prohibit or penalize a pharmacy or pharmacist for providing information to an insured regarding the insured's cost-sharing amount for a prescription drug; or

(5) prohibit or penalize a pharmacy or pharmacist for the pharmacist or other pharmacy employee disclosing to an insured the cash price for a prescription drug or selling a lower cost drug to the insured if one is available.

* * * Effective Dates * * *

Sec. 12. EFFECTIVE DATES

(a) Secs. 1–6 (interchangeable biological products) shall take effect on July 1, 2018.

(b) Sec. 11 (18 V.S.A. § 9473; disclosures by pharmacists) shall take effect on July 1, 2018 and shall apply to all contracts taking effect on or after that date.

(c) The remaining sections shall take effect on passage.

and that after passage the title of the bill be amended to read: “An act relating to prescription drug price transparency and cost containment”

(Committee vote: 11-0-0)

(For text see Senate Journal March 22, 2018)

S. 173

An act relating to sealing criminal history records when there is no conviction

Rep. Jessup of Middlesex, 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. 13 V.S.A. § 7602 is amended to read:

§ 7602. EXPUNGEMENT AND SEALING OF RECORD,
POSTCONVICTION; PROCEDURE

* * *

(c)(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.

(B) The person has not been convicted of a felony arising out of a new incident or occurrence ~~since the person was convicted of the qualifying crime in the last 7 years.~~

(C) The person has not been convicted of a misdemeanor during the past five years.

(D) Any restitution ordered by the court for any crime of which the person has been convicted has been paid in full.

(E) After considering the particular nature of any subsequent offense, the court finds that expungement of the criminal history record for the qualifying crime serves the interest of justice.

* * *

Sec. 2. 13 V.S.A. § 7603 is amended to read:

§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO
CONVICTION; PROCEDURE

~~(a) A person who was cited or arrested for a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or Unless either party objects in the interest of justice, the court shall issue an order sealing of the criminal history record related to the citation or arrest if one of the following conditions is met of a person:~~

~~(1) No criminal charge is filed by the State and the statute of limitations has expired.~~

~~(2) The twelve months after the dismissal if:~~

~~(A) the court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment and the statute of limitations has expired; or~~

~~(3)(B) The the charge is dismissed before trial:~~

~~(A) without prejudice and the statute of limitations has expired; or~~

~~(B) with prejudice.~~

~~(4)(2) The at any time if the prosecuting attorney and the defendant and the respondent stipulate that the court may grant the petition to expunge and seal the record.~~

~~(b) The State's Attorney or Attorney General shall be the respondent in the matter. If a party objects to sealing or expunging a record pursuant to this section, the court shall schedule a hearing to determine if sealing or expunging the record serves the interest of justice. The petitioner defendant and the respondent prosecuting attorney shall be the only parties in the matter.~~

~~(c) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if it finds that expungement of the criminal history record serves the interest of justice. [Repealed.]~~

~~(d) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if:~~

~~(1) The court finds that sealing the criminal history record better serves the interest of justice than expungement.~~

~~(2) The person committed the qualifying crime after reaching 19 years of age. [Repealed.]~~

~~(e) Unless either party objects in the interest of justice, the court shall issue an order expunging a criminal history record related to the citation or arrest of a person:~~

(1) not more than 45 days after:

(A) acquittal if the defendant is acquitted of the charges; or

(B) dismissal if the charge is dismissed with prejudice before trial;

(2) at any time if the prosecuting attorney and the defendant stipulate that the court may grant the petition to expunge the record.

(f) Unless either party objects in the interest of justice, the court shall issue an order to expunge a record sealed pursuant to subsection (a) or (g) of this section after the statute of limitations has expired.

(g) A person may file a petition with the court requesting sealing or expungement of a criminal history record related to the citation or arrest of the person at any time. The court shall grant the petition and issue an order sealing or expunging the record if it finds that sealing or expunging the record serves the interest of justice.

(h) The court may expunge any records that were sealed pursuant to this section prior to July 1, 2018 unless the State's Attorney's office that prosecuted the case objects. Thirty days prior to expunging a record pursuant to this subsection, the court shall provide to the State's Attorney's office that prosecuted the case written notice of its intent to expunge the record.

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. DEPARTMENT OF STATE’S ATTORNEYS AND SHERIFFS;
EXPUNGEMENT-ELIGIBLE CRIMES; AUTOMATIC
EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY
RECORDS; REPORT

The Department of State’s Attorneys and Sheriffs, in consultation with the Office of the Court Administrator, the Vermont Crime Information Center, the Office of the Attorney General, the Office of the Defender General, the Center for Crime Victim Services, and Vermont Legal Aid, shall:

(1) consider:

(A) expanding the list of qualifying crimes eligible for expungement pursuant to 13 V.S.A. § 7601 to include any nonviolent drug-related offenses;

(B) the implications of such an expansion on public health, economic development, and law enforcement efforts in the State; and

(C) the viability of automating the process of expunging and sealing criminal history records;

(2) seek input from the Vermont Governor’s Opioid Coordination Council; and

(3) on or before November 1, 2018, report to the Joint Legislative Justice Oversight Committee on the findings of the group, including any recommendations on specific crimes to add to the definition of qualifying crimes pursuant to 13 V.S.A. § 7601.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(Committee vote: 9-0-2)

(For text see Senate Journal March 13, 2018)

S. 289

An act relating to protecting consumers and promoting an open Internet in Vermont.

Rep. Sibilía of Dover, for the Committee on Energy and Technology, 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:

* * * Legislative Findings * * *

Sec. 1. FINDINGS

The General Assembly finds and declares that:

(1) Our State has a compelling interest in preserving and promoting an open Internet in Vermont.

(2) As Vermont is a rural state with many geographically remote locations, broadband Internet access service is essential for supporting economic and educational opportunities, strengthening health and public safety networks, and reinforcing freedom of expression and democratic, social, and civic engagement.

(3) The accessibility and quality of communications networks in Vermont, specifically broadband Internet access service, will critically impact our State's future.

(4) Net neutrality is an important topic for many Vermonters. Nearly 50,000 comments attributed to Vermonters were submitted to the FCC during the *Notice of Proposed Rulemaking* regarding the *Restoring Internet Freedom Order*; WC Docket No. 17-108, FCC 17-166. Transparency with respect to the network management practices of ISPs doing business in Vermont will continue to be of great interest to many Vermonters.

(5) In 1996, Congress recognized that “[t]he Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity” and “[i]ncreasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.” 47 U.S.C. § 230(a)(3) and (5).

(6) Many Vermonters do not have the ability to choose easily between Internet service providers (ISPs). This lack of a thriving competitive market, particularly in isolated locations, disadvantages the ability of consumers and businesses to protect their interests sufficiently.

(7) Without net neutrality, “ISPs will have the power to decide which websites you can access and at what speed each will load. In other words,

they'll be able to decide which companies succeed online, which voices are heard – and which are silenced.” Tim Berners-Lee, founder of the World Wide Web and Director of the World Wide Web Consortium (W3C), December 13, 2017.

(8) The Federal Communications Commission’s (FCC’s) recent repeal of the federal net neutrality rules pursuant to its *Restoring Internet Freedom Order* manifests a fundamental shift in policy.

(9) The FCC anticipates that a “light-touch” regulatory approach under Title I of the Communications Act of 1934, rather than “utility-style” regulation under Title II, will further advance the Congressional goals of promoting broadband deployment and infrastructure investment.

(10) The FCC’s regulatory approach is unlikely to achieve the intended results in Vermont. The policy does little, if anything, to overcome the financial challenges of bringing broadband service to hard-to-reach locations with low population density. However, it may result in degraded Internet quality or service. The State has a compelling interest in preserving and protecting consumer access to high quality Internet service.

(11) The economic theory advanced by the FCC in 2010 known as the “virtuous circle of innovation” seems more relevant to the market conditions in Vermont. See *In re Preserving the Open Internet*, 25 F.C.C.R. 17905, 17910-11 (2010).

(12) As explained in the FCC’s 2010 Order, “The Internet’s openness. . . enables a virtuous circle of innovation in which new uses of the network – including new content, applications, services, and devices – lead to increased end-user demand for broadband, which drives network improvements, which in turn lead to further innovative network uses. Novel, improved, or lower-cost offerings introduced by content, application, service, and device providers spur end-user demand and encourage broadband providers to expand their networks and invest in new broadband technologies.” 25 FCC Rcd. at 17910-11, upheld by *Verizon v. FCC*, 740 F.3d 623, 644-45 (D.C. Circuit 2014).

(13) As affirmed by the FCC five years later, “[t]he key insight of the virtuous cycle is that broadband providers have both the incentive and the ability to act as gatekeepers standing between edge providers and consumers. As gatekeepers, they can block access altogether; they can target competitors, including competitors in their own video services; and they can extract unfair tolls.” *Open Internet Order*, 30 FCC Rcd at para. 20.

(14) The State may exercise its traditional role in protecting consumers from potentially unfair and anticompetitive business practices. Doing so will provide critical protections for Vermont individuals, entrepreneurs, and small

businesses that do not have the financial clout to negotiate effectively with commercial providers, some of whom may provide services and content that directly compete with Vermont companies or companies with whom Vermonters do business.

(15) The FCC’s most recent order expressly contemplates state exercise of traditional police powers on behalf of consumers: “we do not disturb or displace the states’ traditional role in generally policing such matters as fraud, taxation, and general commercial dealings, so long as the administration of such general state laws does not interfere with federal regulatory objectives.” *Restoring Internet Freedom Order*, WC Docket No. 17-108, FCC 17-166, para. 196.

(16) The benefits of State measures designed to protect the ability of Vermonters to have unfettered access to the Internet far outweigh the benefits of allowing ISPs to manipulate Internet traffic for pecuniary gain.

(17) The most recent order of the FCC contemplates federal and local enforcement agencies preventing harm to consumers: “In the unlikely event that ISPs engage in conduct that harms Internet openness. . . we find that utility-style regulation is unnecessary to address such conduct. Other legal regimes – particularly antitrust law and the FTC’s authority under Section 5 of the FTC Act to prohibit unfair and deceptive practices – provide protections to consumers.” para. 140. The Attorney General enforces antitrust violations or violations of the Consumer Protection Act in Vermont.

(18) The Governor’s Executive Order No. 2-18, requiring all State agency contracts with Internet service providers to include net neutrality protections, manifests a significant and reasonable step toward preserving an open Internet in Vermont.

(19) The State has a compelling interest in knowing with certainty what services it receives pursuant to State contracts.

(20) Procurement laws are for the benefit of the State. When acting as a market participant, the government enjoys unrestricted power to contract with whomever it deems appropriate and purchase only those goods or services it desires.

(21) The disclosures required by this act are a reasonable exercise of the State’s traditional police powers and will support the State’s efforts to monitor consumer protection and economic factors in Vermont, particularly with regard to competition, business practices, and consumer choice, and will also enable consumers to stay apprised of the network management practices of ISPs offering service in Vermont.

(22) The State is in the best position to balance the needs of its

constituencies with policies that best serve the public interest. The State has a compelling interest in promoting Internet consumer protection and net neutrality standards. Any incidental burden on interstate commerce resulting from the requirements of this act is far outweighed by the compelling interests the State advances.

* * * Consumer Protection; Disclosure; Net Neutrality Compliance * * *

Sec. 2. 9 V.S.A. § 2466c is added to read:

§ 2466c. INTERNET SERVICE; NETWORK MANAGEMENT;

ATTORNEY GENERAL REVIEW AND DISCLOSURE

(a) The Attorney General shall review the network management practices of Internet service providers in Vermont and, to the extent possible, make a determination as to whether the provider's broadband Internet access service complies with the open Internet rules contained in the Federal Communications Commission's 2015 Open Internet Order, "Protecting and Promoting the Open Internet," WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling and Order, 30 FCC Rcd 5601.

(b) The Attorney General shall disclose his or her findings under this section on a publicly available, easily accessible website maintained by his or her office.

* * * Net Neutrality Study; Attorney General * * *

Sec. 3. NET NEUTRALITY STUDY

On or before December 15, 2018, the Attorney General, in consultation with the Commissioner of Public Service and with input from industry and consumer stakeholders, shall submit findings and recommendations in the form of a report or draft legislation to the Senate Committees on Finance and on Economic Development, Housing and General Affairs and the House Committees on Energy and Technology and on Commerce and Economic Development reflecting whether and to what extent the State should enact net neutrality rules applicable to Internet service providers offering broadband Internet access service in Vermont. Among other things, the Attorney General shall consider:

(1) the scope and status of federal law related to net neutrality and ISP regulation;

(2) the scope and status of net neutrality rules proposed or enacted in state and local jurisdictions;

(3) methods for and recommendations pertaining to the enforcement of net neutrality requirements;

(4) the economic impact of federal or state changes to net neutrality policy, including to the extent practicable methods for and recommendations pertaining to tracking broadband investment and deployment in Vermont and otherwise monitoring market conditions in the State;

(5) the efficacy of the Governor's Executive Order No. 2-18, requiring all State agency contracts with Internet service providers to include net neutrality protections;

(6) proposed courses of action that balance the benefits to society that the communications industry brings with actual and potential harms the industry may pose to consumers; and

(7) any other factors and considerations the Attorney General deems relevant to making recommendations pursuant to this section.

* * * Connectivity Initiative; Grant Eligibility; H.581 * * *

Sec. 4. 30 V.S.A. § 7515b is amended to read:

§ 7515b. CONNECTIVITY INITIATIVE

(a) The purpose of the Connectivity Initiative is to provide each service location in Vermont access to Internet service that is capable of speeds of at least 10 Mbps download and 1 Mbps upload, or the FCC speed requirements established under Connect America Fund Phase II, whichever is higher, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time. Within this category of service locations, priority shall be given first to unserved and then to underserved locations. As used in this section, "unserved" means a location having access to only satellite or dial-up Internet service and "underserved" means a location having access to Internet service with speeds that exceed satellite and dial-up speeds but are less than 4 Mbps download and 1 Mbps upload. Any new services funded in whole or in part by monies from this Initiative shall be capable of being continuously upgraded to reflect the best available, most economically feasible service capabilities.

(b) The Department of Public Service shall publish annually a list of census blocks eligible for funding based on the Department's most recent broadband mapping data. The Department annually shall solicit proposals from service providers to deploy broadband to eligible census blocks. Funding shall be available for capital improvements only, not for operating and maintenance expenses. The Department shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations; however, the Department also shall consider:

(1) the proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;

- (2) the price to consumers of services;
- (3) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;
- (4) whether the proposal would use the best available technology that is economically feasible;
- (5) the availability of service of comparable quality and speed; and
- (6) the objectives of the State's Telecommunications Plan.

* * * Effective Date * * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 8-0-0)

(For text see Senate Journal January 31, February 2, 2018)

Favorable

H. 926

An act relating to approval of amendments to the charter of the Town of Colchester

Rep. Lewis of Berlin, for the Committee on Government Operations, recommends the bill ought to pass.

(Committee Vote: 9-0-2)

Senate Proposal of Amendment

H. 300

An act relating to the statute of limitations for recovery and possession of property actions against the grantee of a tax collector's deed

The Senate proposes to the House to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 2293 is amended to read:

§ 2293. EXTINGUISHMENT OF CLAIM FOR RELIEF

A claim for relief with respect to a transfer or obligation under this chapter is extinguished unless action is brought:

- (1) under subdivision 2288(a)(1) of this title not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under subdivision 2288(a)(2) or subsection 2289(a) of this title not later than four years after the transfer was made or the obligation was incurred; ~~or~~

(3) under subsection 2289(b) of this title, not later than one year after the transfer was made or the obligation was incurred; or

(4) pursuant to the provisions of 32 V.S.A. chapter 133, subchapter 9 for a tax sale, not later than two years after the tax collector's deed is delivered to the successful bidder at the tax sale.

Sec. 2. 32 V.S.A. § 5263 is amended to read:

§ 5263. LIMITATION OF ACTIONS AGAINST GRANTEE IN
POSSESSION

An action for the recovery of lands, or the possession thereof, shall not be maintained against the grantee of such lands in a tax collector's deed, duly recorded, or his or her heirs or assigns, when the grantee, his or her heirs or assigns have been in continuous and open possession of the land conveyed in such deed and have paid the taxes thereon, unless commenced within ~~three years~~ one year after the cause of action first accrues to the plaintiff or those under whom he or she claims.

Sec. 3. 32 V.S.A. § 5252 is amended to read:

§ 5252. LEVY AND NOTICE OF SALE; SECURING PROPERTY

(a) When the collector of taxes of a town or of a municipality within it has for collection a tax assessed against real estate in the town and the taxpayer is delinquent, the collector may extend a warrant on such land. If a collector receives notice from a mobile home park owner pursuant to 10 V.S.A. § 6248(c), the collector shall, within 15 days ~~of~~ after the notice, commence tax sale proceedings to hold a tax sale within 60 days ~~of~~ after the notice. If the collector fails to initiate such proceedings, the town may initiate tax sale proceedings only after complying with 10 V.S.A. § 6249(f). If the tax collector extends the warrant, the collector shall:

(1) File in the office of the town clerk for record a true and attested copy of the warrant and so much of the tax bill committed to the collector for collection as relates to the tax against the delinquent taxpayer, a sufficient description of the land so levied upon, and a statement in writing that by virtue of the original tax warrant and tax bill committed to the collector for collection, the collector has levied upon the described land.

(2) Advertise forthwith such land for sale at public auction in the town where it lies three weeks successively in a newspaper circulating in the vicinity, the last publication to be at least 10 days before such sale.

(3) Give the delinquent taxpayer written notice by ~~registered~~ certified mail requiring a return receipt directed to the last known address of the delinquent of the date and place of such sale at least 10 days prior thereto if the delinquent is a resident of the town, and 20 days prior thereto if the delinquent is a nonresident of the town. If the notice by certified mail is returned unclaimed, notice shall be provided to the taxpayer by resending the notice by first-class mail or by personal service pursuant to Rule 4 of the Vermont Rules of Civil Procedure.

(4) Give to the mortgagee or lien holder of record written notice of such sale at least 10 days prior thereto if a resident of the town, and if a nonresident, 20 days' notice to the mortgagee or lien holder of record or his or her agent or attorney by ~~registered~~ certified mail requiring a return receipt directed to the last known address of such person. If the notice by certified mail is returned unclaimed, notice shall be provided by resending the notice by first-class mail or by personal service pursuant to Rule 4 of the Vermont Rules of Civil Procedure.

(5) Post a notice of such sale in some public place in the town.

* * *

Sec. 4. 32 V.S.A. § 5258 is amended to read:

§ 5258. FEES AND COSTS ALLOWED AFTER WARRANT AND LEVY RECORDED

(a) The fees and costs allowed after the warrant and levy for delinquent taxes have been recorded shall be as follows:

(1) levy and extending of warrant, \$10.00;

(2) recording levy and extending of warrant in the town clerk's office, \$10.00, to be paid to the town clerk;

(3) notices and publication of notices, actual costs incurred, including the costs of service pursuant to subdivisions 5252(a)(3) and (4) of this title;

(4) expenses actually and reasonably incurred by the town in securing a property for which property taxes are delinquent against illegal activity and fire hazards, to be paid to the town clerk, provided that the expenses shall not exceed 20 percent of the uncollected tax;

(5) when authorized by the selectboard, expenses actually and reasonably incurred by the tax collector for legal assistance in the preparation for or conduct of a tax sale, provided that the expenses shall not exceed 15 percent of the uncollected tax;

(6) travel reimbursement at the rate established by the contract

governing State employees;

(7) attending and holding the sale, \$10.00;

(8) making return and recording the return in the town clerk's office, \$10.00, to be paid to the town clerk;

(9) collector's deed, \$30.00;

(b) ~~the~~ The fees and costs allowed in subsection (a) of this section, together with a collector's fee of up to eight percent, shall be in lieu of all other fees and costs.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(For text see House Journal January 23, 2018)

H. 429

An act relating to establishment of a communication facilitator program

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

In Sec. 2, in the first sentence, after the word "establishment" by inserting the word of.

(For text see House Journal March 20, 2018)

Action Postponed Until April 19, 2018

Senate Proposal of Amendment

H. 874

An act relating to inmate access to prescription drugs

The Senate proposes to the House to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 28 V.S.A. § 801 is amended to read:

§ 801. MEDICAL CARE OF INMATES

* * *

(e)(1) Except as otherwise provided in this subsection, an offender who is admitted to a correctional facility while under the medical care of a licensed physician, a licensed physician assistant, or a licensed advanced practice registered nurse, ~~or a licensed nurse practitioner~~ and who is taking medication at the time of admission pursuant to a valid prescription as verified by the inmate's pharmacy of record, primary care provider, other licensed care provider, or as verified by the Vermont Prescription Monitoring System or

other prescription monitoring or information system shall be entitled to continue that medication and to be provided that medication by the Department pending an evaluation by a licensed physician, a licensed physician assistant, a licensed nurse practitioner, or a licensed advanced practice registered nurse.

(2) However, Notwithstanding subdivision (1) of this subsection, the Department may defer provision of a validly prescribed medication in accordance with this subsection if, in the clinical judgment of a licensed physician, a physician assistant, a nurse practitioner, or an advanced practice registered nurse, it is not in the inmate's best interest medically necessary to continue the medication at that time.

(3) The licensed practitioner who makes the clinical judgment to discontinue a medication shall enter cause the reason for the discontinuance to be entered into the inmate's permanent medical record, specifically stating the reason for the discontinuance. The inmate shall be provided, both orally and in writing, with a specific explanation of the decision to discontinue the medication and with notice of the right to have his or her community-based prescriber notified of the decision. If the inmate provides signed authorization, the Department shall notify the community-based prescriber in writing of the decision to discontinue the medication.

(4) It is not the intent of the General Assembly that this subsection shall create a new or additional private right of action.

* * *

Sec. 2. DATA COLLECTION

(a) The Department of Corrections shall collect information on: how often a medication for which an inmate has a valid prescription is continued or discontinued upon incarceration at each correctional facility, the name of the medication, and the reason for discontinuance.

(b) The Department shall collect this information for a period of at least six months and provide a written report of its findings based on the data collected, including a breakdown by correctional facility of record, to the House Committee on Corrections and Institutions and the Senate Committee on Institutions on or before January 31, 2019. Prior to finalizing the report, the Department shall consult with the Prisoners' Rights Office and Disability Rights Vermont.

(c) Nothing in this section shall require the Department to reveal individually identifiable health information in violation of State or federal law.

Sec. 3. EFFECTIVE DATES

(a) This section and Sec. 2 shall take effect on passage.

(b) Sec. 1 shall take effect on July 1, 2018.

(For text see House Journal March 13, 2018)

NOTICE CALENDAR

Favorable with Amendment

S. 272

An act relating to miscellaneous changes to laws related to motor vehicles

Rep. Brennan of Colchester, for the Committee on Transportation, 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:

* * * Special Plates and Placards for Persons with Disabilities * * *

Sec. 1. 23 V.S.A. § 304a(b) is amended to read:

(b) Special registration plates or removable windshield placards, or both, shall be issued by the Vermont Commissioner of Motor Vehicles. The placard shall be issued without a fee to a person who is blind or has an ambulatory disability. One set of plates shall be issued without additional fees for a vehicle registered or leased to a person who is blind or has an ambulatory disability or to a parent or guardian of a person with a permanent disability. The Commissioner shall issue these placards or plates under rules adopted by him or her after proper application has been made to the Commissioner by any person residing within the State of Vermont. Application forms shall be available on request at the Department of Motor Vehicles.

* * *

* * * Eliminating Requirements to Return License Plates * * *

Sec. 2. 23 V.S.A. § 326 is amended to read:

§ 326. REFUND UPON LOSS OF VEHICLE

The Commissioner may cancel the registration of a motor vehicle when the owner thereof proves to his or her satisfaction that it has been totally destroyed by fire, or, through accident or wear, has become wholly unfit for use and has been dismantled. ~~Upon the cancellation of such~~ After the Commissioner cancels the registration and the return owner returns to the Commissioner of either the registration certificate, or the number plates and the validation sticker (if issued for that year), the Commissioner shall certify to the Commissioner of Finance and Management the fact of such the cancellation, giving the name of the owner of such the motor vehicle, his or her address, the amount of the registration fee paid, and the date of such cancellation. The

Commissioner of Finance and Management shall issue his or her warrant in favor of the owner for such percent of the registration fee paid as the unexpired term of the registration bears to the entire registration period, but in no case shall the Commissioner retain less than \$5.00 of the fee paid.

Sec. 3. 23 V.S.A. § 327 is amended to read:

§ 327. REFUND WHEN PLATES NOT USED

Subject to the conditions set forth in subdivisions (1), (2), and (3) of this section, the Commissioner may cancel the registration of a motor vehicle, snowmobile, or ~~motor boat~~ motorboat when the owner returns to the Commissioner either the number plates, if any, and or the registration certificate to the Commissioner. Upon cancellation of the registration, the Commissioner shall notify the Commissioner of Finance and Management, who shall issue a refund as follows:

(1) For registrations cancelled prior to the beginning of the registration period, the refund is the full amount of the fee paid, less a ~~fee~~ charge of \$5.00.

(2) For registrations cancelled within 30 days of the date of issue, the refund is the full amount of the fee paid, less a charge of \$5.00. The owner of a motor vehicle must prove to the Commissioner's satisfaction that the number plates have not been used or attached to a motor vehicle.

(3) For registrations cancelled prior to the beginning of the second year of a two-year registration period, the refund is one-half of the full amount of the two-year fee paid, less a charge of \$5.00.

* * * Veterans; Fee Exemptions * * *

Sec. 4. 23 V.S.A. § 378 is amended to read:

§ 378. VETERANS' EXEMPTIONS

No fees shall be charged an ~~an~~ honorably discharged veterans veteran of the U.S. Armed Forces, ~~who are residents~~ is a resident of the State of Vermont for the registration of a motor vehicle granted that the veteran by the Veterans' Administration has acquired with financial assistance from the U.S. Department of Veterans Affairs, or for the registration of a motor vehicle owned by him or her during his or her lifetime obtained as a replacement thereof, when his or her application is accompanied by a certificate copy of an approved VA Form 21-4502 issued by the Veterans' Administration center U.S. Department of Veterans Affairs certifying him or her to be entitled to such exemption ~~the financial assistance.~~

Sec. 5. 23 V.S.A. § 609 is amended to read:

§ 609. VETERANS' EXEMPTION

No fees shall be charged ~~an~~ an honorably discharged ~~veterans~~ veteran of the U.S. Armed Forces, ~~who are residents~~ is a resident of the State of Vermont, for a license to operate a motor vehicle, when the veteran has ~~received~~ acquired a motor vehicle with financial assistance from the ~~Veterans' Administration~~ U.S. Department of Veterans Affairs and he or she is otherwise eligible to be granted ~~such~~ the license, and when his or her application is accompanied by a ~~certificate~~ copy of an approved VA Form 21-4502 issued by the ~~Veterans' Administration~~ U.S. Department of Veterans Affairs certifying him or her to be entitled to ~~such exemption~~ the financial assistance.

Sec. 6. 23 V.S.A. § 2002(a) is amended to read:

(a) The Commissioner shall be paid the following fees:

(1) for any certificate of title, including a salvage certificate of title, or an exempt vehicle title, \$35.00;

* * *

(11) for a certificate of title for a motor vehicle ~~granted~~ acquired by a veteran ~~by~~ with financial assistance from the Veterans' Administration U.S. Department of Veterans Affairs and exempt from registration fees pursuant to section 378 of this title, no fee;

* * *

Sec. 7. 32 V.S.A. § 8911 is amended to read:

§ 8911. EXCEPTIONS

The tax imposed by this chapter shall not apply to:

* * *

(14) A motor vehicle ~~granted~~ acquired by a veteran ~~by~~ with financial assistance from the Veterans' Administration U.S. Department of Veterans Affairs, or a vehicle obtained as a replacement to one ~~granted~~ acquired with such assistance, when accompanied by a ~~certificate~~ copy of an approved VA Form 21-4502 issued by the ~~Veterans' Administration Center~~ U.S. Department of Veterans Affairs certifying the veteran to be entitled to the ~~exemption~~ financial assistance.

* * *

* * * Restoration of Driving Privileges Under Total Abstinence Program * * *

Sec. 8. 23 V.S.A. § 1209a(b) is amended to read:

(b) Abstinence.

(1)(A) Notwithstanding any other provision of this subchapter, a person whose license or privilege to operate has been suspended or revoked for life

under this subchapter may apply to the ~~Driver Rehabilitation School Director~~ and to the Commissioner for reinstatement of his or her driving privilege. The person shall have completed three years of total abstinence from consumption of alcohol ~~or~~ and nonprescription regulated drugs, ~~or both~~. The use of a regulated drug in accordance with a valid prescription shall not disqualify an applicant for reinstatement of his or her driving privileges unless the applicant used the regulated drug in a manner inconsistent with the prescription label.

(B) The beginning date for the period of abstinence shall be ~~no sooner~~ not earlier than the effective date of the suspension or revocation from which the person is requesting reinstatement and shall not include any period during which the person is serving a sentence of incarceration to include furlough. The application shall include the applicant's authorization for a urinalysis examination, or another examination if it is approved as a preliminary screening test under this subchapter, to be conducted prior to reinstatement under this subdivision. The application to the Commissioner shall be accompanied by a fee of \$500.00. The Commissioner shall have the discretion to waive the application fee if the Commissioner determines that payment of the fee would present a hardship to the applicant.

(2) If the Commissioner or a medical review board convened by the Commissioner is satisfied by a preponderance of the evidence that the applicant has abstained for the required number of years immediately preceding the application ~~and hearing,~~ has successfully completed a therapy program as required under this section, and has operated under a valid ignition interlock RDL or under an ignition interlock certificate for at least three years following the suspension or revocation, and the person ~~appreciates~~ provides a written acknowledgment that he or she cannot drink any amount of alcohol ~~and drive safely at all~~ and cannot consume nonprescription regulated drugs under any circumstances, the person's license or privilege to operate shall be reinstated immediately, subject to the condition that the person's suspension or revocation will be put back in effect in the event any further investigation reveals a return to the consumption of alcohol or drugs and to such additional conditions as the Commissioner may impose. The requirement to operate under an ignition interlock RDL or ignition interlock certificate shall not apply if the person is exempt under subdivision (a)(4) of this section.

* * *

(4) If the Commissioner finds that a person reinstated under this subsection ~~was~~ is suspended pursuant to section 1205 of this title, ~~or was~~ is convicted of a violation of section 1201 of this title subsequent to reinstatement under this subsection, the person shall be conclusively presumed to be in violation of the conditions of his or her reinstatement.

(5) A person shall be eligible for reinstatement under this subsection only once following a suspension or revocation for life.

* * *

* * * Means of Transmitting Fuel Tax Payments * * *

Sec. 9. 23 V.S.A. § 3015 is amended to read:

§ 3015. COMPUTATION AND PAYMENT OF TAX

Each report required under section 3014 of this title from licensed distributors, dealers, or users shall be accompanied by evidence of an electronic funds transfer payment or a remittance payable to the Department of Motor Vehicles for the amount of tax due, which shall be computed and transmitted in the following manner:

* * *

(3)(A) Distributors and dealers with a tax liability of more than \$25,000.00 filing a report required under subsection 3014(a) of this title shall transmit payment of taxes due to the Department of Motor Vehicles by means of an electronic funds transfer.

(B) Distributors and dealers with a tax liability of \$25,000.00 or less filing a report required under subsection 3014(a) of this title, and users filing a report required under subsection 3014(b) of this title, shall transmit payment of taxes due to the Department of Motor Vehicles by means of an electronic funds transfer payment or by a remittance through the U.S. mail. If a remittance ~~to cover payment of taxes due as shown by a report required by this chapter~~ is sent through the U.S. mail properly addressed to the Department of Motor Vehicles, it shall be deemed received on the date shown by the postmark on the envelope containing the report only for purposes of avoiding penalty and interest. In the event a mailing date is affixed to the envelope by a machine owned or under the control of the person submitting the report, and the U.S. Post Office has corrected or changed the date stamped thereon by causing the official U.S. Post Office postmark to also be imprinted on the envelope, the date shown by the official Post Office postmark shall be the accepted date if different from the original postmark.

* * *

Sec. 10. 23 V.S.A. § 3015 is amended to read:

§ 3015. COMPUTATION AND PAYMENT OF TAX

Each report required under section 3014 of this title from licensed distributors, dealers, or users shall be accompanied by evidence of an electronic funds transfer payment or a remittance payable to the Department of

Motor Vehicles for the amount of tax due, which shall be computed and transmitted in the following manner:

* * *

(3)(A) ~~Distributors and dealers with a tax liability of more than \$25,000.00~~ filing a report required under subsection 3014(a) of this title shall transmit payment of taxes due to the Department of Motor Vehicles by means of an electronic funds transfer.

(B) ~~Distributors and dealers with a tax liability of \$25,000.00 or less filing a report required under subsection 3014(a), of this title and users~~ Users filing a report required under subsection 3014(b) of this title, shall transmit payment of taxes due to the Department of Motor Vehicles by means of an electronic funds transfer payment or by a remittance through the U.S. mail. If a remittance is sent through the U.S. mail properly addressed to the Department of Motor Vehicles, it shall be deemed received on the date shown by the postmark on the envelope containing the report only for purposes of avoiding penalty and interest. In the event a mailing date is affixed to the envelope by a machine owned or under the control of the person submitting the report and the U.S. Post Office has corrected or changed the date stamped thereon by causing the official U.S. Post Office postmark to also be imprinted on the envelope, the date shown by the official Post Office postmark shall be the accepted date if different from the original postmark.

* * *

Sec. 11. 23 V.S.A. § 3106(b) is amended to read:

(b)(1) If a remittance to cover On or before the due date established by section 3108 of this title, payment of taxes due as shown by a report required by this chapter shall be transmitted to the Department of Motor Vehicles as follows:

(A) If the tax liability is more than \$25,000.00, it shall be sent by means of an electronic funds transfer payment.

(B) If the tax liability is \$25,000.00 or less, payment shall be sent by means of an electronic funds transfer payment or by a remittance through the U.S. mail.

(2) If payment is sent through the U.S. mail properly addressed to the Department of Motor Vehicles, it shall be deemed received on the date shown by the postmark on the envelope containing the report only for purposes of avoiding penalty and interest. In the event a mailing date is affixed to the envelope by a machine owned or under the control of the person submitting the report, and the U.S. Post Office has corrected or changed the date stamped by causing the official U.S. Post Office postmark to also be imprinted on the

envelope, the date shown by the official post office postmark shall be the accepted date if different from the original postmark.

Sec. 12. 23 V.S.A. § 3106(b) is amended to read:

(b)(1) On or before the due date established by section 3108 of this title, payment of taxes due as shown by a report required by this chapter shall be transmitted to the Department of Motor Vehicles as follows:

(A) ~~If the tax liability is more than \$25,000.00, it shall be sent by means of an electronic funds transfer payment.~~

(B) ~~If the tax liability is \$25,000.00 or less, payment shall be sent by means of an electronic funds transfer payment or by a remittance through the U.S. mail.~~

(2) ~~If payment is sent through the U.S. mail properly addressed to the Department of Motor Vehicles, it shall be deemed received on the date shown by the postmark on the envelope containing the report only for purposes of avoiding penalty and interest. In the event a mailing date is affixed to the envelope by a machine owned or under the control of the person submitting the report, and the U.S. Post Office has corrected or changed the date stamped by causing the official U.S. Post Office postmark to also be imprinted on the envelope, the date shown by the official post office postmark shall be the accepted date if different from the original postmark.~~

* * * Motor Vehicle Purchase and Use Tax * * *

Sec. 13. 32 V.S.A. § 8911 is amended to read:

§ 8911. EXCEPTIONS

The tax imposed by this chapter shall not apply to:

* * *

(8) Motor vehicles transferred to the spouse, mother, father, child, sibling, grandparent, or grandchild of the donor during the donor's life or following his or her death, or to a trust established for the benefit of any such persons or for the benefit of the donor, or subsequently transferred among such persons, including transfers following a death, provided ~~such~~ the motor vehicle has been registered or titled in this State in the name of the original donor. Transfers exempt under this subdivision (8) include eligible transfers resulting by operation of the law governing intestate estates.

* * *

* * * New Motor Vehicle Arbitration * * *

Sec. 14. 9 V.S.A. § 4171 is amended to read:

§ 4171. DEFINITIONS

As used in this chapter:

* * *

(6) “Motor vehicle” means a passenger motor vehicle ~~which~~ that is purchased, leased, or registered in the State of Vermont, and shall not include tractors, motorized highway building equipment, road-making appliances, snowmobiles, motorcycles, motor-driven cycles, or the living portion of recreation vehicles, or trucks with a gross vehicle weight rating over 12,000 pounds.

(7) “Manufacturer” means any person, resident or nonresident, ~~who~~ that manufactures or assembles new motor vehicles or imports for distribution through distributors of motor vehicles or any partnership, firm, association, joint venture, corporation, or trust, resident or nonresident, ~~which~~ that is controlled by a manufacturer. In the case of the portion of a recreation vehicle subject to this chapter, and except as otherwise provided in subdivision 4172(e)(2) of this title, “manufacturer” means the final stage assembler of the completed recreation vehicle. Additionally, the term “manufacturer” shall include:

(A) “distributor,” meaning any person, resident or nonresident, ~~who~~ that in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers or new motor vehicle lessors or maintains factory representatives or ~~who~~ that controls any person, firm, association, corporation, or trust, resident or nonresident, ~~who~~ that in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers or new motor vehicle lessors; and

(B) “factory branch,” meaning any branch office maintained by a manufacturer for the purpose of selling, leasing, or offering for sale or lease, vehicles to a distributor or new motor vehicle dealer or for directing or supervising, in whole or in part, factory distributor representatives.

* * *

(9) A “new motor vehicle” means a ~~passenger~~ motor vehicle ~~which~~ that is still under the manufacturer’s express warranty or, in the case of the portion of a recreation vehicle that is subject to this chapter, that is still under an express warranty for the relevant component.

* * *

Sec. 15. 9 V.S.A. § 4172 is amended to read:

§ 4172. ENFORCEMENT OF WARRANTIES

* * *

(e)(1) If, after a reasonable number of attempts, the manufacturer, its agent, or authorized dealer or its delegate is unable to conform the motor vehicle to any express warranty by repairing or correcting any defect or condition covered by the warranty ~~which~~ that substantially impairs the use, market value, or safety of the motor vehicle to the consumer, the manufacturer shall, at the option of the consumer within 30 days of the effective date of the Board's order, either:

(A) ~~replace~~ Replace the motor vehicle with a new motor vehicle from the same manufacturer, if available, of comparable worth to the same make and model with all options and accessories with appropriate adjustments being allowed for any model year differences ~~or shall~~.

(B) ~~accept~~ Accept return of the vehicle from the consumer and refund to the consumer the full purchase price or to the lessee in the case of leased vehicles, as provided in subsection (i) of this section. In those instances in which a refund is tendered, the manufacturer shall refund to the consumer the full purchase price as indicated in the purchase contract and all credits and allowances for any trade-in or downpayment, finance charges, credit charges, registration fees, and any similar charges and incidental and consequential damages or, in the case of leased vehicles, as provided in subsection (i) of this section. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear or to the motor vehicle lessor and lessee as provided in subsection (i) of this section. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to his or her first repair attempt and shall be calculated by multiplying the full purchase price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled prior to the first attempt at repairing the vehicle. If the manufacturer refunds the purchase price or a portion of the price to the consumer, any Vermont motor vehicle purchase and use tax paid shall be refunded by the State to the consumer in the proportionate amount. To receive a refund, the consumer must file a claim with the Commissioner of Motor Vehicles within 90 days of the effective date of the order.

(2) In the case of a recreation vehicle, the warrantor of the chassis shall be responsible for any refund under subdivision (1)(B) of this subsection or under subsection (i) of this section, even if the consumer's or lessee's right to the refund results from a nonconformity caused by the final stage assembler of the completed recreation vehicle or by another warranted component subject to this chapter.

* * *

Sec. 16. 9 V.S.A. § 4173 is amended to read:

§ 4173. PROCEDURE TO OBTAIN REFUND OR REPLACEMENT;

WAIVER OF RIGHTS VOID

(a)(1) After reasonable attempt at repair or correction of the nonconformity, defect, or condition, or after the vehicle is out of service by reason of repair of one or more nonconformities, defects, or conditions for a cumulative total of 30 or more calendar days as provided in this chapter, the consumer shall notify the manufacturer and lessor in writing, on forms to be provided by the manufacturer at the time the new motor vehicle is delivered, of the nonconformity, defect, or condition and the consumer's election to proceed under this chapter. The forms shall be made available by the manufacturer to any public or nonprofit agencies that shall request them. Notice of consumer rights under this chapter shall be conspicuously displayed by all authorized dealers and agents of the manufacturer.

(2) The consumer shall in the notice elect whether to use the dispute settlement mechanism or the arbitration provisions established by the manufacturer or to proceed under the Vermont Motor Vehicle Arbitration Board as established under this chapter. Except in the case of a settlement agreement between a consumer and manufacturer, and unless federal law otherwise requires, any provision or agreement that purports to waive, limit, or disclaim the rights set forth in this chapter or that purports to require a consumer not to disclose the terms of the provision or agreement is void as contrary to public policy.

(3) The consumer's election of whether to proceed before the Board or the manufacturer's mechanism shall preclude his or her recourse to the method not selected.

* * *

* * * Three-wheeled Motorcycles * * *

Sec. 17. 23 V.S.A. § 601(f) is amended to read:

(f) Operators of autocycles shall be exempt from the requirements to obtain a motorcycle learner's permit or a motorcycle endorsement. The Commissioner shall offer operators of three-wheeled motorcycles that are not autocycles the opportunity to obtain a motorcycle endorsement that authorizes the operation of three-wheeled motorcycles only.

Sec. 18. 23 V.S.A. § 617 is amended to read:

§ 617. LEARNER'S PERMIT

* * *

(b)(1) Notwithstanding the provisions of subsection (a) of this section, any licensed person may apply to the Commissioner of Motor Vehicles for a learner's permit for the operation of a motorcycle in the form prescribed by the Commissioner. The Commissioner shall offer both a motorcycle learner's permit that authorizes the operation of three-wheeled motorcycles only and a motorcycle learner's permit that authorizes the operation of any motorcycle. The Commissioner shall require payment of a fee of \$20.00 at the time application is made.

(2) After the applicant has successfully passed all parts of the applicable motorcycle endorsement examination, other than a skill test, the Commissioner may issue to the applicant a learner's permit ~~which~~ that entitles the applicant, subject to subsection 615(a) of this title, to operate a three-wheeled motorcycle only, or to operate any motorcycle, upon the public highways for a period of 120 days from the date of issuance. The fee for the examination shall be \$9.00.

(3) A motorcycle learner's permit may be renewed only twice upon payment of a \$20.00 fee. If, during the original permit period and two renewals, the permittee has not successfully passed the applicable skill test or the motorcycle rider training course, he or she may not obtain another motorcycle learner's permit for a period of 12 months from the expiration of the permit unless:

(A) he or she has successfully completed the applicable motorcycle rider training course; or

(B) the learner's permit and renewals thereof authorized the operation of any motorcycle and the permittee is seeking a learner's permit for the operation of three-wheeled motorcycles only.

(4) This section shall not affect section 602 of this title. ~~The fee for the examination shall be \$9.00.~~

* * *

(f)(1) The Commissioner may authorize motorcycle rider training instructors to administer ~~either the~~ a motorcycle endorsement examination for three-wheeled motorcycles only or for any motorcycle, or ~~the~~ a motorcycle skills skill test for three-wheeled motorcycles only or for any motorcycle, or ~~both~~ any of these. Upon successful completion of the applicable examination or test, the instructor shall issue to the applicant either a temporary motorcycle learner ~~learner's~~ permit or notice of motorcycle endorsement, as appropriate. The instructor shall immediately forward to the Commissioner the application and fee together with such additional information as the Commissioner may require.

(2) The Commissioner shall maintain a list of approved in-state and out-of-state motorcycle rider training courses, successful completion of which the Commissioner shall deem to satisfy the skill test requirement. This list shall include courses that provide training on three-wheeled motorcycles.

* * * Dealer Records of Sales * * *

Sec. 19. 23 V.S.A. § 466 is amended to read:

§ 466. RECORDS; CUSTODIAN

(a) On a form prescribed or approved by the Commissioner, every licensed dealer shall maintain and retain for six years a record containing the following information, which shall be open to inspection by any law enforcement officer or motor vehicle inspector or other agent of the Commissioner during reasonable business hours:

(1) Every vehicle or motorboat ~~which~~ that is bought, sold, or exchanged by the licensee or received or accepted by the licensee for sale or exchange.

(2) Every vehicle or motorboat ~~which~~ that is bought or otherwise acquired and dismantled by the licensee.

(3) The name and address of the person from whom such vehicle or motorboat was purchased or acquired, the date thereof, the name and address of the person to whom any such vehicle or motorboat was sold or otherwise disposed of and the date thereof, and a sufficient description of every such vehicle or motorboat by name and identifying numbers thereon to identify the same.

~~(4) If the vehicle or motorboat is sold or otherwise transferred to a consumer, the cash price. As used in this section, "consumer" shall be as defined in 9 V.S.A. § 2451a(a) and "cash price" shall be as defined in 9 V.S.A. § 2351(6). [Repealed.]~~

* * *

* * * Seatbelt Law for Adults; Primary Enforcement * * *

Sec. 20. 23 V.S.A. § 1259 is amended to read:

§ 1259. SAFETY BELTS; PERSONS ~~AGE 18~~ YEARS OF AGE AND
OVER

* * *

~~(e) This section may be enforced only if a law enforcement officer has detained the operator of a motor vehicle for another suspected traffic violation. An operator shall not be subject to the penalty established in this section unless the operator is required to pay a penalty for the primary violation. [Repealed.]~~

* * *

Sec. 21. PRIMARY ENFORCEMENT OF SEATBELT LAW; PUBLIC
EDUCATION CAMPAIGN

(a) To inform highway users of the requirements of Sec. 20 of this act (primary enforcement of the seatbelt law for adults) and the October 1, 2018 effective date of Sec. 20, the Secretary of Transportation shall conduct a public education campaign to commence on or before July 1, 2018.

(b) At a minimum, the Secretary shall:

(1) notify media outlets throughout the State of the change in the law to primary enforcement of the adult seatbelt law and the October 1, 2018 effective date of the change in the law;

(2) update the website of the Agency of Transportation and the website of the Department of Motor Vehicles to provide notice of the change in the law and its effective date; and

(3) consistent with the Manual on Uniform Traffic Control Devices and any other applicable federal law, post messages on changeable message signs of the Agency that inform highway users of the change in the law and its effective date.

* * * Motor Vehicle Inspections * * *

Sec. 22. 23 V.S.A. § 1222 is amended to read:

§ 1222. INSPECTION OF REGISTERED VEHICLES

(a) Except for school buses, which shall be inspected as prescribed in section 1282 of this title, and motor buses as defined in subdivision 4(17) of this title, which shall be inspected twice during the calendar year at six-month intervals, all motor vehicles registered in this State shall be inspected once each year. Any motor vehicle, trailer, or semi-trailer not currently inspected in this State shall be inspected within 15 days ~~from~~ following the date of its registration in the State of Vermont.

(b)(1) The inspections shall be made at garages or qualified service stations, designated by the Commissioner as inspection stations, for the purpose of determining whether those motor vehicles are properly equipped and maintained in good mechanical condition; provided, however, the scope of the safety inspection of a motor vehicle other than a school bus or a commercial motor vehicle shall be limited to parts or systems that are relevant to the vehicle's safe operation, and such vehicles shall not fail the safety portion of the inspection unless the condition of the part or system poses or may pose a danger to the operator or to other highway users.

(2) The charges for such inspections made by garages or qualified service stations designated to conduct periodic inspections shall be subject to the approval of the Commissioner. If a fee is charged for inspection, it shall be based upon the hourly rate charged by each official inspection station or it may be a flat rate fee and, in either instance, the fee shall be prominently posted and displayed beside the official inspection station certificate. In addition, the official inspection station may disclose the State inspection certificate charge on the repair order as a separate item and collect the charge from the consumer.

* * *

Sec. 23. RULEMAKING; TRANSITION

(a)(1) As soon as practicable after the effective date of this section, and not later than May 1, 2018, the Commissioner of Motor Vehicles (Commissioner) shall file with the Secretary of State a proposed amended rule governing motor vehicle inspections (C.V.R. 14-050-022) that:

(A) is consistent with the permissible scope of safety inspections under the amendments to 23 V.S.A. § 1222 in Sec. 22 of this act; and

(B) clarifies ambiguous language in the rule.

(2) The amended rule described in subdivision (1) of this subsection shall be adopted so as to take effect no later than July 1, 2019.

(3) As soon as practicable after the effective date of this section, the Commissioner shall update the content of inspections conducted through the Automated Vehicle Inspection Program to exclude any requirement of C.V.R. 14-050-022 that is inconsistent with the permissible scope of safety inspections under the amendments to 23 V.S.A. § 1222 in Sec. 22 of this act, with the result that no vehicle will fail inspection as a result of any such inconsistent requirement.

(b) In the proposed rule amendments, the Commissioner may direct inspection stations to identify advisory, recommended repairs that are not required for the vehicle to pass inspection.

(c) Except as provided in subdivision (a)(2) and subsection (d) of this section, nothing in this section or Sec. 22 of this act is intended to affect the emissions-related requirements of the rule governing motor vehicle inspections.

(d) Notwithstanding 10 V.S.A. § 567 and C.V.R. 14-050-022, the Commissioner may establish criteria to allow vehicles that would otherwise fail inspection as a result of the emissions component of the inspection to pass inspection and receive an inspection sticker, provided that the vehicle satisfies

all inspection requirements that are relevant to the vehicle's safe operation. The authority conferred in this subsection shall expire on January 15, 2019.

(e) On November 30, 2018, the Commissioners of Motor Vehicles and of Environmental Conservation shall send a written update to the Joint Transportation Oversight Committee that includes:

(1) a copy of any criteria developed under the authority granted in subsection (d) of this section;

(2) if the authority granted in subsection (d) of this section is exercised:

(A) whether the authority is still being exercised; and

(B) the number of conditional passes issued since the effective date of this section;

(3) a summary of the status of efforts to amend the Department's rule as required under subsection (a) of this section, and an estimate of the likely effective date of the amended rule if not yet adopted; and

(4) a summary of the status of any efforts to develop a program of waivers related to the emissions component of the State's inspection program and to educate consumers and inspection stations about issues related to emissions inspections, including: the availability of any such waivers; manufacturer warranties available for emissions components for certain vehicle models and model years; and vehicle readiness for emissions testing.

* * * Effective Dates * * *

Sec. 24. EFFECTIVE DATES

(a) This section and Secs. 16 (new motor vehicle arbitration), 19 (dealer records), 21 (education campaign; primary enforcement), and 22-23 (motor vehicle inspections) shall take effect on passage, except that notwithstanding 1 V.S.A. § 214, in Sec. 23, subsection (d) shall take effect retroactively on January 1, 2017.

(b) Sec. 20 (primary enforcement of adult seatbelt law) shall take effect on October 1, 2018.

(c) Secs. 9 and 11 (means of transmitting fuel tax payments) shall take effect on July 1, 2019.

(d) Secs. 10 and 12 (means of transmitting fuel tax payments) shall take effect on July 1, 2020.

(e) All other sections shall take effect on July 1, 2018.

(Committee vote: 9-0-2)

(For text see Senate Journal March 2, 16, 2018)

Favorable

H. 927

An act relating to approval of amendments to the charter of the City of Montpelier

Rep. Lewis of Berlin, for the Committee on Government Operations, recommends the bill ought to pass.

(Committee Vote: 9-0-2)

Rep. Canfield of Fair Haven, for the Committee on Ways and Means, recommends the bill ought to pass.

(Committee Vote: 10-0-1)

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?