

House Calendar

Wednesday, May 09, 2018

127th DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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ACTION CALENDAR

Third Reading

S. 40

An act relating to increasing the minimum wage

S. 204

An act relating to the registration of short-term rentals

Senate Proposal of Amendment

H. 897

An act relating to enhancing the effectiveness, availability, and equity of services provided to students who require additional support

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

* * * Findings * * *

Sec. 1. FINDINGS

(a) In 2016 Acts and Resolves No. 148, the General Assembly directed the Agency of Education to contract with a consulting firm to review current practices and recommend best practices for the delivery of special education services in school districts. The Agency of Education contracted with the District Management Group, which issued in November 2017 its report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” (Delivery of Services Report).

(b) In Act 148, the General Assembly also directed the Agency of Education to contract for a study of special education funding and practice and to recommend a funding model for Vermont designed to provide incentives for desirable practices and stimulate innovation in the delivery of services. The General Assembly required that the study consider a census-based model of funding. The Agency of Education contracted with the University of Vermont and State Agricultural College, and the report of its Department of Education and Social Services entitled “Study of Vermont State Funding for Special Education” was issued in December 2017 (Funding Report).

(c) The Delivery of Services Report made the following five recommendations on best practices for the delivery of special education services:

(1) ensure core instruction meets most needs of most students;

(2) provide additional instructional time outside core subjects to students who struggle, rather than providing interventions instead of core instruction;

(3) ensure students who struggle receive all instruction from highly skilled teachers;

(4) create or strengthen a systems-wide approach to supporting positive student behaviors based on expert support; and

(5) provide specialized instruction from skilled and trained experts to students with more intensive needs.

(d) The Funding Report noted, based on feedback from various stakeholders, including educators, school leaders, State officials, parents, and others, that Vermont's existing reimbursement model of funding special education has a number of limitations in that it:

(1) is administratively costly for the State and localities;

(2) is misaligned with policy priorities, particularly with regard to the delivery of a multitiered system of supports and positive behavioral interventions and supports;

(3) creates misplaced incentives for student identification, categorization, and placement;

(4) discourages cost containment; and

(5) is unpredictable and lacks transparency.

(e) The Funding Report assessed various funding models that support students who require additional support, including a census-based funding model. A census-based model would award funding to supervisory unions based on the number of students within the supervisory union and could be used by the supervisory union to support the delivery of services to all students. The Funding Report noted that the advantages of a census-based model are that it is simple and transparent, allows flexibility in how the funding is used by supervisory unions, is aligned with the policy priorities of serving students who require additional support across the general and special education service-delivery systems, and is predictable.

* * * Goals * * *

Sec. 2. GOALS

(a) By enacting this legislation, the General Assembly intends to enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts.

(b)(1) To support the enhanced delivery of these services, the State funding model for special education shall change for all supervisory unions in fiscal year 2021, for school year 2020-2021, from a reimbursement model to a census-based model, which will provide more flexibility in how the funding can be used, is aligned with the State's policy priorities of serving students who require additional support across the general and special education service-delivery systems, and will simplify administration.

(2) The General Assembly recognizes that a student on an individualized education program, is entitled, under federal law, to a free and appropriate public education in the least restrictive environment in accordance with that program. The changes to State funding for special education and the delivery of special education services as envisioned under this act are intended to facilitate the exercise of this entitlement.

(c) The General Assembly recognizes that it might be appropriate and equitable to provide a higher amount of census-based funding to supervisory unions that have relatively higher costs in supporting students who require additional support, but the General Assembly does not have sufficient information on which to base this determination. Therefore, this act directs the Agency of Education to make a recommendation to the General Assembly on whether the amount of the census grant should be increased for supervisory unions that have relatively higher costs in supporting students who require additional support, and if so, the criteria for qualification for the adjustment and the manner in which the adjustment should be applied. The General Assembly intends to reconsider this matter after receiving this recommendation and before the census-based model is implemented.

Sec. 3. 16 V.S.A. § 2901 is amended to read:

§ 2901. SUCCESS FOR ALL STUDENTS IN THE GENERAL
EDUCATION ENVIRONMENT

(a) ~~It is the policy of the State that each~~ Each local school district shall develop and maintain, in consultation with parents, a comprehensive system of education that ~~will~~ is designed to result, to the extent appropriate, in all students succeeding in the general education environment. A comprehensive system of education includes a full range of services and accommodations that are needed by students in the district. These services could include a separate alternative program if the district finds that some of its students could be better served in an environment outside the classroom, or if the district finds that separate placement is the best way to provide services to a student who is ~~disrupting the class or~~ having difficulty learning in a traditional school setting for educational, emotional, or personal reasons and thereby impairing the ability of the classroom teacher to provide ~~quality~~ high-quality services to that

student or to other students. This chapter does not replace or expand entitlements created by federal law, nor is it the intent of this chapter to create a higher standard for maintaining a student in the general classroom than the standard created in the following federal laws: 20 U.S.C. § ~~1401 et seq. chapter 33~~, Individuals with Disabilities Education Act; 29 U.S.C. § 794, Section 504 of the Rehabilitation Act of 1973; and 42 U.S.C. § ~~12101 et seq. chapter 126~~, Americans with Disabilities Act.

(b) [Repealed.]

(c) No individual entitlement or private right of action is created by this section.

Sec. 4. 16 V.S.A. § 2902 is amended to read:

§ 2902. TIERED SYSTEM OF SUPPORTS AND EDUCATIONAL SUPPORT TEAM

(a) Within each school district's comprehensive system of educational services, each public school shall develop and maintain a tiered system of academic and behavioral supports for the purpose of providing all students with the opportunity to succeed or to be challenged in the general education environment. For each school it maintains, a school district board shall assign responsibility for developing and maintaining the tiered system of supports either to the superintendent pursuant to a contract entered into under section 267 of this title or to the school principal. The school shall provide all students a full and fair opportunity to access the system of supports and achieve educational success. The tiered system of supports shall, at a minimum, include an educational support team, instructional and behavioral interventions, and accommodations that are available as needed for any student who requires support beyond what can be provided in the general education classroom, and may include intensive, individualized interventions for any student requiring a higher level of support.

(b) The tiered system of supports shall:

- (1) be aligned as appropriate with the general education curriculum;
- (2) be designed to enhance the ability of the general education system to meet the needs of all students;
- (3) be designed to provide necessary supports promptly, regardless of an individual student's eligibility for categorical programs;
- (4) seek to identify and respond to students in need of support for ~~at-risk behaviors~~ emotional or behavioral challenges and to students in need of specialized, individualized behavior supports; ~~and~~
- (5) provide all students with a continuum of evidence-based ~~and~~

~~research-based behavior~~ positive behavioral practices that teach and encourage prosocial skills and behaviors schoolwide promote social and emotional learning, including trauma-sensitive programming, that are both school-wide and focused on specific students or groups of students;

(6) promote collaboration with families, community supports, and the system of health and human services; and

(7) provide professional development, as needed, to support all staff in full implementation of the multi-tiered system of support.

(c) The educational support team for each public school in the district shall be composed of staff from a variety of teaching and support positions and shall:

(1) Determine which enrolled students require additional assistance to be successful in school or to complete secondary school based on indicators set forth in guidelines developed by the Secretary, such as academic progress, attendance, behavior, or poverty. The educational support team shall pay particular attention to students during times of academic or personal transition.

(2) Identify the classroom accommodations, remedial services, and other supports ~~that have been~~ to be provided to the identified student.

(3) Assist teachers to plan for and provide services and accommodations to students in need of classroom supports or enrichment activities.

(4) Develop an individualized strategy, in collaboration with the student's parents or legal guardian whenever possible, to assist the identified student to succeed in school and to complete his or her secondary education.

(5) Maintain a written record of its actions.

~~(6) Report no less than annually to the Secretary, in a form the Secretary prescribes, on the ways in which the educational support system has addressed the needs of students who require additional assistance in order to succeed in school or to complete secondary school and on the additional financial costs of complying with this subsection (c).~~

(d) No individual entitlement or private right of action is created by this section.

(e) The Secretary shall establish guidelines for teachers and administrators in following federal laws relating to provision of services for children with disabilities and the implementation of this section. The Secretary shall develop and provide to supervisory unions information to share with parents of children suspected of having a disability that describes the differences between the tiered system of academic and behavioral supports required under this section, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and

the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, including how and when school staff and parents of children having a suspected disability may request interventions and services under those entitlements.

(f) It is the intent of the General Assembly that a gifted and talented student shall be able to take advantage of services that an educational support team can provide. It is not the intent of the General Assembly that funding under chapter 101 of this title shall be available for a gifted and talented student unless the student has been otherwise determined to be a student for whom funding under that chapter is available.

(g) The tiered system of academic and behavioral supports required under this section shall not be used by a school district to deny a timely initial comprehensive special education evaluation for children suspected of having a disability. The Agency of Education shall adopt policies and procedures to ensure that a school district's evaluation of a child suspected of having a disability is not denied because of implementation of the tiered system of academic and behavioral supports. The policies and procedures shall include:

(1) the definition of what level of progress is sufficient for a child to stop receiving instructional services and supports through the tiered system of academic and behavioral supports;

(2) guidance on how long children are to be served in each tier; and

(3) guidance on how a child's progress is to be measured.

* * * Census-based Funding Model; Amendment of Special
Education Laws * * *

Sec. 5. 16 V.S.A. chapter 101 is amended to read:

CHAPTER 101. SPECIAL EDUCATION

Subchapter 1. General Provisions

§ 2941. POLICY AND PURPOSE

It is the policy of the State to ensure equal educational opportunities for all children in Vermont. This means that children with disabilities are entitled to receive a free appropriate public education. ~~It is further the policy of the State to pay 60 percent of the statewide costs expended by public education for children with disabilities.~~ The purpose of this chapter is to enable the Agency to ensure the provision of ~~the special educational facilities and instruction~~ education services and supports in accordance with individualized education programs necessary to meet the needs of children with disabilities.

§ 2942. DEFINITIONS

As used in this chapter

* * *

(8) A “student who requires additional support” means a student who:

(A) is on an individualized education program;

(B) is on a section 504 plan under the Rehabilitation Act of 1973, 29 U.S.C. § 794;

(C) is not on an individualized education program or section 504 plan but whose ability to learn is negatively impacted by a disability or by social, emotional, or behavioral needs, or whose ability to learn is negatively impacted because the student is otherwise at risk;

(D) is an English language learner; or

(E) reads below grade level.

* * *

Subchapter 2. Aid for Special Education and Support Services

§ 2961. ~~STANDARD MAINSTREAM BLOCK GRANTS~~ CENSUS GRANT

~~(a) Each supervisory union shall be eligible to receive a standard mainstream block grant each school year. The mainstream block grant shall be equal to the supervisory union’s mainstream salary standard multiplied by 60 percent.~~

~~(b) The supervisory union shall expend all such assistance for special education services or for remedial or compensatory services in accordance with its service plan as required under section 2964 of this title. It shall likewise expend, from local funds, an amount not less than 40 percent of its mainstream salary standard for special education.~~

~~(c) As used in this section:~~

~~(1) “Mainstream salary standard” means:~~

~~(A) the supervisory union’s full-time equivalent staffing for special education for the preceding year multiplied by the average special education teacher salary in the State for the preceding year; plus~~

~~(B) an amount equal to the average special education administrator salary in the State for the preceding year, plus, for any supervisory union with member districts which have in the aggregate more than 1,500 average daily membership, a fraction of an additional full-time equivalent salary for a special education administrator, the numerator of which is the aggregate average daily membership of the supervisory union’s member districts minus 1,500, and the denominator of which is the aggregate average daily~~

~~membership of member districts in the largest supervisory union in the State minus 1,500.~~

~~(2) “Full-time equivalent staffing” means 9.75 special education teaching positions per 1,000 average daily membership.~~

~~(d) If in any fiscal year, a supervisory union in which a school is maintained does not expend an amount equal to its mainstream salary standard on special education expenditures, the supervisory union may expend the balance, including the matching funds, to provide support and remedial services pursuant to section 2902 or 2903 of this title. A supervisory union choosing to expend funds in this way shall submit a report describing the services provided and their costs with the final financial report submitted under section 2968 of this title.~~

As used in this section:

(1) “Average daily membership” shall have the same meaning as in subdivision 4001(1) of this title, except it shall exclude State-placed students.

(2) “Average daily membership of a supervisory union” means the aggregate average daily membership of the school districts that are members of the supervisory union or, for a supervisory district, the average daily membership of the supervisory district.

(3) “Long-term membership” of a supervisory union in any school year means the average of the supervisory union’s average daily membership over three school years.

(4) “Uniform base amount” means an amount determined by:

(A) dividing an amount:

(i) equal to the average State appropriation for fiscal years 2018, 2019, and 2020 for special education under 16 V.S.A. §§ 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances); and

(ii) increased by the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis; by

(B) the statewide average daily membership for prekindergarten through grade 12 for the 2019–2020 school year.

(b) The State commits to satisfying its special education maintenance of fiscal support requirement under 34 C.F.R. § 300.163(a).

(c) Each supervisory union shall receive a census grant each fiscal year to

support the provision of special education services to students on an individualized education program. Supervisory unions shall use this funding and other available sources of funding to provide special education services to students in accordance with their individualized education programs as mandated under federal law. A supervisory union may use census grant funds to support the delivery of the supervisory union's comprehensive system of educational services under sections 2901 and 2902 of this title, but shall not use census grant funds in a manner that abrogates its responsibility to provide special education services to students in accordance with their individualized education programs as mandated under federal law.

(d)(1)(A) For fiscal year 2021, the amount of the census grant for a supervisory union shall be:

(i) the average amount it received for fiscal years 2017, 2018, and 2019 from the State for special education under sections 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances) of this title; increased by

(ii) the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

(B) The amount determined under subdivision (A) of this subdivision (1) shall be divided by the supervisory union's long-term membership, to determine the base amount of the census grant, which is the amount of the census grant calculated on a per student basis.

(2) For fiscal year 2025 and subsequent fiscal years, the amount of the census grant for a supervisory union shall be the uniform base amount multiplied by the supervisory union's long-term membership.

(3) For fiscal years 2022, 2023, and 2024, the amount of the census grant for a supervisory union shall be determined by multiplying the supervisory union's long-term membership by a base amount established under this subdivision. The base amounts for each supervisory union for fiscal years 2022, 2023, and 2024 shall move gradually the supervisory union's fiscal year 2021 base amount to the fiscal year 2025 uniform base amount by pro rating the change between the supervisory union's fiscal year 2021 base amount and the fiscal year 2025 uniform base amount over this three-fiscal-year period.

§ 2962. EXTRAORDINARY SERVICES SPECIAL EDUCATION REIMBURSEMENT

(a) Except as otherwise provided in this subchapter, extraordinary services

~~reimbursement shall be payable, based on where the related cost is incurred, to a town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, and unorganized town or gore or to a supervisory union.~~

~~(b) The amount of extraordinary services reimbursement provided to each district or supervisory union shall be equal to 95 percent of its extraordinary special education expenditures.~~

~~(c) As used in this subchapter, “extraordinary special education expenditures” means a school district’s or supervisory union’s allowable expenditures that for any one child exceed \$60,000.00 for a fiscal year. In this subsection, child means a student with disabilities who is three years of age or older in the current school year. The State Board shall define allowable expenditures that shall include any expenditures required under federal law, and any costs of mediation conducted by a mediator who is approved by the Secretary.~~

~~(1) As used in this section, “child” means a student with disabilities who is three years of age or older in the current school year.~~

~~(2) As used in this subchapter, “extraordinary expenditures” means a supervisory union’s allowable special education expenditures that for any one child in a fiscal year exceed \$60,000.00, increased annually by the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.~~

~~(3) The State Board of Education shall define allowable special education expenditures that shall include any expenditures required under federal law in order to implement fully individual education programs under the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, and any costs of mediation conducted by a mediator who is approved by the Secretary.~~

~~(b) If a supervisory union has extraordinary expenditures, it shall be eligible for extraordinary special education reimbursement (extraordinary reimbursement) as provided in this section.~~

~~(c) A supervisory union that has extraordinary expenditures in a fiscal year for any one child shall be eligible for extraordinary reimbursement equal to:~~

~~(1) an amount equal to its special education expenditures in that fiscal year for that child that exceed the extraordinary expenditures threshold amount under subdivision (a)(2) of this section (excess expenditures) multiplied by 95 percent; plus~~

(2) an amount equal to the lesser of:

(A) the amount of its excess expenditures; or

(B)(i) the extraordinary expenditures threshold amount under subdivision (a)(2) of this section; minus

(ii) the base amount of the census grant received by the supervisory union under subsection 2961(d) of this title for that fiscal year; multiplied by

(iii) 60 percent.

(d) The State Board of Education shall establish by rule the administrative process for supervisory unions to submit claims for extraordinary reimbursement under this section and for the review and payment of those claims.

(e) Under section 2973 of this title, a supervisory union, in its role as the local education agency, may place a student with an individualized education plan under the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, with certain approved independent schools that accept public tuition. If the approved independent school is entitled to special education cost reimbursement under that section, it may bill the supervisory union for excess special education costs incurred by the independent school in providing special education services to that student beyond those covered by general tuition. If those costs for that student exceed the extraordinary expenditures' threshold as defined in subdivision (a)(2) of this section, the supervisory union shall be entitled to extraordinary reimbursement under this section for that student as if it incurred those costs directly.

~~§ 2963. SPECIAL EDUCATION EXPENDITURES REIMBURSEMENT~~

~~(a) Based on where the related cost is incurred, each town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, and unorganized town or gore or supervisory union shall receive a special education expenditures reimbursement grant each school year.~~

~~(b) The amount of a school district's or supervisory union's special education expenditures reimbursement shall be equal to the total of its special education expenditures multiplied by the reimbursement rate for that year.~~

~~(c) As used in this subchapter:~~

~~(1) Special education expenditures are allowable expenditures for special education, as defined by rule of the State Board, less the following:~~

~~(A) revenue from federal aid for special education;~~

~~(B) mainstream service costs, as defined in subdivision 2961(c)(1) of this title;~~

~~(C) extraordinary special education expenditures, as defined in section 2962 of this title;~~

~~(D) any transportation expenses already reimbursed;~~

~~(E) special education costs for a student eligible for aid under section 2963a of this title; and~~

~~(F) other State funds used for special education costs as defined by the State Board by rule.~~

~~(2) The State Board shall define allowable expenditures under this subsection. Allowable expenditures shall include any expenditures required under federal law.~~

~~(3) “Special education expenditures reimbursement rate” means a percentage of special education expenditures that is calculated to achieve the 60 percent share required by subsection 2967(b) of this title. [Repealed.]~~

~~§ 2963a. EXCEPTIONAL CIRCUMSTANCES~~

~~(a) In lieu of reimbursement under section 2963 of this title, the Secretary shall reimburse a school district or supervisory union for 80 percent of the costs not eligible for reimbursement under section 2962 of this title for each student causing the school district or supervisory union to be eligible for extraordinary services reimbursement pursuant to that section. However, in order for a school district or supervisory union to be eligible for reimbursement under this section, the total costs of the school district or supervisory union eligible for extraordinary services reimbursement must equal or exceed 15 percent of the total costs eligible for State assistance under sections 2961, 2962, and 2963 of this title.~~

~~(b) An eligible school district or supervisory union may apply to the Secretary to receive reimbursement under this section. The Secretary shall award reimbursement to a school district or supervisory union under this section if the Secretary makes a determination that the school district or supervisory union considered all the cost-effective and appropriate available alternatives for placement and programs for students before incurring these costs. A decision of the Secretary shall be final. [Repealed.]~~

~~§ 2964. SERVICE PLAN~~

~~(a) As a condition of receiving assistance under this subchapter, a supervisory union shall file a service plan with the Secretary annually on or before October 15. The service plan shall contain the anticipated special education expenditures for the following school year for the supervisory union~~

~~and its member districts. The plan shall be in a form prescribed by the Secretary and shall include information on services planned and anticipated expenditures.~~

~~(b) If a supervisory union fails to file a service plan by October 15, the Secretary may withhold any funds due the supervisory union and its member districts under this title until a service plan is filed and accepted by the Secretary as properly completed. [Repealed.]~~

* * *

§ 2967. AID PROJECTION; STATE SHARE

~~(a) On or before December 15, the Secretary shall publish an estimate, by supervisory union and its member districts to the extent they anticipate reimbursable, of its anticipated special education expenditures under this chapter, of the amount of State assistance necessary to fully fund sections 2961 through 2963 of this title in for the ensuing school year.~~

~~(b) The total expenditures made by the State in any fiscal year pursuant to this chapter shall be 60 percent of the statewide total special education expenditures of funds that are not derived from federal sources. Special As used in this section, special education expenditures shall include:~~

~~(1) costs eligible for grants and reimbursements under sections 2961 through 2963a and 2962 of this title;~~

~~(2) costs for services for persons who are visually impaired; and~~

~~(3) costs for persons who are deaf and or hard of hearing;~~

~~(3)(4) costs for the interdisciplinary team program;~~

~~(4) costs for regional specialists in multiple disabilities;~~

~~(5) funds expended for training and programs to meet the needs of students with emotional or behavioral problems challenges under subsection 2969(c) of this title; and~~

~~(6) funds expended for training under subsection 2969(d) of this title.~~

§ 2968. REPORTS

~~(a) On or before November 15, March 15, and August 1 of each school year, each supervisory union and its member districts to the extent they incur reimbursable expenditures under this chapter shall file a financial report with the Secretary in a form prescribed by the Secretary. The report shall describe total expenditures for special education actually incurred during the preceding period, and shall describe revenues derived from different funding sources, including federal assistance, State assistance under this chapter, and local~~

effort.

~~(b) If a supervisory union or its member districts that have incurred reimbursable expenditures under this chapter fail to file a complete report by August 1, until the properly completed August 1 report is filed and accepted by the Secretary, the Secretary may withhold any funds due the supervisory union or school district under this title and shall subtract \$100.00 per business day from funds due to the supervisory union or school district under this title for that fiscal year. The Secretary may waive the \$100.00 penalty required under this subsection upon appeal by the supervisory union or school district. The Secretary shall establish procedures for administration of this subsection.~~

~~(c) The Secretary shall review and monitor the reports received pursuant to subsection (a) of this section as well as the service plans received pursuant to section 2964 of this title, and shall assist supervisory unions and school districts to complete and submit these documents in a timely and accurate fashion.~~

~~(d) Special education receipts and expenditures shall be included within the audits required of a supervisory union and its member districts that have incurred reimbursable expenditures under this chapter pursuant to section 323 of this title. [Repealed.]~~

§ 2969. PAYMENTS

~~(a)(1) On or before August 15, December 15, and April 15 of each fiscal year, the State Treasurer shall withdraw from the Education Fund, based on a warrant issued by the Commissioner of Finance and Management, and shall forward to each supervisory union and its member districts to the extent they anticipate reimbursable expenditures under this chapter, the amount of State assistance estimated in accordance with State Board rules to be necessary to fund sections 2961 through 2963a of this title in the current fiscal period. The State Board shall by rule ensure that the amount of such assistance shall be adjusted to compensate for any overpayments or underpayments determined, after review and acceptance of the reports submitted under section 2968 of this title, to have been made in previous periods. Notwithstanding this subsection, failure to submit the reports within the timelines established by subsection 2968(a) of this title shall result in the withholding of any payments until the report is filed one-third of the census grant due to the supervisory union under section 2961 of this title for that fiscal year.~~

~~(2) On or before November 15, January 15, April 15, and August 1 of each school year, each supervisory union, to the extent it incurs extraordinary expenditures under section 2962 of this title, shall file a financial report with the Secretary in a form prescribed by the Secretary. The report shall describe total extraordinary expenditures actually incurred during the reporting period.~~

(3) On or before December 15, February 15, May 15, and September 15 of each school year, based on a warrant issued by the Commissioner of Finance and Management, the State Treasurer shall withdraw from the Education Fund and shall forward to each supervisory union the amount of extraordinary reimbursement incurred by the supervisory union under section 2962 of this title that is unreimbursed and determined by the Agency of Education to be payable to the supervisory union.

(b) [Repealed.]

(c) For the purpose of meeting the needs of students with emotional ~~or~~ behavioral ~~problems~~ challenges, each fiscal year the Secretary shall use for training, program development, and building school and regional capacity, up to one percent of the State funds appropriated under this subchapter.

(d) For the training of teachers, administrators, and other personnel in the identification and evaluation of, and provision of ~~education~~ educational services to children who require educational supports, each fiscal year the Secretary shall use up to 0.75 percent of the State funds appropriated under this subchapter. In order to set priorities for the use of these funds, the Secretary shall identify effective practices and areas of critical need. The Secretary may expend up to five percent of these funds for statewide training and shall distribute the remaining funds to school districts or supervisory unions.

(e) School districts and supervisory unions that apply for funds under this section must submit a plan for training that will result in lasting changes in their school systems and give assurances that at least 50 percent of the costs of training, including in-kind costs, will be assumed by the applicant. The Secretary shall establish written procedures and criteria for the award of such funds. In addition, the Secretary may identify schools most in need of training assistance and may pay for 100 percent of the assistance to the supervisory union or school district for these schools to fund the provision of training assistance for these schools.

* * *

§ 2974. SPECIAL EDUCATION PROGRAM; FISCAL REVIEW

(a) Annually, the Secretary shall report to the State Board regarding:

(1) ~~special education expenditures by supervisory unions~~ the total amount of census grants made to supervisory unions under section 2961 of this title;

(2) ~~the rate of growth or decrease in special education costs, including the identity of high- and low-spending supervisory unions~~ the total amount of extraordinary special education reimbursement made to supervisory unions

under section 2962 of this title;

(3) results for special education students;

(4) the availability of special education staff;

(5) the consistency of special education program implementation statewide;

(6) the status of ~~the education support systems~~ tiered systems of supports in supervisory unions; and

(7) a statewide summary of the special education student count, including:

(A) the percentage of the total average daily membership represented by special education students statewide and by supervisory union;

(B) the percentage of special education students by disability category; and

(C) the percentage of special education students served by public schools within the supervisory union, by day placement, and by residential placement.

~~(b) The Secretary's report shall include the following data for both high- and low-spending supervisory unions:~~

~~(1) each supervisory union's special education staff-to-child count ratios as compared to the State average, including a breakdown of ratios by staffing categories;~~

~~(2) each supervisory union's percentage of students in day programs and residential placements as compared to the State average of students in those placements and information about the categories of disabilities for the students in such placements;~~

~~(3) whether the supervisory union was in compliance with section 2901 of this title;~~

~~(4) any unusual community characteristics in each supervisory union relevant to special education placements;~~

~~(5) a review of high- and low-spending supervisory unions' special education student count patterns over time;~~

~~(6) a review of the supervisory union's compliance with federal and State requirements to provide a free, appropriate public education to eligible students; and~~

~~(7) any other factors affecting its spending.~~

~~(c) The Secretary shall review low-spending supervisory unions to determine the reasons for their spending patterns and whether those supervisory unions used cost-effective strategies appropriate to replicate in other supervisory unions.~~

~~(d) For the purposes of this section, a “high-spending supervisory union” is a supervisory union that, in the previous school year, spent at least 20 percent more than the statewide average of special education eligible costs per average daily membership. Also for the purposes of this section, a “low-spending supervisory union” is a supervisory union that, in the previous school year, spent no more than 80 percent of the statewide average of special education eligible costs per average daily membership.~~

~~(e) The Secretary and Agency staff shall assist the high-spending supervisory unions, that have been identified in subsection (a) of this section and have not presented an explanation for their spending that is satisfactory to the Secretary, to identify reasonable alternatives and to develop a remediation plan. Development of the remediation plan shall include an on-site review. The supervisory union shall have two years to make progress on the remediation plan. At the conclusion of the two years or earlier, the supervisory union shall report its progress on the remediation plan.~~

~~(f) Within 30 days of receipt of the supervisory union’s report of progress, the Secretary shall notify the supervisory union that its progress is either satisfactory or not satisfactory.~~

~~(1) If the supervisory union fails to make satisfactory progress, the Secretary shall notify the supervisory union that, in the ensuing school year, the Secretary shall withhold 10 percent of the supervisory union’s special education expenditures reimbursement pending satisfactory compliance with the plan.~~

~~(2) If the supervisory union fails to make satisfactory progress after the first year of withholding, 10 percent shall be withheld in each subsequent year pending satisfactory compliance with the plan; provided, however, before funds are withheld in any year under this subdivision (f)(2), the supervisory union shall explain to the State Board either the reasons the supervisory union believes it made satisfactory progress on the remediation plan or the reasons it failed to do so. The State Board’s decision whether to withhold funds under this subdivision shall be final.~~

~~(3) If the supervisory union makes satisfactory progress under any subdivision of this subsection, the Secretary shall release to the supervisory union any special education expenditures reimbursement withheld for the prior fiscal year only.~~

~~(g) Within 10 days after receiving the Secretary's notice under subdivision (f)(1) of this section, the supervisory union may challenge the Secretary's decision by filing a written objection to the State Board outlining the reasons the supervisory union believes it made satisfactory progress on the remediation plan. The Secretary may file a written response within 10 days after the supervisory union's objection is filed. The State Board may give the supervisory union and the Secretary an opportunity to be heard. The State Board's decision shall be final. The State shall withhold no portion of the supervisory union's reimbursement before the State Board issues its decision under this subsection.~~

~~(h) Nothing in this section shall prevent a supervisory union from seeking and receiving the technical assistance of Agency staff to reduce its special education spending.~~

§ 2975. UNUSUAL SPECIAL EDUCATION COSTS; FINANCIAL ASSISTANCE

The Secretary may use up to two percent of the funds appropriated for allowable special education expenditures, as that term is defined in subsection 2967(b) of this title State Board of Education rules, to directly assist supervisory unions with special education expenditures of an unusual or unexpected nature. ~~These funds shall not be used for exceptional circumstances that are funded under section 2963a of this title.~~ The Secretary's decision regarding a supervisory union's eligibility for and amount of assistance shall be final.

* * * Technical and Conforming Changes * * *

Sec. 6. 16 V.S.A. § 826 is amended to read:

§ 826. NOTICE OF TUITION RATES; SPECIAL EDUCATION CHARGES

* * *

(c) Excess special education costs incurred by a district supervisory union in providing special education services to a student beyond those covered by tuition may be charged to the student's supervisory union for the district of residence. However, only actual costs or actual proportionate costs attributable to the student may be charged.

* * *

Sec. 7. 16 V.S.A. § 2958 is amended to read:

§ 2958. RESIDENTIAL PLACEMENT REVIEW TEAM; RESIDENTIAL PLACEMENTS

(a) A ~~school district~~ supervisory union shall notify the parents and the

Secretary when it believes residential placement is a possible option for inclusion in a child's individualized education program.

* * *

Sec. 8. 16 V.S.A. § 4002 is amended to read:

§ 4002. PAYMENT; ALLOCATION

(a) State and federal funds appropriated for services delivered by the supervisory union and payable through the Agency shall be paid to the order of the supervisory union and administered in accordance with the plan adopted under subdivision 261a(4) of this title. Funding for special education services under section 2969 of this title shall be paid to the ~~districts~~ and supervisory unions in accordance with that section.

(b) The Secretary shall notify the superintendent or chief executive officer of each supervisory union in writing of federal or State funds disbursed to member school districts.

* * * Census-based Funding Advisory Group * * *

Sec. 9. CENSUS-BASED FUNDING ADVISORY GROUP

(a) Creation. There is created the Census-based Funding Advisory Group to consider and make recommendations on the implementation of a census-based model of funding for students who require additional support.

(b) Membership. The Advisory Group shall be composed of the following 12 members:

(1) the Executive Director of the Vermont Superintendents Association or designee;

(2) the Executive Director of the Vermont School Boards Association or designee;

(3) the Executive Director of the Vermont Council of Special Education Administrators or designee;

(4) the Executive Director of the Vermont Principals' Association or designee;

(5) the Executive Director of the Vermont Independent Schools Association or designee;

(6) the Executive Director of the Vermont-National Education Association or designee;

(7) the Secretary of Education or designee;

(8) one member selected by the Vermont-National Education

Association who is a special education teacher;

(9) one member selected by the Vermont Association of School Business Officials;

(10) one member selected by the Vermont Legal Aid Disability Law Project;

(11) one member who is either a family member, guardian, or education surrogate of a student requiring special education services or a person who has received special education services directly, selected by the Vermont Coalition for Disability Rights; and

(12) the Commissioner of the Vermont Department of Mental Health or designee.

(c) Powers and duties. The Advisory Group shall:

(1) advise the State Board of Education on the development of proposed rules to implement this act prior to the submission of the proposed rules to the Interagency Committee on Administrative Rules;

(2) advise the Agency of Education and supervisory unions on the implementation of this act; and

(3) recommend to the General Assembly any statutory changes it determines are necessary or advisable to meet the goals of this act, including any statutory changes necessary to align special education funding for approved independent schools with the census grant funding model for public schools as envisioned in the amendments to 16 V.S.A. chapter 101 in Sec. 5 of this act.

(d) Assistance. The Advisory Group shall have the administrative, technical, and legal assistance of the Agency of Education.

(e) Meetings.

(1) The Secretary of Education shall call the first meeting of the Advisory Group to occur on or before September 30, 2018.

(2) The Advisory Group shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Advisory Group shall cease to exist on June 30, 2022.

(f) Reports. On or before January 15, 2019, the Advisory Group shall submit a written report to the House and Senate Committees on Education and the State Board of Education with its findings and recommendations on the development of proposed rules to implement this act and any recommendations

for legislation. On or before January 15 of 2020, 2021, and 2022, the Advisory Group shall submit a supplemental written report to the House and Senate Committees on Education and the State Board of Education with a status of implementation under this act and any recommendations for legislation.

(g) Reimbursement. Members of the Advisory Group who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than eight meetings per year.

(h) Appropriation. The sum of \$3,900.00 is appropriated for fiscal year 2018 from the General Fund to the Agency of Education to provide funding for per diem compensation and reimbursement under subsection (g) of this section. The Agency shall include in its budget request to the General Assembly for each of fiscal years 2020, 2021, and 2022 the amount of \$3,900.00 to provide funding for per diem compensation and reimbursement under subsection (g) of this section.

* * * Census Grant Supplemental Adjustment;
Pupil Weighting Factors; Report * * *

Sec. 10. REPEAL

2017 Acts and Resolves No. 49, Sec. 35 (education weighting report) is repealed.

Sec. 11. CENSUS GRANT SUPPLEMENTAL ADJUSTMENT; PUPIL WEIGHTING FACTORS; REPORT

(a) The Agency of Education, in consultation with the Secretary of Human Services, the Vermont Superintendents Association, the Vermont School Boards Association, and the Vermont-National Education Association, shall consider and make recommendations on the following:

(1) Whether the census grant, as defined in the amendment to 16 V.S.A. § 2961 in Sec. 5 of this act, should be increased for supervisory unions that have, in any year, relatively higher costs in supporting students who require additional support, and if so, the criteria for qualification for the adjustment and the manner in which the adjustment should be applied. In making this recommendation, the Agency of Education shall consider the report entitled "Study of Vermont State Funding for Special Education" issued in December 2017 by the University of Vermont Department of Education and Social Services.

(2) Methods, other than the use of per pupil weighting factors, that would further the quality and equity of educational outcomes for students.

(3) The criteria used for determining weighted long-term membership of a school district under 16 V.S.A. § 4010, including each of the following:

(A) The current weighting factors and any supporting evidence or basis in the historical record for these factors.

(B) The relationship between each of the current weighting factors and the quality and equity of educational outcomes for students.

(C) Whether any of the weighting factors, including the weighting factors for students from economically deprived backgrounds and for students for whom English is not the primary language, should be modified, and if so, how the weighting factors should be modified and whether the modification would further the quality and equity of educational outcomes for students.

(D) Whether to add any weighting factors, including a school district population density factor and a factor for students who attend regional career technical education centers, and if so, why the weighting factor should be added and whether the weighting factor would further the quality and equity of educational outcomes for students. In considering whether to recommend the addition of a school district population density factor, the Agency of Education shall consider the practices of other states, information from the National Conference of State Legislatures, and research conducted by higher education institutions working on identifying rural or urban education financing factors.

(b) On or before November 1, 2019, the Agency of Education shall submit a written report to the House and Senate Committees on Education, the House Committee on Ways and Means, and the Senate Committee on Finance with its findings and any recommendations.

(c) The Agency of Education shall have the technical assistance of the Joint Fiscal Office and the Office of Legislative Council.

(d) Notwithstanding any provision to the contrary in 16 V.S.A. § 4025, the sum of \$250,000.00 is appropriated for fiscal year 2018 from the Education Fund to the Agency of Education to provide funding for the purposes set forth in this section. The Agency of Education shall contract with a contractor with expertise in Vermont's education funding system to assist the Agency in producing the study required by this section. Any application of funds for the purpose of administrative overhead shall be capped at ten percent of the total sum allocated pursuant to this subsection.

* * * Training and Technical Assistance on the Delivery of Special
Education Services * * *

Sec. 12. TRAINING AND TECHNICAL ASSISTANCE ON THE DELIVERY OF SPECIAL EDUCATION SERVICES

(a) The Agency of Education shall, for the 2018–2019, 2019–2020, and 2020–2021 school years, assist supervisory unions to expand and improve their delivery of services to students who require additional supports in accordance with the report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” delivered to the Agency of Education in November 2017 from the District Management Group. This assistance shall include the training of teachers and staff and technical assistance with the goal of embedding the following best practices for the delivery of special education services:

(1) ensuring core instruction meets most needs of most students;

(2) providing additional instructional time outside core subjects to students who require additional support, rather than providing interventions instead of core instruction;

(3) ensuring students who require additional support receive all instruction from highly skilled teachers;

(4) creating or strengthening a systems-wide approach to supporting positive student behaviors based on expert support; and

(5) providing specialized instruction from skilled and trained experts to students with more intensive needs.

(b) The sum of \$200,000.00 is appropriated from federal funds that are available under the Individuals with Disabilities Education Act for fiscal year 2019 to the Agency of Education, which the Agency shall administer in accordance with this section. The Agency shall include in its budget request to the General Assembly for each of fiscal years 2020 and 2021 the amount of \$200,000.00 from federal funds that are available under the Individuals with Disabilities Education Act for administration in accordance with this section.

(c) The Agency of Education shall present to the General Assembly on or before December 15 in 2019, 2020, and 2021 a report describing what changes supervisory unions have made to expand and improve their delivery of services to students who require additional supports and describing the associated delivery challenges. The Agency shall share each report with all supervisory unions.

* * * Agency of Education; Staffing * * *

Sec. 13. AGENCY OF EDUCATION; STAFFING

The following positions are created in the Agency of Education: one full-time, exempt legal counsel specializing in special education law and two full-time, classified positions specializing in effective instruction for students who require additional support. There is appropriated to the Agency of Education

from the General Fund for fiscal year 2019 the amount of \$325,000.00 for salaries, benefits, and operating expenses.

* * * Extraordinary Services Reimbursement * * *

Sec. 14. 16 V.S.A. § 2962 is amended to read:

§ 2962. EXTRAORDINARY SERVICES REIMBURSEMENT

(a) Except as otherwise provided in this subchapter, extraordinary services reimbursement shall be payable, based on where the related cost is incurred, to a town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, ~~and~~ an unorganized town or gore or to a supervisory union.

(b) The amount of extraordinary services reimbursement provided to each district or supervisory union shall be equal to ~~90~~ 95 percent of its extraordinary special education expenditures.

(c) As used in this subchapter, “extraordinary special education expenditures” means a school district’s or supervisory union’s allowable expenditures that for any one child exceed ~~\$50,000.00~~ \$60,000.00 for a fiscal year. In this subsection, child means a student with disabilities who is three years of age or older in the current school year. The State Board shall define allowable expenditures that shall include any expenditures required under federal law, and any costs of mediation conducted by a mediator who is approved by the Secretary.

Sec. 15. 16 V.S.A. § 4001 is amended to read:

§ 4001. DEFINITIONS

As used in this chapter:

* * *

(6) “Education spending” means the amount of the school district budget, any assessment for a joint contract school, career technical center payments made on behalf of the district under subsection 1561(b) of this title, and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) that is paid for by the school district, but excluding any portion of the school budget paid for from any other sources such as endowments, parental ~~fund raising~~ fundraising, federal funds, nongovernmental grants, or other State funds such as special education funds paid under chapter 101 of this title.

(A) [Repealed.]

(B) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12), “education spending” shall not include:

* * *

(v) Spending attributable to the district's share of special education spending in excess of \$50,000.00 that is not reimbursed as an extraordinary reimbursement under section 2962 of this title for any one student in the fiscal year occurring two years prior.

* * *

* * * Rulemaking * * *

Sec. 16. RULEMAKING

The Agency of Education shall recommend to the State Board proposed rules that are necessary to implement this act and, on or before November 1, 2019, the State Board of Education shall adopt rules that are necessary to implement this act. The State Board and the Agency of Education shall consult with the Census-based Funding Advisory Group established under Sec. 9 of this act in developing the State Board rules. The State Board rules shall include rules that establish processes for reporting, monitoring, and evaluation designed to ensure:

(1) the achievement of the goal under this act of enhancing the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts; and

(2) that supervisory unions are complying with the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33.

* * * Transition * * *

Sec. 17. TRANSITION

(a) Notwithstanding the requirement under 16 V.S.A. § 2964 for a supervisory union to submit a service plan to the Secretary of Education, a supervisory union shall not be required to submit a service plan for fiscal year 2021.

(b) On or before November 1, 2019, a supervisory union shall submit to the Secretary such information as required by the Secretary to estimate the supervisory union's projected fiscal year 2021 extraordinary special education reimbursement under Sec. 5 of this act.

(c) The Agency of Education shall assist supervisory unions as they transition to the census-based funding model in satisfying their maintenance of effort requirements under federal law.

Sec. 18. TRANSITION FOR ALLOWABLE SPECIAL EDUCATION COSTS

(a) Allowable special education costs shall include salaries and benefits of licensed special education teachers, including vocational special needs teachers and instructional aides for the time they carry out special education responsibilities.

(1) The allowable cost that a local education agency may claim includes a school period or service block during which the staff member identified in this subsection is providing special education services to a group of eight or fewer students, and not less than 25 percent of the students are receiving the special education services, in accordance with their individualized education programs.

(2) In addition to the time for carrying out special education responsibilities, a local education agency may claim up to 20 percent of special education staff members' time, if that staff spends the additional time performing consultation to assist with the development of and providing instructional services required by:

(A) a plan pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; or

(B) a plan for students who require additional assistance in order to succeed in the general education environment.

(b) This section is repealed on July 1, 2020.

* * * Approved Independent Schools * * *

Sec. 19. FINDINGS AND GOALS

(a) The General Assembly created the Approved Independent Schools Study Committee in 2017 Acts and Resolves No. 49 to consider and make recommendations on the criteria to be used by the State Board of Education for designation of an "approved" independent school. The Committee was specifically charged to consider and make recommendations on:

(1) the school's enrollment policy and any limitation on a student's ability to enroll;

(2) how the school should be required to deliver special education services and which categories of these services; and

(3) the scope and nature of financial information and special education information that should be required to be reported by the school to the State Board or Agency of Education.

(b) The General Assembly in Act 49 directed the State Board of Education to suspend further development of the amendments to its rules for approval of independent schools pending receipt of the report of the Committee.

(c) The Committee issued its report in December 2017, noting that, while it was unable to reach consensus on specific legislative language, it did agree unanimously that Vermont students with disabilities should be free to attend the schools that they, their parents, and their local education agency deem appropriate to them.

(d) This act completes that work and provides the direction necessary for the State Board of Education to develop further the amendments to its rules for approval of independent schools.

Sec. 20. 16 V.S.A. § 166 is amended to read:

§ 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

* * *

(b) Approved independent schools.

(1) On application, the State Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to section 906 of this title and that it substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools. An independent school that intends to accept public tuition shall be approved by the State Board only on the condition that the school agrees, notwithstanding any provision of law to the contrary, to enroll any student who requires special education services and who is placed in or referred to the approved independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education plan team or by the local education agency; provided, however, that this requirement shall not apply to an independent school that limits enrollment to students who are on an individualized education plan or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the local education agency and the school.

(2) Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school has have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with any State or federal law or regulation.

(3) Approval may be granted without State Board evaluation in the case of any school accredited by a private, State, or regional agency recognized by the State Board for accrediting purposes, provided that the State Board shall determine that the school complies with all student enrollment provisions

required by law.

* * *

(5) The State Board may revoke or, suspend, or impose conditions upon the approval of an approved independent school, after having provided an opportunity for a hearing, for substantial failure to comply with the minimum course of study, for failure to demonstrate that the school has the resources required to meet its stated objectives, for failure to comply with statutory requirements or the Board's rules for approved independent schools, or for failure to report under subdivision (4) of this subsection (b). Upon that revocation or suspension, students required to attend school who are enrolled in that school shall become truant unless they enroll in a public school, an approved or recognized independent school, or a home study program.

* * *

(8)(A) If an approved independent school experiences any of the following financial reporting events during the period of its approved status, the school shall notify the Secretary of Education within five days after its knowledge of the event unless the failure is de minimis:

(i) the school's failure to file its federal or State tax returns when due, after permissible extension periods have been taken into account;

(ii) the school's failure to meet its payroll obligations as they are due or to pay federal or State payroll tax obligations as they are due;

(iii) the school's failure to maintain required retirement contributions;

(iv) the school's use of designated funds for nondesignated purposes;

(v) the school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;

(vi) the withdrawal or conditioning of the school's accreditation on financial grounds by a private, State, or regional agency recognized by the State Board for accrediting purposes; or

(vii) the school's insolvency, as defined in 9 V.S.A. § 2286(a).

(B)(i) If the State Board reasonably believes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, then the State Board shall notify the school in writing of the reasons for this belief and permit the school a reasonable

opportunity to respond.

(ii) If the State Board, after having provided the school a reasonable opportunity to respond, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the State Board may establish a review team, that, with the consent of the school, includes a member of the Council of Independent Schools, to:

(I) conduct a school visit to assess the school's financial capacity;

(II) obtain from the school such financial documentation as the review team requires to perform its assessment; and

(III) submit a report of its findings and recommendations to the State Board.

(iii) If the State Board concludes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, the State Board may take any action that is authorized by this section.

(iv) In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions the State Board should take if it makes this finding, the State Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.

(C) Information provided by an independent school under this subsection that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

* * *

Sec. 21. 16 V.S.A. § 2973 is amended to read:

§ 2973. ~~INDEPENDENT SCHOOL TUITION RATES~~ SCHOOLS

(a)(1) Notwithstanding any provision of law to the contrary, an approved independent school that accepts public tuition shall enroll any student with an individualized education plan who requires special education services and who is placed in the approved independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education plan team or by the local education agency (LEA); provided, however, that this requirement shall not apply to an independent school that limits enrollment to students who are on an individualized education plan or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the LEA and

the school.

(2) In placing a student with an independent school under subdivision (1) of this subsection, the student's individualized education plan team and the LEA shall comply with all applicable federal and State requirements.

(3) An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under State Board of Education rules in order to be approved or retain its approval to receive public funding for general tuition.

(4) The terms "special education services," "LEA," and "individualized education plan" or "IEP" as used in this section shall have the same meanings as defined by State Board rules.

(b)(1) The Secretary of Education shall establish minimum standards of services for students receiving special education services in independent schools in Vermont; shall set, after consultation with independent schools in Vermont, the maximum rates to be paid by the Agency and school districts for tuition, room, and board based on the level of services; and may advise independent schools as to the need for certain special education services in Vermont.

(2)(A) The Secretary of Education shall set, after consultation with independent schools in Vermont, and based on the level of services provided by the schools, the maximum rates to be paid by the Agency and supervisory unions or school districts for tuition, room, and board for residential placement of students who require special education services. The amount charged by an independent school for tuition shall reflect the school's actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of these maximum rates where the Secretary deems warranted.

(B)(i) An approved independent school that enrolls a student under subdivision (a)(1) of this section on a nonresidential basis may bill the responsible LEA for excess special education costs incurred by the independent school in providing special education services beyond those covered by general tuition. Reimbursement of these excess special education costs shall be based on the direct-costs rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting. The Agency of Education shall publish specific elements that must be included as part of an independent school's invoice for excess special education costs, and these elements shall be included in the written agreement required under subdivision (c)(2) of this section.

(ii) In establishing the direct cost rates for reimbursement under this subdivision (B), the Secretary shall apply the principle of treating an approved independent school and a public school with parity in the amount of federal, State, and local contributions to cover the costs of providing special education services.

(C)(i) The Secretary shall set, after consultation with independent schools in Vermont, the maximum tuition rates to be paid by the Agency and supervisory unions or school districts to independent schools that limit enrollment to students who are on an IEP or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the LEA and the school. The maximum tuition rates shall be based on the level of services provided by the school.

(ii) The tuition rates established by the Secretary under this subdivision (C) shall be no more than the costs that are reasonably related to the level of services provided by the school and shall be set forth on a form prescribed for that purpose by the Secretary of Education. The Secretary shall determine the relationship between costs and the level of services by using generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

(iii) After the Secretary approves a tuition rate for an independent school under this subdivision (C), the school shall not exceed that tuition rate until such time as a new tuition rate is approved by the Secretary.

(3) An approved independent school shall provide such documentation to the Secretary as the Secretary deems necessary in order to ensure that amounts payable under this subsection to the school are reasonable in relation to the special education services provided by the school. The Secretary may withhold, or direct an LEA to withhold, payment under this subsection pending the Secretary's receipt of required documentation under this subsection, or may withhold, or direct an LEA to withhold, an amount determined by the Secretary as not reasonable in relation to the special education services provided by the school.

(c)(1) In order to be approved as an independent school eligible to receive State funding under subdivision (a)(1) of this section, the school shall demonstrate the ability to serve students with disabilities by:

(A) demonstrating an understanding of special education requirements, including the:

(i) provision of a free and appropriate public education in accordance with federal and State law;

(ii) provision of education in the least restrictive environment in

accordance with federal and State law;

(iii) characteristics and educational needs associated with any of the categories of disability or suspected disability under federal and State law; and

(iv) procedural safeguards and parental rights, including discipline procedures, specified in federal and State law;

(B) committing to implementing the IEP of an enrolled student with special education needs, providing the required services, and appropriately documenting the services and the student's progress;

(C) subject to subsection (d) of this section, employing or contracting with staff who have the required licensure to provide special education services;

(D) agreeing to communicate with the responsible LEA concerning:

(i) the development of, and any changes to, the IEP;

(ii) services provided under the IEP and recommendations for a change in the services provided;

(iii) the student's progress;

(iv) the maintenance of the student's enrollment in the independent school; and

(v) the identification of students with suspected disabilities; and

(E) committing to participate in dispute resolution as provided under federal and State law.

(2) An approved independent school that enrolls a student requiring special education services who is placed under subdivision (a)(1) of this section:

(A) shall enter into a written agreement with the LEA:

(i) committing to the requirements under subdivision (1) of this subsection (c); and

(ii) if the LEA provides staff or resources to the approved independent school on an interim basis under subsection (d) of this section, setting forth the terms of that arrangement with assistance from the Agency of Education on the development of those terms and on the implementation of the arrangement; and

(B) subject to subsection (d) of this section, shall ensure that qualified school personnel attend evaluation and planning meetings and IEP meetings for the student.

(d) If an approved independent school enrolls a student under subdivision (a)(1) of this section but does not have the staff or State Board certification to provide special education services in the specific disability category that the student requires, then:

(1) The LEA, in consultation with the approved independent school and the Agency of Education, shall determine what special education services and supports the school is able to provide to the student.

(2) The LEA shall, on an interim basis and at its cost, provide such additional staff and other resources to the approved independent school as are necessary to support the student until such time as the approved independent school is able to directly provide these services and has the appropriate State Board certification; provided, however, that the school shall have all required staff and resources and the appropriate State Board certification within nine academic months after the date of the student's initial enrollment.

(3) If the school does not have all required staff and resources and the appropriate State Board certification within nine academic months after the date of the student's initial enrollment as required under subdivision (2) of this subsection (d), then, in the event that the State Board determines that the school has failed to make good faith and reasonable efforts to secure the required staff, resources, and certification, the State Board may take any action that is authorized by section 166 of this title.

(b)(e) Neither a school districts district nor any State agency shall pay rates for tuition, room, and board, for students receiving special education in independent schools outside Vermont that are in excess of allowable costs approved by the authorized body in the state in which the independent school is located, except in exceptional circumstances or for a child who needs exceptional services, as approved by the Secretary.

(e)(f) The State Board is authorized to enter into interstate compacts with other states to regulate rates for tuition, room, and board for students receiving special education in independent schools.

* * * Effective Dates * * *

Sec. 22. EFFECTIVE DATES

(a) The following sections shall take effect on July 1, 2020:

(1) Sec. 5 (amendment to 16 V.S.A. chapter 101); and

(2) Sec. 17 (transition).

(b) The following sections shall take effect on July 1, 2019:

(1) Sec. 14 (extraordinary services reimbursement);

(2) Sec. 15 (amendment to 16 V.S.A. § 4001); and

(3) Secs. 19-21 (approved independent schools).

(c) This section and the remaining sections shall take effect on passage.

(For text see House Journal March 22, 2018)

NOTICE CALENDAR

Favorable with Amendment

S. 244

An act relating to repealing the guidelines for spousal maintenance awards

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:

by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 2017 Acts and Resolves No. 60, Sec. 3 is amended to read:

Sec. 3. REPEAL

On July 1, ~~2019~~ 2021, 15 V.S.A. § 752(b)(8) (spousal support and maintenance guidelines) is repealed.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: “An act relating to extending the repeal date for the guidelines for spousal maintenance awards”

(Committee vote: 11-0-0)

(For text see Senate Journal February 13, 2018)

S. 261

An act relating to mitigating trauma and toxic stress during childhood by strengthening child and family resilience

Rep. Mrowicki of Putney, for the Committee on Human Services, 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:

by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Purpose and Status Update * * *

Sec. 1. PURPOSE

It is the purpose of this act to ensure a consistent family support system by enhancing opportunities to build resilience among families throughout the State that are experiencing the causes or symptoms of childhood adversity. While significant efforts to provide preventative services are already well under way in many parts of the State, better coordination is necessary to ensure that gaps in services are addressed and redundancies do not occur. In this regard, this act builds on the significant work advanced in 2017 Acts and Resolves No. 43, including the principles for Vermont's trauma-informed system of care. The General Assembly supports a public health approach to address childhood adversity wherein interventions pertaining to socioeconomic determinants of health are employed in a manner that has the broadest societal reach and in which specialized interventions are directed to individuals with the most acute need.

Sec. 2. STATUS REPORT; COMPLETION OF ACT 43 REPORT

On or before November 1, 2018, the Agency of Human Services' Director of Trauma Prevention and Resilience Development shall submit to the Chairs of the House Committee on Human Services and the Senate Committee on Health and Welfare and to any existing Advisory Council on Child Poverty and Strengthening Families a status report on the Agency's methodology and progress in preparing the response plan required pursuant to 2017 Acts and Resolves No. 43, Sec. 4, including any preliminary findings. The status report shall include information as to the Agency's progress in implementing trauma-informed training opportunities for child care providers

* * * Human Services Generally * * *

Sec. 3. 33 V.S.A. § 3402 is added to read:

§ 3402. DEFINITIONS

As used in this chapter:

(1) "Childhood adversity" means experiences that may be traumatic to children and youths during the first 18 years of life, such as experiencing violence or other emotionally disturbing exposures in their homes or communities.

(2) "Resilience" means the ability to respond to, withstand, and recover from serious hardship with coping skills and a combination of protective factors, including a strong community, family support, social connections, knowledge of parenting and child development, concrete support in times of need, and social and emotional competence of children.

(3) "Toxic stress" means strong, frequent, or prolonged experience of

adversity without adequate support.

(4) “Trauma-informed” means a type of program, organization, or system that recognizes the widespread impact of trauma and potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved in a system; responds by fully integrating knowledge about trauma into policies, procedures, and practices; and seeks actively to resist retraumatization and build resilience among the population served.

Sec. 4. 33 V.S.A. § 3403 is added to read:

§ 3403. DIRECTOR OF TRAUMA PREVENTION AND RESILIENCE

DEVELOPMENT

(a) There is created the permanent position of Director of Trauma Prevention and Resilience Development within the Office of the Secretary in the Agency of Human Services for the purpose of directing and coordinating systemic approaches across State government that build childhood resiliency and mitigate toxic stress by implementing a public health approach. The Director shall engage families and communities to build the protective factors of a strong community, family support, social connections, knowledge of parenting and child development, concrete support in times of need, and the social and emotional competence of children. It is the intent of the General Assembly that the Director position be funded by the repurposing of existing expenditures and resources, including the potential reassignment of existing positions. If the Secretary determines to fund this position by reassigning an existing position, he or she shall propose to the Joint Fiscal Committee prior to October 1, 2018 any necessary statutory modifications to reflect the reassignment.

(b) The Director shall:

(1) provide advice and support to the Secretary of Human Services and facilitate communication and coordination among the Agency’s departments with regard to childhood trauma, toxic stress, and the promotion of resilience building;

(2) collaborate with both community and State partners, including the Agency of Education and the Judiciary, to build consistency between trauma-informed systems that address medical and social service needs and serve as a conduit between providers and the public;

(3) provide support for and dissemination of educational materials pertaining to childhood trauma, toxic stress, and the promotion of resilience building, including to postsecondary institutions within Vermont’s State College System;

(4) coordinate with partners inside and outside State government, including the Child and Family Trauma Work Group; and

(5) evaluate the work of the Agency and the Agency's grantees and community contractors that addresses resilience and trauma-prevention using results-based accountability methodologies.

Sec. 5. 2017 Acts and Resolves No. 43, Sec. 4 is amended to read:

Sec. 4. ~~ADVERSE CHILDHOOD EXPERIENCES~~ ADVERSITY;
RESPONSE PLAN

(a) On or before January 15, 2019, the Agency of Human Services shall present to the House Committees on Health Care and on Human Services and the Senate Committee on Health and Welfare, in response to the work completed by the Adverse Childhood Experiences Working Group established pursuant to Sec. 3 of this act, a plan that specially addresses the integration of evidence-informed and family-focused prevention, intervention, treatment, and recovery services for individuals affected by ~~adverse childhood experiences~~ adversity. The plan shall address the coordination of services throughout and among the Agency, the Agency of Education, and the Judiciary and shall propose mechanisms for:

(1) improving and engaging community providers in the systematic prevention of trauma;

(2) case detection and care of individuals affected by ~~adverse childhood experiences~~ adversity; and

(3) ensuring that the Agency's policies related to children, families, and communities build resilience;

(4) ensuring that the Agency and grants to the Agency of Human Services' Agency's community partners related to children and families strive toward accountability and community resilience are evaluated using results-based accountability methodology; and

(5) providing an estimate of the resources necessary to implement the response plan, including any possible reallocations.

* * *

* * * Health Care * * *

Sec. 6. 18 V.S.A. § 702 is amended to read:

§ 702. BLUEPRINT FOR HEALTH; STRATEGIC PLAN

* * *

(c) The Blueprint shall be developed and implemented to further the

following principles:

(1) ~~the primary care provider~~ The Blueprint community health team should serve a central role in the coordination of medical care and social services and shall be compensated appropriately for this effort;

(2) ~~use~~ Use of information technology should be maximized;

(3) ~~local~~ Local service providers should be used and supported, whenever possible;

(4) ~~transition~~ Transition plans should be developed by all involved parties to ensure a smooth and timely transition from the current model to the Blueprint model of health care delivery and payment;

(5) ~~implementation~~ Implementation of the Blueprint in communities across the State should be accompanied by payment to providers sufficient to support care management activities consistent with the Blueprint, recognizing that interim or temporary payment measures may be necessary during early and transitional phases of implementation; ~~and~~

(6) ~~interventions~~ Interventions designed to prevent chronic disease and improve outcomes for persons with chronic disease should be maximized, should target specific chronic disease risk factors, and should address changes in individual behavior; the physical, mental, and social environment; and health care policies and systems.

(7) Providers should assess trauma and toxic stress to ensure that the needs of the whole person are addressed and opportunities to build resilience and community supports are maximized.

* * *

Sec. 7. 18 V.S.A. § 9382 is amended to read:

§ 9382. OVERSIGHT OF ACCOUNTABLE CARE ORGANIZATIONS

(a) In order to be eligible to receive payments from Medicaid or commercial insurance through any payment reform program or initiative, including an all-payer model, each accountable care organization shall obtain and maintain certification from the Green Mountain Care Board. The Board shall adopt rules pursuant to 3 V.S.A. chapter 25 to establish standards and processes for certifying accountable care organizations. To the extent permitted under federal law, the Board shall ensure these rules anticipate and accommodate a range of ACO models and sizes, balancing oversight with support for innovation. In order to certify an ACO to operate in this State, the Board shall ensure that the following criteria are met:

* * *

(17) The ACO provides connections and incentives to existing community services for preventing and addressing the impact of childhood adversity. The ACO collaborates on the development of quality-outcome measurements for use by primary care providers who work with children and families and fosters collaboration among care coordinators, community service providers, and families.

* * *

* * * Effective Date * * *

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

and that after passage the title of the bill be amended to read: “An act relating to ensuring a coordinated public health approach to addressing childhood adversity and promoting resilience”

(Committee vote: 11-0-0)

(For text see Senate Journal March 13, 2018)

Rep. Trieber of Rockingham, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Human Services and when further amended as follows:

The report of the Committee on Human Services and recommends that the House propose to the Senate that the report be amended in Sec. 4, 33 V.S.A. § 3403, subdivision (b)(3), after the word “System” and before the semicolon, by inserting the phrase “and the University of Vermont and State Agricultural College”

(Committee Vote: 11-0-0)

Rep. Lanpher of Vergennes, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Human Services and Appropriations.

(Committee Vote: 11-0-0)

Amendment to be offered by Rep. Turner of Milton to the recommendation of amendment of the Committee on Human Services to S. 261

First: After Sec. 7 and before Sec. 8, by inserting Secs. 7a–7c and a reader assistance heading as follows:

* * * Appropriations and Personal Income Tax Rates * * *

Sec. 7a. APPROPRIATION; CHILD CARE FINANCIAL ASSISTANCE

PROGRAM

The amount of \$19,700,000.00 is appropriated to the Department for Children and Families' Child Development Division from the General Fund in fiscal year 2019 for the purposes of:

(1) providing all participants with a household income at or below 200 percent of the federal poverty level with a 100 percent subsidy benefit;

(2) providing all participants with a household income between 201 percent and 250 percent of the federal poverty level with a 50 percent subsidy benefit; and

(3) providing all participants with a household income between 251 percent and 300 percent of the federal poverty level with a graduated subsidy benefit that is no more than 50 percent of the full subsidy benefit.

Sec. 7b. 32 V.S.A. § 5828b(a) is amended to read:

(a) A resident individual or part-year resident individual who is entitled to an earned income tax credit granted under the laws of the United States shall be entitled to a credit against the tax imposed for each year by section 5822 of this title. The credit shall be ~~32~~ 85 percent of the earned income tax credit granted to the individual under the laws of the United States, multiplied by the percentage which the individual's earned income that is earned or received during the period of the individual's residency in this State bears to the individual's total earned income.

Sec. 7c. PERSONAL INCOME TAX RATES

(a) 2009 Spec. Sess. Acts and Resolves No. 2, Sec. 20 is repealed.

(b) For taxable year 2018 and after, income tax rates under 32 V.S.A. § 5822(a)(1)-(5), after taking into consideration any inflation adjustments to taxable income as required by 32 V.S.A. § 5822(b)(2), shall be as follows:

(1) taxable income that without the passage of this act would have been subject to a rate of 3.55 percent, 6.80 percent, or 7.80 percent shall continue to be taxed at those rates;

(2) taxable income that without the passage of this act would have been subject to a rate of 8.80 percent shall be taxed at the rate of 9.8 percent instead;

(5) taxable income that without the passage of this act would have been subject to a rate of 8.95 percent shall be taxed at the rate of 11 percent instead.

(c) When preparing the Vermont Statutes Annotated for publication, the Office of Legislative Council shall revise the tables in 32 V.S.A. § 5822(a)(1)-(5) to reflect the changes to the tax rates and tax brackets made in this section.

Second: By striking out Sec. 8, effective date, and its reader assistance heading in their entirety and inserting in lieu thereof:

* * * Effective Dates * * *

Sec. 8. EFFECTIVE DATES

This act shall take effect on July 1, 2018, except notwithstanding 2 V.S.A. § 214, Secs. 7b (earned income tax credit) and 7c (income tax rates) shall take effect retroactively on January 1, 2018 and apply to taxable year 2018 and after.

S. 276

An act relating to rural economic development

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

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 the following:

* * * Rural Economic Development Initiative * * *

Sec. 1. 10 V.S.A. § 325m is amended to read:

§ 325m. RURAL ECONOMIC DEVELOPMENT INITIATIVE

(a) Definitions. As used in this subchapter:

(1) ~~“Industrial park” means an area of land permitted as an industrial park under chapter 151 of this title or under 24 V.S.A. chapter 117, or under both.~~

(2) “Rural area” means a county of the State designated as “rural” or “mostly rural” by the U.S. Census Bureau in its most recent decennial census.

(3)(2) “Small town” means a town in the State with a population of less than 5,000 at the date of the most recent U.S. Census Bureau decennial census.

(b) Establishment. There is created ~~within the Vermont Housing and Conservation Board~~ a the Rural Economic Development Initiative to promote and facilitate to be administered by the Vermont Housing and Conservation Board for the purpose of promoting and facilitating community economic development in the small towns and rural areas of the State. The Rural Economic Development Initiative shall collaborate with municipalities, businesses, ~~industrial parks,~~ regional development corporations, regional planning commissions, and other appropriate entities to access funding and other assistance available to small towns and businesses in rural areas of the

State when existing State resources or staffing assistance is not available.

(c) Services; access to funding.

(1) The Rural Economic Development Initiative shall provide the following services to small towns and businesses in rural areas:

~~(A)(1)~~ identification of grant or other funding opportunities available to small towns, businesses in rural areas, and industrial parks in small towns and rural areas that facilitate business development, siting of businesses, workforce development, broadband deployment, infrastructure development, or other economic development opportunities;

~~(B)(2)~~ technical assistance to small towns, businesses in rural areas, and industrial parks in small towns and rural areas in writing grants, accessing and completing the application process for identified grants or other funding opportunities, including writing applications for grants or other funding, coordination with providers of grants or other funding, strategic planning for the implementation or timing of activities funded by grants or other funding, and compliance with the requirements of grant awards or awards of other funding.

~~(2)(d)~~ Priority. In providing services under this subsection section, the Rural Economic Development Initiative shall give first priority to projects that have received necessary State or municipal approval and that are ready for construction or implementation.

~~(d)(e)~~ Services; business development Priority projects. The Rural Economic Development Initiative shall provide small towns and rural areas with services to facilitate business development in these areas. These services shall include:

~~(1)~~ Identifying businesses or business types suitable for a small town, rural areas, industrial parks in a small town or rural area, or coworker spaces or generator spaces in rural areas. In identifying businesses or business types, the Rural Economic Development Initiative shall seek to assist the following priority types of projects:

~~(A)~~ identify businesses or business types in the following priority areas:

~~(i)(1)~~ milk plants, milk handlers, or dairy products, as those terms are defined in 6 V.S.A. § 2672;

~~(ii)(2)~~ the outdoor recreation and equipment or recreation industry enterprises;

~~(iii)(3)~~ the value-added food and forest products industry enterprises;

~~(iv)(4) the value-added food industry farm operations, including phosphorus removal technology for farm operations;~~

~~(v)(5) phosphorus removal technology coworking or business generator and accelerator spaces; and~~

~~(vi)(6) commercial composting facilities; and~~

~~(7) restoration and rehabilitation of historic buildings in community centers.~~

~~(B) explore with a small town or rural area whether underused or closed school buildings are appropriate sites for coworker or generator spaces.~~

~~(2) Recommending available grants, tax credits, or other incentives that a small town or rural area can use to attract businesses.~~

~~(3)(f) Coordination. In providing services under this subsection section, the Rural Economic Development Initiative shall coordinate with the Secretary of Commerce and Community Development in order to avoid duplication by the Rural Economic Development Initiative of business recruitment and workforce development services provided by the Agency of Commerce and Community Development, regional development corporations, and regional planning commissions.~~

~~(e)(g) Report. Beginning on January 15, 2018 31, 2019, and annually thereafter, the Rural Economic Development Initiative shall submit to the Senate Committees on Agriculture and on Economic Development, Housing and General Affairs and the House Committees on Agriculture and Forestry and on Commerce and Economic Development a report regarding the activities and progress of the Initiative as part of the report of the Vermont Farm and Forest Viability Program. The report shall include:~~

~~(1) a summary of the Initiative's activities in the preceding calendar year;~~

~~(2) an evaluation of the effectiveness of the services provided by the Initiative to small towns, rural areas, and industrial parks;~~

~~(3) a summary of the Initiative's progress in attracting priority businesses to small towns and rural areas;~~

~~(4) an accounting of the grants or other funding that the Initiative facilitated or provided assistance with;~~

~~(5) an accounting of the funds acquired by the Rural Economic Development Initiative for administration of grants or other funding mechanisms and whether these funds are sufficient to offset the cost of the Rural Economic Development Initiative; and~~

~~(6) recommended changes to the program, including proposed legislative amendments to further economic development in small towns and rural areas in the State summarize the Initiative's activities in the preceding year; evaluate the effectiveness of the services provided by the Initiative; provide an accounting of the grants or other funding that the Initiative facilitated or helped secure; and recommend any changes to the program to further economic development in small towns and rural areas of the State.~~

~~* * * Outdoor Recreation-Friendly Community Program * * *~~

Sec. 2. OUTDOOR RECREATION-FRIENDLY COMMUNITY PROGRAM

(a) Establishment. Upon receipt of funding, the Outdoor Recreation-Friendly Community Program (Program) is created to provide incentives for communities to leverage outdoor recreation assets to foster economic growth within a town, village, city, or region of the State.

(b) Administration. The Program shall be administered by the Department of Forests, Parks and Recreation in association with the Agency of Commerce and Community Development.

(c) Selection. The Commissioner of Forests, Parks and Recreation in consultation with the Agency of Commerce and Community Development and the Vermont Outdoor Recreation Economic Collaborative steering committee shall select communities for the Program using, at minimum, the following factors:

(1) community economic need;

(2) identification of outdoor recreation as a priority in a town plan or other pertinent planning document;

(3) community commitment to an outdoor recreation vision; demonstrated support from community officials, the public, local business, and local and statewide outdoor recreation nonprofit organizations; and commitment to adhere to accepted standards and recreation ethos;

(4) a community with a good foundation of outdoor recreation assets already in place with strong potential for growth on both private and public lands;

(5) a community with good opportunities for connecting assets within the community with assets of other nearby communities;

(6) a community with an existing solid network of local supporting businesses; and

(7) community commitment to track and measure outcomes to demonstrate economic and social success.

(d) Incentives. Communities accepted into the Program shall be offered, at minimum, the following incentives:

(1) preferential consideration to become part of the Vermont Trail System;

(2) preferential consideration when applying for grant assistance through the Recreational Trails Program and the Land and Water Conservation Fund Program;

(3) access to other economic development assistance if available and appropriate; and

(4) recognition as part of a network of Outdoor Recreation-Friendly Communities connected through a common branding and adherence to high standards of quality and service.

(e) Pilot project and appropriation. Upon receipt of funding to create the Outdoor Recreation Friendly Community Program, the Agency of Commerce and Community Development, in association with the Department of Forests, Parks and Recreation, shall approve pilot communities to serve as prototypes for the Program. The funding may be used for the following purposes:

(1) communitywide outdoor recreation planning, including assessment, mapping, and identifying possibilities and priorities;

(2) services of consultants and other technical assistance providers;

(3) public facing mapping and other informational materials;

(4) securing access;

(5) implementation of public access improvements;

(6) stewardship;

(7) marketing; and

(8) program administration.

(f) Reports. On or before January 15, 2019, the Commissioner of Forests, Parks and Recreation shall submit a report to the General Assembly detailing the progress made with the pilot project authorized under subsection (e) of this section. On or before January 15, 2020, the Commissioner of Forests, Parks and Recreation shall submit a report to the General Assembly detailing any measurable results of economic activity growth.

* * * Vermont Trails System; Act 250 * * *

Sec. 3. PURPOSE

The purpose of this section and Sec. 4 of this act is to provide for

consistency in the application of 10 V.S.A. chapter 151 (Act 250) to the construction and improvement of trails that are part of the Vermont Trails System under 10 V.S.A. chapter 20.

Sec. 4. 10 V.S.A. § 6001(3) is amended to read:

(3)(A) “Development” means each of the following:

* * *

(v) The construction of improvements on a tract of land involving more than 10 acres that is to be used for municipal, county, or State purposes. In computing the amount of land involved, land shall be included that is incident to the use such as lawns, parking areas, roadways, leaching fields, and accessory buildings. Trails recognized as part of the Vermont Trails System under section 443 of this title shall be deemed to be for a State purpose.

* * *

(C) For the purposes of determining jurisdiction under subdivision ~~(3)(A)~~ of this section subdivision (3), the following shall apply:

* * *

(vi) Vermont Trail System projects. In the case of a construction project for a trail recognized as part of the Vermont Trail System pursuant to section 443 of this title, the computation of land involved shall not include any portion of the trail or of the Vermont Trail System in existence as of July 1, 2018, unless that portion will be physically altered as part of the project and is on the same tract or tracts of land.

* * *

(F) When jurisdiction over a trail has been established pursuant to subdivision (A) of this subdivision (3), jurisdiction shall extend only to the trail corridor and to any area directly or indirectly affected by the construction, operation, or maintenance of the trail corridor. The width of the corridor shall be 10 feet unless the District Commission determines that circumstances warrant a wider or narrower width.

Sec. 4a. PROSPECTIVE REPEAL

10 V.S.A. § 6001(3)(C)(vi) shall be repealed on July 1, 2019.

Sec. 4b. ACT 250 JURISDICTION; RECREATIONAL TRAILS;

EVALUATION

(a) In addition to the currently assigned tasks under 2017 Acts and Resolves No. 47 (Act 47), the Commission on Act 250: the Next 50 Years (the Commission) established under that act shall evaluate the strengths and

challenges associated with regulation of recreational trails under 10 V.S.A. chapter 151 (Act 250) and alternative structures for the planning, review, and construction of future trail networks and the extension of existing trail networks. The Commission shall include recommendations on this issue in its report to the General Assembly due on or before December 15, 2018 under Act 47.

(b) To provide information and recommendations to the Commission on the issue identified in subsection (a) of this section, the Commissioner of Forest, Parks and Recreation or designee and the Chair of the Natural Resources Board or designee shall form a recreational trails working group that shall include officers and employees of the Agency of Natural Resources designated by the Secretary of Natural Resources, the Vermont Trails and Greenways Council established under 10 V.S.A. chapter 20, representatives of environmental organizations, and other affected persons. The working group shall submit a report to the Commission on Act 250 on or before October 1, 2018.

(1) With respect to recreational trails, the working group's report shall examine multiple potential planning and regulatory structures, including possible revisions to Act 250; the creation of a trail oversight program within the Agency of Natural Resources that includes best development practices and an agency permitting process, including consideration of a general permit; and other options that the working group may identify.

(2) In considering alternative structures, the working group shall evaluate how best to foster the development of an interconnected recreational trail network in Vermont while safeguarding the State's natural resources, including water quality, wildlife habitat and populations, and sensitive natural communities and areas, and potential impacts on neighboring properties and host municipalities.

(3) The Commission shall consider the report of the working group during its deliberation and report preparation phase set forth in Act 47, Sec. 2(d)(3), and shall attach a copy of the working group's report to its own report to the General Assembly.

* * * Farm and Forest Viability * * *

Sec. 5. 6 V.S.A. § 4710 is amended to read:

§ 4710. VERMONT FARM AND FOREST VIABILITY ENHANCEMENT PROGRAM

(a) The Vermont Farm and Forest Viability ~~Enhancement~~ Program is a voluntary program established in the Agency of Agriculture, Food and Markets to provide assistance to Vermont ~~farmers~~ farm, food, and forest-sector

businesses to enhance the financial success and long-term viability of Vermont ~~agriculture~~ agricultural and forest sectors. In administering the Program, the Secretary shall:

(1) Collaborate with the Vermont Housing and Conservation Board, to administer the program with other State and federal agencies, private entities, and service groups to develop, coordinate, and provide technical and financial assistance to Vermont ~~farmers~~ farm, food, and forest-sector businesses.

(2) ~~Include teams of~~ Secure and coordinate experts to assist ~~farmers~~ farm, food, and forest-sector business owners in areas such as ~~assessing farm resources and potential~~ business and financial planning, succession planning, diversifying, adopting new technologies, improving product quality, developing value-added products, and lowering costs of production for Vermont's agricultural sector. ~~The teams.~~ Providers may include farm business management specialists, University of Vermont Extension professionals, veterinarians, and other experts to deliver the informational and technological educational and consulting services.

(3) Encourage agricultural or forest-sector economic development through investing in improvements to essential infrastructure and the promotion of ~~farm~~ businesses in Vermont these sectors.

(4) Enter into agreements with private organizations or individuals or with any agency or instrumentality of the United States or of this State and employ technical experts to carry out the purposes of this section.

(b) ~~The farm viability enhancement program~~ Farm and Forest Viability Program shall be assisted by an advisory board consisting of ~~ten~~ 12 members who shall include:

(1) The Secretary of Agriculture, Food and Markets. The Secretary shall serve as Chair of the Board.

(2) The Commissioner of Forests, Parks and Recreation or designee.

(3) The Commissioner of Economic Development or designee.

~~(3)~~(4) The Manager of the Vermont Economic Development Authority or designee.

~~(4)~~(5) The Director of University of Vermont Extension or designee.

~~(5)~~(6) The Executive Director of the Vermont Housing and Conservation Board or designee.

~~(6)~~(7) Four Vermont ~~farmers~~ agricultural or forest-sector business owners appointed by the Secretary of Agriculture, Food and Markets in consultation with the Vermont Housing and Conservation Board and the

Commissioner of Forests, Parks and Recreation. The four farmers shall serve two-year terms, except for the first year, two farmers chosen by the Chair shall serve one-year terms. At least two of the four business owners shall be agricultural-sector business owners.

~~(7)(8)~~ A person who has Two people who have expertise in agricultural or forest-sector economics, financing, or business planning development appointed by the Secretary of Agriculture, Food and Markets in consultation with the Vermont Housing and Conservation Board and the Commissioner of Forests, Parks and Recreation.

(c) Members of the Advisory Board established in subsection (b) of this section other than ex officio members shall serve up to three two-year terms and shall be entitled to per diem expenses pursuant to 32 V.S.A. § 1010 for each day spent in the performance of their duties, and each such member shall be reimbursed ~~from the fund created by this section~~ for his or her reasonable expenses incurred in carrying out his or her duties under this section.

(d) In consultation with the Advisory Board, the Secretary of Agriculture, Food and Markets and the Vermont Housing and Conservation Board shall establish ~~grant criteria~~, performance goals, performance measures that demonstrate Program results, and other criteria to implement the Program. The ~~grant~~ criteria shall include at least the following requirements:

(1) ~~the application is developed in consultation with the producers who use or would use the Program and will address their needs;~~

(2) ~~the use of the funds available to the Program is likely to succeed in improving the economic viability of the farm and the farm's producers business;~~

~~(3)(2)~~ the producers are committed enrollees demonstrate commitment to participating in the Program; and

~~(4)(3)~~ an evaluation shall be completed by enrolled farmers in conjunction with the teams the enrollees.

~~(e)(1) The Farm Viability Enhancement Program Special Fund is established in the State Treasury and shall be administered by the Secretary of Agriculture, Food and Markets in accordance with the provisions of 32 V.S.A. chapter 7, subchapter 5, except that interest earned on the fund shall be retained in the Fund. The Fund shall be used only for the purpose of implementing and effectuating the Farm Viability Enhancement Program established by this section. There shall be deposited in such Fund any monies appropriated by the General Assembly to, or received by, the Secretary of Agriculture, Food and Markets from any other source, public or private. The Fund shall be used only for the purposes of:~~

~~(A) providing funds for the Farm Viability Enhancement Program as established in this section;~~

~~(B) providing funds to enrolled farmers;~~

~~(C) providing funds to service providers for administrative expenses of the program; and~~

~~(D) leveraging other competitive public and private funds, grants, and contributions for the Farm Viability Enhancement Program.~~

~~(2) The Secretary of Agriculture, Food and Markets, the Commissioner of Forests, Parks and Recreation, and the Vermont Housing and Conservation Board, separately or cooperatively, may solicit federal funds, grants, and private contributions for the Farm and Forest Viability Enhancement Program, but any Vermont Housing and Conservation Board funds used for the Farm and Forest Viability Enhancement Program shall be administered in accordance with 10 V.S.A. § 312.~~

~~(f)(1) In collaboration with the Vermont Housing and Conservation Board, the Secretary of Agriculture, Food and Markets and the Commissioner of Forests, Parks and Recreation, the Vermont Housing and Conservation Board shall report in writing to the Senate Committee Committees on Agriculture and on Economic Development, Housing and General Affairs and the House Committee Committees on Agriculture and Forestry and on Commerce and Economic Development on or before January 31 of each year with a report on the activities and performance of the Farm and Forest Viability Enhancement Program. At a minimum, the report shall include an evaluation of the Program utilizing the performance goals and performance measures established in consultation with the Advisory Board under subsection (d) of this section. The report should assess potential demand for the Program over the succeeding three years.~~

~~(2) The Agency of Agriculture, Food and Markets and the Vermont Housing and Conservation Board shall describe in their annual budget submissions plans to develop adequate State, federal, and private funds to carry out this initiative.~~

~~(g)(1) The Agricultural Economic Development Special Account is established as a dedicated sub-account of the Vermont Farm Viability Enhancement Program Special Fund. There shall be deposited in such account any monies:~~

~~(A) appropriated by the General Assembly to the account; and~~

~~(B) received by the State or the Secretary of Agriculture, Food and Markets from any source, public or private, for use for any of the purposes for which the account was established.~~

~~(2) The Fund shall only be used for the purposes of:~~

~~(A) encouraging private investment in the economic initiative; and~~

~~(B) providing incentives for technology businesses, determined by the Agency of Agriculture, Food and Markets to provide critical technological solutions for the growth of Vermont's agricultural economy.~~

~~(3) Assistance from the Agricultural Economic Development Special Account shall be available in order to produce agricultural energy, harvest biomass, convert biomass into energy, or enable installation and usage of wind, solar, or other technology that relies on a resource that is being consumed at a harvest rate at or below its natural regeneration rate pursuant to 30 V.S.A. § 8002(2), including:~~

~~(A) business and technical assistance for research and planning to aid a farmer or a group of farmers in developing business enterprises;~~

~~(B) cost-effective implementation assistance to leverage other sources of capital to assist a farmer or group of farmers in purchasing equipment, technology, or other assistance; and~~

~~(C) business, technical, and implementation assistance to persons that are not farmers for the development and implementation of technology or development of facilities designed to produce agricultural energy, harvest biomass, or convert biomass into energy, provided that the person is working in consultation with a Vermont farm, is creating an enterprise that utilizes Vermont resources, and provides Vermont a significant return on investment and meets any financial and technical criteria established by the Secretary by procedure. [Repealed.]~~

* * * Nutrient Management Plans; Technical Service Providers * * *

Sec. 5a. 6 V.S.A. § 4989 is added to read:

§ 4989. CERTIFICATION OF NUTRIENT MANAGEMENT PLAN

TECHNICAL SERVICE PROVIDERS

(a) On or before July 1, 2019, the Secretary of Agriculture, Food and Markets shall adopt by rule a process by which a nutrient management technical service provider shall be certified to operate within the State. The certification process shall require a nutrient management technical service provider to complete eight hours of training over each five-year period regarding:

(1) calculating manure and agricultural waste generation;

(2) taking soil and manure samples;

- (3) identifying and creating maps of all natural resource features;
- (4) use of erosion calculation tools;
- (5) reconciling plans using records;
- (6) use of nutrient index tools; and
- (7) requirements within the Required Agricultural Practices, Medium Farm Operation rules and general permit, and Large Farm Operation rules.

(b) Beginning on July 1, 2019, a nutrient management technical service provider shall not create a nutrient management plan for a farm unless certified by the Secretary of Agriculture, Food and Markets.

* * * Forest Products Industry; Act 250 * * *

Sec. 6. 10 V.S.A. § 6084 is amended to read:

§ 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF REVIEW

* * *

(g) When an application concerns the construction of improvements for one of the following, the application shall be processed as a minor application in accordance with subsections (b) through (e) of this section:

(1) a sawmill that produces three and one-half million board feet or less annually; or

(2) an operation that involves the primary processing of forest products of commercial value and that annually produces:

(A) 3,500 cords or less of firewood or cordwood; or

(B) 10,000 tons or less of bole wood, whole tree chips, or wood pellets.

Sec. 7. COMMISSION ON ACT 250; REVIEW OF FOREST PRODUCTS PROCESSING

The Commission on Act 250: the Next 50 Years (Commission) established under 2017 Acts and Resolves No. 47 (Act 47) shall review whether permit conditions in permits issued under 10 V.S.A. chapter 151 (Act 250) to forest processing operations negatively impact the ability of a forest processing operation to operate in an economically sustainable manner, including whether Act 250 permit conditions limit the ability of a forest processing operation to alter production or processing in order to respond to market conditions. If the Commission determines that Act 250 permit conditions have a significant negative economic impact on forestry processing operations, the Commission

shall recommend alternatives for mitigating those negative economic impacts. The Commission shall include its findings and recommendation on this issue, if any, in the report due to the General Assembly on December 15, 2018 under Act 47.

* * * Environmental Permitting Fees * * *

Sec. 8. 3 V.S.A. § 2822(j) is amended to read:

(j) In accordance with subsection (i) of this section, the following fees are established for permits, licenses, certifications, approvals, registrations, orders, and other actions taken by the Agency of Natural Resources.

* * *

(26) For individual conditional use determinations, for individual wetland permits, for general conditional use determinations issued under 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit, an administrative processing fee assessed under subdivision (2) of this subsection (j) and an application fee of:

(A) \$0.75 per square foot of proposed impact to Class I or II wetlands.

(B) \$0.25 per square foot of proposed impact to Class I or II wetland buffers.

(C) Maximum fee, for the conversion of Class II wetlands or wetland buffers to cropland use or for installation of a pipeline in a wetland for the transport of manure for the purpose of farming, as that term is defined in 10 V.S.A. § 6001(22), when the pipeline will serve or implement a water quality or conservation practice, \$200.00 per application. As used in this subdivision, “cropland” means land that is used for the production of agricultural crops, including row crops, fibrous plants, pasture, fruit-bearing bushes, trees, or vines, and the production of Christmas trees.

* * *

* * * Electric Utility Demand Charges; Rural Towns * * *

Sec. 9. DEMAND CHARGES; REPORT

(a) On or before January 31, 2019, the Commissioner of Public Service (Commissioner), in consultation with the Secretary of Commerce and Community Development, shall submit a written report on electric utility demand charges in Vermont and their effect on the ability of industrial enterprises to locate in rural towns of the State.

(b) The Commissioner shall submit the report to the House Committees on Agriculture and Forestry, on Commerce and Community Development, and on

Energy and Technology and the Senate Committees on Agriculture, on Economic Development, Housing and General Affairs, and on Finance.

(c) The report under this section shall include:

(1) a narrative summary of the terms, conditions, and rates for each demand charge tariff of each Vermont electric utility;

(2) a table that shows the rates and applicability of each such tariff, with such other information as the Commissioner may consider relevant, organized by electric utility;

(3) an analysis of the alternatives to these tariffs that will improve the ability of industrial enterprises to locate in rural towns of the State, including the use of energy efficiency, self-generation, and other measures to reduce the demand of such enterprises on the interconnecting electric utility;

(4) the Commissioner's recommendations on changes to demand charge tariffs and other methods to reduce demand that would encourage locating industrial enterprises in rural towns of the State or that would reduce or remove disincentives posed by demand charge tariffs to such locations.

(d) In this section, "rural town" shall have the same meaning as in 24 V.S.A. § 4303.

* * * Purchase and Use Tax; Forestry Equipment * * *

Sec. 10. 32 V.S.A. § 8911 is amended to read:

§ 8911. EXCEPTIONS

The tax imposed by this chapter shall not apply to:

(1) Motor vehicles owned or registered, or motor vehicles rented, by any state or province or any political subdivision thereof.

* * *

(23) The following motor vehicles used for timber cutting, timber removal, and processing of timber or other solid wood forest products intended to be sold ultimately at retail: skidders with grapple and cable, feller bunchers, cut-to-length processors, forwarders, delimiters, loader slashers, log loaders, whole-tree chippers, stationary screening systems, and firewood processors, elevators, and screens.

* * * Forest Products Industry; Wood Energy; Supply * * *

Sec. 11. PUBLIC BUILDINGS; WOOD ENERGY; VERMONT SUPPLIERS; REPORT

(a) On or before December 15, 2018, the Commissioner of Buildings and

General Services (Commissioner), in consultation with the Commissioner of Public Service, shall submit a written report and recommendation on the feasibility and impacts of requiring certain public buildings that use wood to produce heat or electricity, or both, to give preference to Vermont suppliers when making fuel supply purchases.

(b) As used in this section, “public building” has the same meaning as in 20 V.S.A. § 2730.

(c) The submission shall include the Commissioner’s specific recommendations as to each of the following categories of public buildings:

(1) schools owned, occupied, or administered by municipalities;

(2) other public buildings owned or occupied by the State of Vermont, counties, municipalities, or other public entities; and

(3) public buildings or biomass energy facilities in Vermont that receive incentives or financing, or both, from the State of Vermont and are not within the category described in subdivision (1) or (2) of this subsection.

(d) The Commissioner shall submit the report and recommendation to the Senate Committees on Agriculture and on Natural Resources and Energy and the House Committees on Agriculture and Forestry and on Energy and Technology.

* * * Hemp * * *

Sec. 12. PURPOSE

The purpose of this section and Secs. 13–14 of this act is to amend the laws of Vermont regarding the cultivation of industrial hemp to conform with federal requirements for industrial hemp research set forth in section 7606 of the federal Agricultural Act of 2014, Pub. L. No. 113-79, codified at 7 U.S.C. § 5940.

Sec. 13. 6 V.S.A. chapter 34 is amended to read:

CHAPTER 34. HEMP

§ 561. FINDINGS; INTENT

(a) Findings.

(1) Hemp has been continuously cultivated for millennia, is accepted and available in the global marketplace, and has numerous beneficial, practical, and economic uses, including: high-strength fiber, textiles, clothing, ~~bio-fuel~~ biofuel, paper products, protein-rich food containing essential fatty acids and amino acids, biodegradable plastics, resins, nontoxic medicinal and cosmetic products, construction materials, rope, and value-added crafts.

(2) The many agricultural and environmental beneficial uses of hemp include: livestock feed and bedding, stream buffering, erosion control, water and soil purification, and weed control.

(3) The hemp plant, an annual herbaceous plant with a long slender stem ranging in height from four to 15 feet and a stem diameter of one-quarter to three-quarters of an inch is morphologically distinctive and readily identifiable as an agricultural crop grown for the cultivation and harvesting of its fiber and seed.

(4) Hemp cultivation will enable the State of Vermont to accelerate economic growth and job creation, promote environmental stewardship, and expand export market opportunities.

(5) The federal Agricultural Act of 2014, Pub. L. No. 113-79 authorized the growing, cultivation, and marketing of industrial hemp, notwithstanding restrictions under the federal Controlled Substances Act, if certain criteria are satisfied.

(b) Purpose. The intent of this chapter is to establish policy and procedures for growing hemp in Vermont that comply with federal law so that farmers and other businesses in the Vermont agricultural industry can take advantage of this market opportunity.

§ 562. DEFINITIONS

As used in this chapter:

(1) [Repealed.]

(2) “Hemp products” or “hemp-infused products” means all products made from hemp, including cloth, cordage, fiber, food, fuel, paint, paper, construction materials, plastics, seed, seed meal, seed oil, and certified seed for cultivation.

(3) “Hemp” or “industrial hemp” means the plant *Cannabis sativa* L. and any part of the plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

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

§ 563. HEMP; AN AGRICULTURAL PRODUCT

~~Hemp~~ Industrial hemp is an agricultural product ~~which~~ that may be grown as a crop, produced, possessed, marketed, and commercially traded in Vermont pursuant to the provisions of this chapter. The cultivation of industrial hemp shall be subject to and comply with ~~the requirements~~ of the required agricultural practices adopted under section 4810 of this title.

§ 564. REGISTRATION; ADMINISTRATION; PILOT PROJECT

(a) The Secretary shall establish a pilot program to research the growth, cultivation, and marketing of industrial hemp. Under the pilot program, the Secretary shall register persons who will participate in the pilot program through growing or cultivating industrial hemp. The Secretary shall certify the site where industrial hemp will be cultivated by each person registered under this chapter. A person who intends to participate in the pilot program and grow industrial hemp shall register with the Secretary and submit on a form provided by the Secretary the following:

(1) the name and address of the person;

(2) a statement that the seeds obtained for planting are of a type and variety that do not exceed the maximum concentration of tetrahydrocannabinol set forth in subdivision 562(3) of this title; and

(3) the location and acreage of all parcels sown and other field reference information as may be required by the Secretary.

(b) The form provided by the Secretary pursuant to subsection (a) of this section shall include a notice statement that, ~~until current federal law is amended to provide otherwise:~~

(1) cultivation and possession of industrial hemp in Vermont is a violation of the federal Controlled Substances Act unless the industrial hemp is grown, cultivated, or marketed under a pilot program authorized by section 7606 of the federal Agricultural Act of 2014, Pub. L. No. 113-79; and

(2) federal prosecution for growing hemp in violation of federal law may include criminal penalties, forfeiture of property, and loss of access to federal agricultural benefits, including agricultural loans, conservation programs, and insurance programs; and

(3) registrants may purchase or import hemp genetics from any state that complies with federal requirements for the cultivation of industrial hemp.

(c) A person registered with the Secretary pursuant to this section shall allow industrial hemp crops, throughout sowing, growing season, harvest, storage, and processing, to be inspected and tested by and at the discretion of the Secretary or ~~his or her~~ designee. The Secretary shall retain tests and inspection information collected under this section for the purposes of research of the growth and cultivation of industrial hemp.

(d) The Secretary may assess an annual registration fee of \$25.00 for the performance of his or her duties under this chapter.

§ 566. RULEMAKING AUTHORITY

(a) The Secretary may adopt rules to provide for the implementation of this chapter and the pilot project authorized under this chapter, which may include rules to require hemp to be tested during growth for tetrahydrocannabinol levels and to require inspection and supervision of hemp during sowing, growing season, harvest, storage, and processing. The Secretary shall not adopt under this or any other section a rule that would prohibit a person to grow hemp based on the legal status of hemp under federal law.

(b) The Secretary shall adopt rules establishing how the Agency of Agriculture, Food and Markets will conduct research within the pilot program for industrial hemp.

(c) The Secretary shall adopt rules establishing requirements for the registration of processors of hemp and hemp-infused products.

Sec. 14. TRANSITION; IMPLEMENTATION

All persons registered prior to July 1, 2018 with the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 34 to grow or cultivate hemp shall be deemed to be registered with the Secretary of Agriculture, Food and Markets as participants in the industrial hemp pilot project established by this act under 6 V.S.A. § 564, and those previously registered persons shall not be required to reregister with the Secretary of Agriculture, Food and Markets.

Sec. 15. 6 V.S.A. §§ 567 and 568 are added to read:

§ 567. AGENCY OF AGRICULTURE, FOOD AND MARKETS; TESTING

The Agency of Agriculture, Food and Markets shall establish a cannabis quality control program for the following purposes:

(1) to develop potency and contaminant testing protocols for hemp and hemp-infused products;

(2) to verify cannabinoid label guarantees of hemp and hemp-infused products;

(3) to test for pesticides, solvents, heavy metals, mycotoxins, and bacterial and fungal contaminants in hemp and hemp-infused products; and

(4) to certify testing laboratories that can offer the services in subdivisions (2) and (3) of this section.

§ 568. TEST RESULTS; ENFORCEMENT

(a) If the Secretary or a dispensary registered under 18 V.S.A. chapter 86 tests a hemp crop and the hemp has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis, the person registered with the Secretary as growing the hemp crop shall:

(1) enter into an agreement with a dispensary registered under 18 V.S.A. chapter 86 for the separation of the delta-9 tetrahydrocannabinol from the hemp crop, return of the hemp crop to the person registered with the Secretary, and retention of the separated delta-9 tetrahydrocannabinol by the dispensary.

(2) sell the hemp crop to a dispensary registered under 18 V.S.A. chapter 86; or

(3) arrange for the Secretary to destroy or order the destruction of the hemp crop.

(b) A person registered with the Secretary as growing the hemp crop shall not be subject to civil, criminal, or administrative liability or penalty under 18 V.S.A. chapter 84 if the tested industrial hemp has a delta-9 tetrahydrocannabinol concentration of one percent or less on a dry weight basis.

(c) A crop or product confirmed by the Secretary to meet the definition of hemp under State or federal law may be sold or transferred in interstate commerce to the extent authorized by federal law.

Sec. 16. 18 V.S.A. § 4474e is amended to read:

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

(a) A dispensary registered under this section may:

(1) Acquire, possess, cultivate, manufacture, process, transfer, transport, supply, sell, and dispense marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her dispensary and to his or her registered caregiver for the registered patient's use for symptom relief.

* * *

(5) Acquire, possess, manufacture, process, transfer, transport, market, and test hemp provided by persons registered with the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 34 to grow or cultivate hemp.

* * *

* * * Produce Inspection * * *

Sec. 17. 6 V.S.A. § 21(b) is amended to read:

(b) The Secretary shall have the authority to:

(1) respond to and remediate incidences of mass animal death, agricultural structure fires, or other emergencies on a farm in order to prevent a public health hazard;

(2) condemn, confiscate, or establish restrictions on the use, sale, or distribution of adulterated raw agricultural commodities or animal feed; and

(3) cooperate with the Department of Health and other State and federal agencies regarding:

(A) the prevention or remediation of the adulteration of raw agricultural commodities, food, or animal feed on farms; and

(B) application of the FDA Food Safety Modernization Act, ~~21 U.S.C. §§ 2201-2252~~ Pub. L. No. 111-353, to farms, farm products, or value-added products produced in the State.

Sec. 18. 6 V.S.A. § 852 is amended to read:

§ 852. ~~AUTHORITY; ENFORCEMENT~~

(a) The Secretary may enforce in the State the requirements of:

(1) ~~the rules adopted under the federal U.S. Food and Drug Administration Food Safety Modernization Act, Public Law No. 111-353, for standards for growing, harvesting, packing, and holding of produce for human consumption~~ Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, 21 C.F.R. part 112; and

(2) the rules adopted under this chapter.

(b) The Agency may collaborate with the ~~Vermont~~ Department of Health regarding application of the ~~federal Food Safety Modernization Act and the rules adopted thereunder~~ U.S. Food and Drug Administration Food Safety Modernization Act, Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, 21 C.F.R. part 112, and application of the rules adopted under this chapter.

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

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

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

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

Sec. 19. 6 V.S.A. § 853 is amended to read:

§ 853. FARM INSPECTIONS

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

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

(B) the rules adopted under this chapter.

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

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

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

Sec. 20. 6 V.S.A. §§ 856 and 857 are added to read:

§ 856. ENFORCEMENT; CORRECTIVE ACTIONS

When the Secretary of Agriculture, Food and Markets determines that a person is violating the rules listed in section 852 of this title, the Secretary may issue a written warning that shall be served in person or by certified mail, return receipt requested. A warning issued under this section shall include:

(1) a description of the alleged violation;

(2) identification of this section;

(3) identification of the applicable rule violated; and

(4) the required corrective action that the person shall take to correct the violation.

§ 857. ENFORCEMENT; ADMINISTRATIVE ORDERS

(a) Notwithstanding the requirements of section 856 of this title, the Secretary at any time may pursue one or more of the following:

(1) issue a cease and desist order in accordance to a person the Secretary believes to be in violation of the rules listed in section 852 of this title;

(2) issue a verbal order or written administrative order to protect public health, including orders for the stop sale, recall, embargo, destruction, quarantine, and release of produce, when:

(A) the U.S. Food and Drug Administration requires immediate State action; or

(B) an alleged violation, activity, or farm practice presents an

immediate threat to the public health or welfare;

(3) order mandatory corrective actions;

(4) take any action authorized under chapter 1 of this title;

(5) seek administrative or civil penalties in accordance with the requirements of section 15, 16, or 17 of this title.

(b) When the Secretary of Agriculture, Food and Markets issues a cease and desist order, written administrative order, or required corrective action under subsection (a) of this section, the Secretary shall provide the person subject to the order or corrective action with a statement that the order or corrective action is effective upon receipt and the person has 15 days from the date the order or corrective action was issued to request a hearing.

(c) If the Secretary of Agriculture, Food and Markets issues a verbal order under this section, the Secretary shall issue written notice to the person subject to the order within five days of the issuance of the verbal order. The written notice shall include a statement that the person has 15 days from the date the written notice was received to request a hearing.

(d) If a person who receives a cease and desist order, a verbal order, an administrative order, or a mandatory corrective action under this section does not request in writing a hearing within 15 days of receipt of the order or within 15 days of written notice for a verbal order, the person's right to a hearing is waived. Upon receipt of a written request for a hearing, the Secretary promptly shall set a date and time for a hearing. A request for a hearing on a cease and desist order, verbal order, or administrative order issued under this section shall not stay the order.

(e) A person aggrieved by a final action or decision of the Secretary under this section may appeal de novo to the Civil Division of the Superior Court within 30 days of the final decision of the Secretary.

* * * Livestock and Poultry Transport for Slaughter * * *

Sec. 21. 6 V.S.A. § 1461a(c) is amended to read:

(c) Livestock and poultry that are transported to a commercial slaughter facility within the State shall not be removed from the facility without the facility's ~~owner~~ owner's first obtaining written permission from the State Veterinarian. For purposes of this section, arrival of the conveyance onto facility property and the offloading of livestock or poultry constitutes transport to a slaughter facility, regardless of whether the animals have been offloaded ~~or~~ presented for antemortem inspection. The State Veterinarian may require inspection and testing prior to issuing consent for removal.

* * * Nutrient Management Planning * * *

Sec. 22. 6 V.S.A. § 4817 is added to read:

§ 4817. NUTRIENT MANAGEMENT PLAN; REPORTING

(a) Submission of plans. Annually, an owner or operator of a farm that, under this chapter, requires a large farm permit or a medium farm permit or is subject to the requirement for small farm certification shall submit to the Secretary a digital or electronic copy of the nutrient management plan required under this chapter. A nutrient management plan submitted by an owner or operator of a farm under this subsection shall identify the location of the outfall of subsurface tile drainage installed on the farm after January 1, 2018.

(b) Limitation on disclosure; authorized disclosure. A nutrient management plan submitted to the Secretary under this section and information contained within a nutrient management plan shall be exempt from inspection or copying under the Public Records Act except that the Secretary may authorize disclosure of a nutrient management plan or information within a nutrient management plan for one or more of the following:

(1) to allow an Agency contractor or governmental entity cooperating with the Agency to provide technical or financial assistance to the farm;

(2) to respond to a disease or pest threat to a farm, if the Secretary determines that a threat to agricultural operations exists and the disclosure of information within the nutrient management plan to a person or governmental entity cooperating with the Agency is necessary to assist the Secretary in responding to the disease or pest threat;

(3) to provide information related to State or federal assistance to the owner or operator of a farm for development of the nutrient management plan or for practices required under the nutrient management plan;

(4) to provide or publish statistical or aggregated information provided that the Secretary shall not disclose the identity of the individual persons, households, or businesses from whom or where the information was obtained;

(5) when the owner or operator of the farm consents; or

(6) to disclose any information related to an enforcement action taken against the owner or operator of the farm that submitted the nutrient management plan.

(c) Waiver of privilege or protection. The disclosure of information by the Secretary under subsection (b) of this section shall not constitute a waiver by the owner or operator of the farm of any applicable privilege or protection under State or federal law, including trade secret protection.

Sec. 23. SCHEDULE; SUBMISSION OF NUTRIENT MANAGEMENT

PLAN

An owner or operator of a farm subject to the nutrient management plan reporting requirements of 6 V.S.A. § 4817 shall initiate submission of the nutrient management plan according to the following schedule:

(1) the owner or operator of a large farm, beginning on February 15, 2019 and annually thereafter;

(2) the owner or operator of a medium farm, beginning on April 30, 2019 and annually thereafter; and

(3) the owner or operator of a small farm subject to certification, beginning on January 31, 2021 and annually thereafter.

* * * Industrial Park Designation * * *

Sec. 24. AGENCY OF COMMERCE AND COMMUNITY

DEVELOPMENT; INDUSTRIAL PARK DESIGNATION

(a) On or before December 15, 2018, the Secretary of Commerce and Community Development, after consultation with the Secretary of Natural Resources, the Chair of the Natural Resources Board, Regional Development Corporations, Regional Planning Commissions, the Vermont Natural Resources Council, and the Commission on Act 250, shall submit to the Senate Committees on Agriculture and on Economic Development, Housing and General Affairs and to the House Committees on Commerce and Economic Development, on Agriculture and Forestry, and on Natural Resources, Fish, and Wildlife recommendations for establishing an economic development program under which defined parcels in rural areas of the State are designated as industrial parks for the purposes of providing regulatory and permitting incentives to businesses sited within the industrial park. The report shall include:

(1) recommended criteria for establishing an industrial park in a rural area;

(2) eligibility criteria, if any, for a business to site within a designated industrial park in a rural area;

(3) recommended incentives for businesses sited within a designated industrial park in a rural area, including permitting incentives, permit fee reductions, reduced electric rates, net metering incentives, and other regulatory incentives;

(4) recommended technical or financial assistance that a business would be eligible to receive for locating within a designated industrial park in a rural area; and

(5) draft legislation necessary to implement any recommendation.

(b) The recommendations in the report shall be designed in a manner so that any recommended process or criteria maintains consistency with the land use goals of Vermont in 24 V.S.A. § 4302 and the relevant regional plan adopted under 24 V.S.A. § 4348.

(c) As used in this section, “rural area” means a county of the State designated as “rural” or “mostly rural” by the U.S. Census Bureau in its most recent decennial census.

* * * Fire Prevention and Building Code Fees * * *

Sec. 25. 20 V.S.A. § 2731(c) is amended to read:

(c) The following fire prevention and building code fees are established:

(1) The permit application fee for a construction plan approval shall be based on \$8.00 per each \$1,000.00 of the total valuation of the construction work proposed to be done for all buildings, but in no event shall the permit application fee exceed ~~\$185,000.00~~ \$130,000.00 nor be less than \$50.00.

(2) When an inspection is required due to the change in use or ownership of a public building, the fee shall be \$125.00.

(3) The proof of inspection fee for fire suppression, alarm, detection, and any other fire protection systems shall be \$30.00.

(4) Three-year initial certificate of fitness and renewal fees for individuals performing activities related to fire or life safety established under subsection (a) of this section shall be:

* * *

* * * Use Value Appraisal * * *

Sec. 26. 32 V.S.A. § 3755 is amended to read:

§ 3755. ELIGIBILITY FOR USE VALUE APPRAISALS

* * *

(b) Managed forestland shall be eligible for use value appraisal under this subchapter only if:

(1) The land is subject to a forest management plan, or subject to a conservation management plan in the case of lands certified under 10 V.S.A. § 6306(b), ~~which~~ that is filed in the manner and form required by the Department of Forests, Parks and Recreation and that:

(A) ~~is~~ Is signed by the owner of the parcel;

(B) ~~complies~~ Complies with subdivision 3752(9) of this title;

(C) ~~is filed with and~~ Is approved by the Department of Forests, Parks and Recreation; ~~and~~.

(D) ~~provides~~ Provides for continued conservation management or forest crop production on the parcel for 10 years. An initial forest management plan or conservation management plan must be filed with the Department of Forests, Parks and Recreation ~~no later than~~ on or before October 1 and shall be effective for a 10-year period beginning the following April 1. Prior to expiration of a 10-year plan and ~~no later than~~ on or before April 1 of the year in which the plan expires, the owner shall file a new conservation or forest management plan for the next succeeding 10 years to remain in the program.

(E) The Department may approve a forest management plan that provides for the maintenance and enhancement of the tract's wildlife habitat where clearly consistent with timber production and with minimum acceptable standards for forest management as established by the Commissioner of Forests, Parks and Recreation.

(F) The Department, upon giving due consideration to resource inventories submitted by applicants, may approve a conservation management plan, consistent with conservation management standards, so as to include appropriate provisions designed to preserve: areas with special ecological values; fragile areas; rare or endangered species; significant habitat for wildlife; significant wetlands; outstanding resource waters; rare and irreplaceable natural areas; areas with significant historical value; public water supply protection areas; areas that provide public access to public waters; and open or natural areas located near population centers or historically frequented by the public. In approving a plan, the Department shall give due consideration to: the need for restricted public access where required to protect the fragile nature of the resource; public accessibility where restricted access is not required; facilitation of appropriate, traditional public usage; and opportunities for traditional or expanded use for educational purposes and for research.

(2) A management report of whatever activity has occurred, signed by the owner, has been filed with the Department of ~~Forests, Parks and Recreation~~ Taxes, Director of Property Valuation and Review on or before February 1 of the year following the year when the management activity occurred.

(3) There has not been filed with the Director an adverse inspection report by the Department stating that the management of the tract is contrary to the forest or conservation management plan, or contrary to the minimum acceptable standards for forest or conservation management. The management activity report shall be on a form prescribed by the Commissioner of Forests,

Parks and Recreation in consultation with the Commissioner of Taxes and shall include a detachable section be signed by all the owners ~~that and~~ shall contain the federal tax identification numbers of all the owners. ~~The section containing federal tax identification numbers shall not be made available to the general public, but shall be forwarded to the Commissioner of Taxes within 30 days after receipt and used for tax administration purposes.~~ All information contained within the management activity report shall be forwarded to the Department of Forests, Parks and Recreation, except for any tax identification number included in the report. If any owner ~~shall satisfy~~ satisfies the Department that he or she was prevented by accident, mistake, or misfortune from filing an initial or revised management plan ~~which that~~ is required to be filed on or before October 1, or a management plan update ~~which that~~ is required to be filed on or before April 1 of the year in which the plan expires, or a management activity report ~~which that~~ is required to be filed on or before February 1 of the year following the year when the management activity occurred, the Department owner may ~~receive~~ submit that management plan or management activity report at a later date; provided, however, no initial or revised management plan shall be received later than December 31, and no management plan update shall be received later than one year after April 1 of the year the plan expires, and no management activity report shall be received later than March 1.

(c) The Department of Forests, Parks and Recreation shall periodically review the management plans and each year review the management activity reports that have been filed.

(1) At intervals not to exceed 10 years, that Department shall inspect each parcel of managed forestland qualified for use value appraisal to verify that the terms of the management plan have been carried out in a timely fashion.

(2) The Department shall have the ability to enter parcels of managed forestland for the purpose of inspections. The Department may bring any other staff from the Agency of Natural Resources that have the expertise to evaluate compliance with this chapter or staff that may be required to ensure the safety of the Department while conducting the inspections.

(3) If that Department finds that the management of the tract is contrary to the conservation or forest management plan, or contrary to the minimum acceptable standards for conservation or forest management, it shall file with the owner, the assessing officials, and the Director an adverse inspection report within 30 days ~~of~~ after the conclusion of the inspection process.

(d) After managed forestland has been removed from use value appraisal due to an adverse inspection report under ~~subdivision 3756(i)(1)~~ subsection

3756(k) of this title, a new application for use value appraisal shall not be considered for a period of five years, and then the forest management plan shall be approved by the Department of Forests, Parks and Recreation only if a compliance report has been filed with the new ~~application~~ forest management plan, certifying that appropriate measures have been taken to bring the parcel into compliance with minimum acceptable standards for forest or conservation management.

* * *

* * * Sales and Use Tax; Advanced Wood Boilers * * *

Sec. 27. 32 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

Unless the context in which they occur requires otherwise, the following terms when used in this chapter mean:

* * *

(54) “Noncollecting vendor” means a vendor that sells tangible personal property or services to purchasers who are not exempt from the sales tax under this chapter, but that does not collect the Vermont sales tax.

(55) “Advanced wood boiler” means a boiler or furnace:

(A) installed as a primary central heating system;

(B) rated as high-efficiency, meaning a higher heating value or gross calorific value of 85 percent or more;

(C) containing at least one week fuel-storage, automated startup and shutdown, and fuel feed; and

(D) meeting other efficiency and air emissions standards established by the Department of Environmental Conservation.

Sec. 28. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(52) Advanced wood boilers, as defined in section 9701 of this title.

Sec. 29. 32 V.S.A. § 9706(II) is added to read:

(II) The statutory purpose of the exemption for advanced wood boilers in

subdivision 9741(52) of this title is to promote the forest products industry in Vermont by encouraging the purchase of modern wood heating systems.

* * * Energy Efficiency * * *

Sec. 30. . 30 V.S.A. § 209 is amended to read:

§ 209. JURISDICTION; GENERAL SCOPE

* * *

(j) Self-managed energy efficiency programs.

(1) There shall be a class of self-managed energy efficiency programs for transmission and industrial electric ratepayers only.

(2) The Commission, by order, shall enact this class of programs.

(3) Entities approved to participate in the self-managed energy efficiency program class shall be exempt from all statewide charges under subdivision (d)(3) of this section that support energy efficiency programs performed by or on behalf of Vermont electric utilities. If an electric ratepayer approved to participate in this program class also is a customer of a natural gas utility, the ratepayer shall be exempt from all charges under subdivision (d)(3) of this section or contained within the rates charged by the natural gas utility to the ratepayer that support energy efficiency programs performed by or on behalf of that utility, provided that the ratepayer complies with this subsection.

(4) All of the following shall apply to a class of programs under this subsection:

(A) A member of the transmission or industrial electric rate classes shall be eligible to apply to participate in the self-managed energy efficiency program class if the charges to the applicant, or to its predecessor in interest at the served property, under subdivision (d)(3) of this section were a minimum of:

(i) \$1.5 million during calendar year 2008; or

(ii) \$1.5 million during calendar year 2017.

(B) A cost-based fee to be determined by the Commission shall be charged to the applicant to cover the administrative costs, including savings verification, incurred by the Commission and Department. The Commission shall determine procedures for savings verification. Such procedures shall be consistent with savings verification procedures established for entities appointed under subdivision (d)(2) of this section.

(C) An applicant shall demonstrate to the Commission that it has a comprehensive energy management program with annual objectives.

Achievement of certification of ISO standard 14001 shall be eligible to satisfy the requirements of having a comprehensive program.

(D) An applicant eligible pursuant to subdivision (A)(i) of this subdivision (j)(4) shall commit to an annual average energy efficiency investment in energy efficiency and productivity programs and measures during each three-year period that the applicant participates in the program of ~~no~~ not less than \$1 million. An applicant eligible pursuant to subdivision (A)(ii) of this subdivision (j)(4) shall commit to an annual average investment in energy efficiency and productivity programs and measures during each three-year period that the applicant participates in the program of not less than \$500,000.00. To achieve the exemption from energy efficiency charges related to natural gas under subdivision (3) of this subsection (j), ~~the~~ an applicant shall make an additional annual energy efficiency investment in an amount not less than \$55,000.00. As used in this subsection (j), “productivity programs and measures” means investments that reduce the amount of energy required to produce a unit of product.

(E) Participation in the self-managed program includes efficiency and productivity programs and measures applicable to electric and other forms of energy. A participant may balance efficiency investments in such programs and measures across all types of energy or fuels without limitations.

(F) A participant shall provide to the Commission and Department annually an accounting of energy investments in energy efficiency and productivity programs and measures and the resultant energy savings in the form prescribed by the Commission, which may conduct reasonable audits to ensure the accuracy of the data provided.

(G) The Commission shall report to the General Assembly annually by on or before April 30 concerning the prior calendar year’s class of self-managed energy efficiency programs. The report shall include identification of participants, their annual investments, and resulting savings, and any actions taken to exclude entities from the program.

(H) Upon approval of an application by the Commission, the applicant shall be able to participate in the class of self-managed energy efficiency programs.

(I) On a determination that, for a given three-year period, a participant in the self-managed efficiency program class did not meet or has not met the commitment required by subdivision ~~(4)(D)~~ of this ~~subsection~~ subdivision (j)(4), the Commission shall terminate the participant’s eligibility for the self-managed program class.

(i) On such termination, the former participant will be subject

fully to the then existing charges applicable to its rate class without exemption under subdivision (3) of this subsection (j), and within 90 days of after such termination shall pay:

(I) the difference between the investment it made pursuant to the self-managed energy efficiency program during the three-year period of noncompliance and the full amount of the charges and rates related to energy efficiency it would have incurred during that period absent exemption under subdivision (3) of this subsection (j); and

(II) the difference between the investment it made pursuant to the program within the current three-year period, if different from the period of noncompliance, and the full amount of the charges and rates related to energy efficiency it would have incurred during the current period absent exemption under subdivision (3) of this subsection (j).

(ii) Payments under subdivision ~~(4)(I)(i)~~ of this subsection ~~(j)~~ subdivision (4)(I) shall be made to the entities to which the full amount of charges and rates would have been paid absent exemption under subdivision (3) of this subsection (j).

(iii) A former participant may not reapply for membership in the self-managed program after termination under this subdivision (4)(I).

(J) A participant in the self-managed program class may request confidentiality of data it reports to the Commission if the data would qualify for exemption from disclosure under 1 V.S.A. § 317. If such confidentiality is requested, the Commission shall disclose the data only in accordance with a protective agreement approved by the Commission and signed by the recipient of the data, unless a court orders otherwise.

(K) Any data not subject to a confidentiality request under subdivision ~~(4)(J)~~ of this ~~subsection~~ subdivision (4) will be a public record.

(L) A participant in the self-managed program class may submit projects to the independent system operator of New England, including through recognized aggregators, for payments under that operator's forward capacity market program, and shall invest such payments in electric or fuel efficiency.

(M) A participant in the self-managed program class may receive funding from an energy program administered by a government or other entity ~~which that~~ that is not the participant ~~but~~ and may ~~not~~ count such funds received as part of the annual commitment to its self-managed energy efficiency program.

* * *

Sec. 31. ENERGY SAVINGS ACCOUNT PARTNERSHIP PILOT

(a) Definitions. As used in this section:

(1) “ACCD” means the Agency of Commerce and Community Development under 3 V.S.A. chapter 47.

(2) “Commission” means the Public Utility Commission under 30 V.S.A. § 3.

(3) “Customer” means a commercial or industrial electric customer that is located in a service territory in which Efficiency Vermont delivers energy efficiency programs and measures and that does not qualify for SMEEP. The term shall also include at least one electric customer located in such a service territory whose operation is primarily devoted to farming as defined in 10 V.S.A. § 6001, regardless of the customer’s rate class.

(4) “Customer EEC Funds” means a customer’s EEC payments during the period of the ESA partnership project.

(5) “Department” means the Department of Public Service under 3 V.S.A. § 212 and 30 V.S.A. § 1.

(6) “EEC” means an energy efficiency charge on a customer’s retail electric bill under 30 V.S.A. § 209(d).

(7) “Efficiency Vermont” or “EVT” means the EEU whose appointment under 30 V.S.A § 209(d)(2) includes the delivery of programs and measures to customers of multiple electric distribution utilities.

(8) “Energy efficiency utility” or “EEU” means an entity appointed to deliver energy efficiency and conservation programs and measures under 30 V.S.A. § 209(d)(2).

(9) “ESA” means an energy savings account under 30 V.S.A. § 209(d)(3)(B).

(10) “ESA Partnership Pilot” means the three-year pilot program established by this section.

(11) “Productivity measures” means investments that reduce the amount of energy required to produce a unit of product.

(12) “SMEEP” means the self-managed energy efficiency program established under 30 V.S.A. § 209(j).

(13) “Standing committees of jurisdiction” means the House Committee on Energy and Technology and the Senate Committees on Finance and on Natural Resources and Energy.

(14) “Unregulated fuel” shall have the same meaning as in 30 V.S.A. § 209(e).

(b) ESA Partnership Pilot; establishment. On or before July 1, 2019, the Commission by rule or order shall establish a three-year pilot program for customers to self-direct the use of their Customer EEC Funds, working with EVT. The total amount of Customer EEC Funds available in the pilot program each year shall not exceed \$2 million. The pilot program established under this section shall be an expansion of the ESA option under which:

(1) Notwithstanding any contrary provision of 30 V.S.A. § 209(d)(3)(B), the customer shall be able to receive an amount equal to 100 percent of its Customer EEC Funds to pay for the full cost of projects that are eligible under subdivision (3) of this subsection; for technical assistance and other services from EVT; and for evaluation, measurement, and verification activity conducted by the Department or EVT.

(2) The customer may receive payments in advance of project completion from EVT based on the energy management plan submitted under subsection (d) of this section, estimated project costs, and projected energy savings. However, a customer shall not receive advance payments from EVT that exceed the amount of Customer EEC Funds the customer has already paid.

(3) Notwithstanding any contrary provision of 30 V.S.A. § 209, the Customer EEC Funds may be used for one or more of the following: electric energy efficiency, thermal energy and process-fuel efficiency for unregulated fuels, productivity measures, demand management, and energy storage that provides benefits to the customer and its interconnecting utility.

(c) Methodology for evaluation, measurement, and verification. In its rule or order under subsection (b) of this section, the Commission shall establish a methodology for evaluation, measurement, and verification of projects implemented under the pilot that is consistent with the requirements of 30 V.S.A. § 218c and that includes cost-effectiveness screening that values energy savings across the customer's energy portfolio and nonenergy benefits such as economic development. As used in this subsection, "economic development" includes job creation, job retention, and capital investment.

(1) This methodology may be considered for future establishment of EEU performance criteria under 30 V.S.A. § 209(d).

(2) EVT and the Department shall evaluate and verify the electricity savings of each project funded under the ESA Partnership Pilot with no less rigor than is required by the Independent System Operator of New England (ISO-NE) for the ISO-NE's forward capacity market.

(d) Competitive solicitation. A customer shall apply to participate in the ESA Partnership Pilot through a competitive solicitation process conducted jointly by EVT, the Department, and ACCD.

(1) Promptly after the Commission's rule or order under subsection (b) of this section becomes effective, EVT, the Department, and ACCD shall establish criteria for customer selection that are consistent with that rule or order and that take into account energy efficiency and economic development.

(2) On establishment of the selection criteria, EVT, the Department, and ACCD jointly shall issue a request for proposals (RFP) from customers seeking to participate in the ESA Partnership Pilot.

(3) EVT, the Department, and ACCD jointly shall select customers to participate in the ESA Partnership Pilot from among the customers that timely submit proposals in response to the RFP and shall notify the Commission of the selected customers.

(4) If EVT, the Department, and ACCD are unable to resolve an issue arising under this subsection, they shall bring the issue to the Commission for resolution.

(5) Customer selection under this subsection shall be completed before July 1, 2019.

(e) Energy management plans. Working with EVT, each customer selected for the ESA Partnership Pilot shall develop an energy management plan for the three-year period of the pilot with projects to be implemented, energy savings targets, and a timeline for projects and investments. A copy of each plan shall be submitted to the Commission, the Department, and ACCD.

(f) Other EEU services. A customer that participates in the ESA Partnership Pilot shall not be eligible for other EEU services, except for an EEU appointed to deliver natural gas efficiency programs and measures.

(g) Other funding. A customer that participates in the ESA Partnership Pilot may receive funding from an energy program administered by a government or other person that is not the participant, including an EEU appointed to deliver natural gas efficiency services, but shall not count such funds as part of the investment commitment of the ESA Partnership Pilot.

(h) Unused funds. At the end of the ESA Partnership Pilot, any Customer EEC Funds that have not been expended or committed under the pilot shall revert to use for systemwide energy efficiency programs and measures.

(i) Annual reports. On or before each November 1 from 2020 through 2022, the EVT and the selected customers jointly shall submit written progress reports to the Commission, the Department, and the standing committees of jurisdiction that include projects under the ESA Partnership Pilot and their associated energy and cost savings. A customer's projects under the pilot and the associated data and results shall be made public through this report. However, a customer may request that the Commission order customer-

specific data to be used in preparing a report under this subsection be kept confidential if the data would qualify for exemption from disclosure under 1 V.S.A. § 317. If the Commission issues such an order, the data subject to the order shall be disclosed only in accordance with a protective agreement approved by the Commission and signed by the recipient of the data, unless a court directs otherwise.

(j) Evaluation; recommendation. On completion of the ESA Partnership Pilot, the Commission shall conduct or shall have a third party conduct an independent evaluation of the ESA Partnership Pilot and, after considering the results of that evaluation, shall submit a written recommendation to the standing committees of jurisdiction on whether to continue the program conducted under this section and, if so, under what recommended conditions and revisions, if any. The Commission shall submit this recommendation on or before January 15, 2023.

* * * Effective Dates * * *

Sec. 31. EFFECTIVE DATES

(a) This section and Secs. 3–4b (Act 250; trails), 5a (technical service providers), 6 (Act 250 primary processing of forest products), 7 (Act 250; review of forest products processing), 8 (wetland permit fee), 17–20 (produce inspection), and 21 (livestock transport) shall take effect on passage.

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

(Committee vote: 10-0-1)

(For text see Senate Journal March 21, 2018)

Rep. Browning of Arlington, for the Committee on Ways and Means, recommends the bill ought to pass when amended as recommended by the Committee on Agriculture and Forestry and when further amended as follows:

bill as amended by the Committee on Agriculture and Forestry be further amended as follows:

First: By striking out Sec. 23 (fire prevention; building code fees) and its reader assistance heading in their entirety and inserting in lieu there a new Sec. 23 to read as follows:

Sec. 23. [Deleted.]

Second: By adding Secs. 26a and 26b to read as follows:

Sec. 26a. TRANSFER FROM CEDF TO GENERAL FUND; TAX

EXPENDITURE; ADVANCED WOOD BOILERS

(a) Beginning on July 1, 2018, the Clean Energy Development Fund

quarterly shall calculate the foregone sales tax on advanced wood fired boilers resulting from the sales tax exemption under 32 V.S.A. § 9741(52) for advanced wood boilers. Beginning on October 1, 2018, the Clean Energy Development Fund shall notify the Department of Taxes of the amount of sales tax foregone in the preceding calendar quarter resulting from the sales tax exemption under 32 V.S.A. § 9741(52) for advanced wood boilers.

(b) In fiscal years 2019 and 2020, the Clean Energy Development Fund shall transfer from the Clean Energy Development Fund to the General Fund the amount of the tax expenditure resulting from the sales tax exemption under 32 V.S.A. § 9741(52) on advanced wood boilers up to a maximum of \$200,000.00 for both fiscal years combined. The Department of Taxes shall deposit 64 percent of the monies transferred from the Clean Energy Development Fund into the General Fund under 32 V.S.A. § 435 and 36 percent of the monies in the Education Fund under 16 V.S.A. § 4025.

Sec. 26b. REPEALS

(a) 32 V.S.A. § 9741(52) (sales tax exemption for advanced wood boilers) shall be repealed on July 1, 2021.

(b) Sec. 26a of this act (transfer from CEDF) shall be repealed on July 1, 2021.

(Committee Vote: 8-0-3)

Rep. Feltus of Lyndon, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Agriculture and Forestry and Ways and Means and when further amended as follows:

First: By adding Secs. 8a and 8b to read as follows:

Sec. 8a. 3 V.S.A. § 2822(j) is amended to read:

(j) In accordance with subsection (i) of this section, the following fees are established for permits, licenses, certifications, approvals, registrations, orders, and other actions taken by the Agency of Natural Resources.

* * *

(26) For individual conditional use determinations, for individual wetland permits, for general conditional use determinations issued under 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit, an administrative processing fee assessed under subdivision (2) of this subsection (j) and an application fee of:

(A) \$0.75 per square foot of proposed impact to Class I or II wetlands.

(B) \$0.25 per square foot of proposed impact to Class I or II wetland buffers.

(C) Maximum fee, for the conversion of Class II wetlands or wetland buffers to cropland use ~~or for installation of a pipeline in a wetland for the transport of manure for the purpose of farming, as that term is defined in 10 V.S.A. § 6001(22), when the pipeline will serve or implement a water quality or conservation practice,~~ \$200.00 per application. As used in this subdivision, “cropland” means land that is used for the production of agricultural crops, including row crops, fibrous plants, pasture, fruit-bearing bushes, trees, or vines, and the production of Christmas trees.

* * *

Sec. 8b. ANR REPPORT ON WETLANDS PERMIT FEES

On or before January 15, 2019, the Secretary of Natural Resources shall submit to the House Committees on Appropriations, on Ways and Means, and on Natural Resources, Fish, and Wildlife and the Senate Committees on Appropriations, on Finance, and on Natural Resources and Energy a revised fee schedule for the permitting of activity or disturbance in a wetland or wetland buffer in the State. In developing the revised fee schedule, the Secretary shall consider whether and how to provide lower fees for activity or disturbance in a wetland or wetland buffer when the activity or disturbance provides a water quality benefit or implements a conservation practice.

Second: By striking out Sec. 30 (effective dates) in its entirety and inserting in lieu thereof a new Sec. 30 to read as follows:

Sec. 30. EFFECTIVE DATES

(a) This section and Secs. 3–4b (Act 250; trails), 5a (technical service providers), 6 (Act 250 primary processing of forest products), 7 (Act 250; review of forest products processing), 8 (wetland permit fee), 8b (ANR report on wetland permit fees), 17–20 (produce inspection), and 21 (livestock transport) shall take effect on passage.

(b) Sec. 8a (repeal of wetland permit fee for manure pipelines) shall take effect on July 1, 2019.

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

(Committee Vote: 9-0-2)

Amendment to be offered by Reps. Sabilia of Dover, Conquest of Newbury, Gannon of Wilmington, Jickling of Randolph, Keefe of Manchester, Kimbell of Woodstock, Pajala of Londonderry and Young of

Glover to the recommendation of amendment of the Committee on Agriculture and Forestry as amended to S. 276

By adding Sec. 29a and accompanying reader assistance to read as follows:

* * * Temporary Universal Service Charge Increase; Connectivity Fund * * *

Sec. 29a. 30 V.S.A. § 7523 is amended to read:

§ 7523. RATE OF CHARGE

(a) Beginning on July 1, 2014, the rate of charge shall be two percent of retail telecommunications service.

(b) Beginning on July 1, 2018 and ending on June 30, 2022, the rate of charge established under subsection (a) of this section shall be increased by one-half of one percent of retail telecommunications service, and the monies collected from this increase shall be transferred to the Connectivity Fund established under section 7516 of this title.

(c) Universal Service Charges imposed and collected by the fiscal agent under this subchapter shall not be transferred to any other fund or used to support the cost of any activity other than in the manner authorized by this section and section 7511 of this title.

Senate Proposal of Amendment

H. 571

An act relating to creating the Department of Liquor and Lottery and the Board of Liquor and Lottery

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

First: In Sec. 63, 7 V.S.A. § 278, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) A manufacturer or rectifier of vinous beverages that is licensed in ~~state~~ the State or ~~out-of-state~~ outside the State and holds valid state and federal permits and operates a winery in the United States may apply for a retail shipping license by filing with the ~~Department~~ Division of Liquor Control an application in a form required by the Commissioner accompanied by a copy of its in-state or out-of-state license and the fee provided in section 204 of this title.

Second: In Sec. 90, 31 V.S.A. § 654a, redesignated § 652, in subdivision (2)(C), after the words "A procedure adopted pursuant to this section shall" by inserting the following: have the force of law and

Third: In Sec. 94, 31 V.S.A. § 658, redesignated § 656, in subsection (b), in the second sentence before the second occurrence of the phrase "percent of

gross receipts,” by striking out the number “1” and inserting in lieu thereof the following: 1 one

Fourth: After Sec. 111, by inserting new Secs. 112, 113, 114 and 115 to read:

Sec. 112. 7 V.S.A. § 660 is amended to read:

§ 660. ADVERTISING

(a) ~~A person shall not display on~~ Any outside billboards or signs ~~erected on the highway any that contain an~~ advertisement of any kind relating to alcoholic beverages, or indicate where alcoholic beverages may be procured shall comply with the requirements of 10 V.S.A. chapter 21. A person who violates any provision of this section shall be fined not more than \$100.00 nor less than \$10.00, for each offense, and a conviction for a violation shall be cause for revoking the person’s license issued under this title.

* * *

Sec. 113. 13 V.S.A. § 2143 is amended to read:

§ 2143. NONPROFIT ORGANIZATIONS

(a)(1) Notwithstanding the provisions of this chapter, a:

(A) A nonprofit organization, as defined in 31 V.S.A. § 1201(5), may organize and execute, and an individual may participate in lotteries, raffles, or other games of chance for the purpose of raising funds to be used in charitable, religious, educational, and or civic undertakings or used by fraternal organizations to provide direct support to charitable, religious, educational, or civic undertakings with which they are affiliated.

(B)(i) A nonprofit organization, as defined in 31 V.S.A. § 1201(5), may organize and execute, and a member of that organization may participate in, lotteries, raffles, or other games of chance in which, except as otherwise provided pursuant to subdivision (ii)(IV) of this subdivision (B), all of the proceeds are awarded as prizes to the members who participated.

(ii) Lotteries, raffles, and other games of chance organized under this this subdivision (B) shall be limited as follows:

(I) an individual who is not a member of the nonprofit organization shall not be allowed to participate;

(II) a nonprofit organization shall not charge more than \$100.00 for an entry or ticket;

(III) a member of the nonprofit organization shall not purchase more than one entry or ticket per day; and

(IV) a nonprofit organization shall not offer or award any prize worth more than \$250.00 unless not less than 25 percent of the proceeds raised is used in charitable, religious, educational, or civic undertakings or used by fraternal organizations to provide direct support to charitable, religious, educational, or civic undertakings with which they are affiliated.

(2) Except as provided in subsection (d) of this section, gambling machines and other mechanical devices described in section 2135 of this title shall not be utilized used under authority of this section.

* * *

(d) Casino events shall be limited as follows:

* * *

(4) As used in this subsection, “casino event” means an event held during any 24-hour period at which ~~any game of chance is~~ casino table games, such as baccarat, blackjack, craps, poker, or roulette are conducted except those. ~~Games of chance prohibited by subdivision 2135(a)(1) or (2) of this title-~~ shall not be permitted at a “casino event.” A “casino event” shall not include a fair, bazaar, field days, agricultural exposition, or similar event that ~~utilizes~~ uses a wheel of fortune, chuck-a-luck, or other ~~such~~ games commonly conducted at such events, or break-open tickets, bingo, a lottery, or a raffle.

* * *

Sec. 114. EDUCATION AND OUTREACH

On or before November 15, 2018, the Attorney General shall update the gambling page on the Attorney General’s website to include the amendments to 13 V.S.A. § 2143 made pursuant to this act.

Sec. 115. LOTTERY AGENT SALES PRACTICES; INTEGRITY; REVIEW; REPORT

(a) The Commissioner of Liquor and Lottery shall conduct a review of:

(1) lottery prize winners by agency location to determine whether a disproportionate number of winning tickets sold by each lottery agent was purchased by the owner or of an employee of the agent, or by an immediate family member of the owner or of an employee of the agent; and

(2) the sales, fraud prevention, and security practices of each lottery agent to determine whether those practices are sufficient to preserve the integrity of the Lottery and to avoid the occurrence or appearance of illegitimate winnings by the owner or an employee of the agent, or by an immediate family member of the owner or of an employee of the agent.

(b) On or before October 1, 2018, the Commissioner shall submit a written

report on the findings of the review conducted pursuant to subsection (a) of this section to the Joint Fiscal Committee.

And by renumbering the remaining section to be numerically correct.

(For text see House Journal February 20, 2018)

H. 663

An act relating to municipal land use regulation of accessory on-farm businesses

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

First: In Sec. 1 (purpose), after “General Assembly adopts” by inserting Sec. 2
of

Second: In Sec. 2, 24 V.S.A. § 4412, subdivision (11)(A)(i) (definition of accessory on-farm business), by striking out subdivision (II) and inserting in lieu thereof a new subdivision (II) to read:

(II) Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products. As used in this subdivision (II), “farm stay” means a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature agricultural practices or qualifying products, or both. A farm stay includes the option for guests to participate in such activities.

Third: By striking out Sec. 3 in its entirety and inserting seven new sections to be numbered Secs. 3 - 9 to read as follows:

Sec. 3. 6 V.S.A. § 1113 is added to read:

§ 1113. ACCESSORY ON-FARM BUSINESSES; PESTICIDES; POSTING

When an agricultural pesticide is applied on a farm in an area in which an accessory on-farm business operates or conducts activity, the accessory on-farm business shall post the same warning signs that would be posted for agricultural workers under the rules of the U.S. Environmental Protection Agency adopted pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. chapter 6, subchapter II (environmental pest control). The manner and duration of posting shall be the same as under those rules. As used in this section:

(1) “Accessory on-farm business” and “farm” shall have the same meaning as in 24 V.S.A. § 4412(11).

(2) “Agricultural pesticide” means any pesticide labeled for use in or on a farm, forest, nursery, or greenhouse.

Sec. 4. PURPOSE

The purpose of this section and Secs. 5–6 of this act is to amend the laws of Vermont regarding the cultivation of industrial hemp to conform with federal requirements for industrial hemp research set forth in section 7606 of the federal Agricultural Act of 2014, Pub. L. No. 113-79, codified at 7 U.S.C. § 5940.

Sec. 5. 6 V.S.A. chapter 34 is amended to read:

CHAPTER 34. HEMP

§ 561. FINDINGS; INTENT

(a) Findings.

(1) Hemp has been continuously cultivated for millennia, is accepted and available in the global marketplace, and has numerous beneficial, practical, and economic uses, including: high-strength fiber, textiles, clothing, ~~bio-fuel~~ biofuel, paper products, protein-rich food containing essential fatty acids and amino acids, biodegradable plastics, resins, nontoxic medicinal and cosmetic products, construction materials, rope, and value-added crafts.

(2) The many agricultural and environmental beneficial uses of hemp include: livestock feed and bedding, stream buffering, erosion control, water and soil purification, and weed control.

(3) The hemp plant, an annual herbaceous plant with a long slender stem ranging in height from four to 15 feet and a stem diameter of one-quarter to three-quarters of an inch is morphologically distinctive and readily identifiable as an agricultural crop grown for the cultivation and harvesting of its fiber and seed.

(4) Hemp cultivation will enable the State of Vermont to accelerate economic growth and job creation, promote environmental stewardship, and expand export market opportunities.

(5) The federal Agricultural Act of 2014, Pub. L. No. 113-79 authorized the growing, cultivation, and marketing of industrial hemp, notwithstanding restrictions under the federal Controlled Substances Act, if certain criteria are satisfied.

(b) Purpose. The intent of this chapter is to establish policy and procedures for growing hemp in Vermont that comply with federal law so that farmers and other businesses in the Vermont agricultural industry can take advantage of this market opportunity.

§ 562. DEFINITIONS

As used in this chapter:

(1) [Repealed.]

(2) “Hemp products” or “hemp-infused products” means all products made from hemp, including cloth, cordage, fiber, food, fuel, paint, paper, construction materials, plastics, seed, seed meal, seed oil, and certified seed for cultivation.

(3) “Hemp” or “industrial hemp” means the plant *Cannabis sativa* L. and any part of the plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

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

§ 563. HEMP; AN AGRICULTURAL PRODUCT

~~Hemp~~ Industrial hemp is an agricultural product ~~which~~ that may be grown as a crop, produced, possessed, marketed, and commercially traded in Vermont pursuant to the provisions of this chapter. The cultivation of industrial hemp shall be subject to and comply with ~~the requirements of~~ the required agricultural practices adopted under section 4810 of this title.

§ 564. REGISTRATION; ADMINISTRATION; PILOT PROJECT

(a) The Secretary shall establish a pilot program to research the growth, cultivation, and marketing of industrial hemp. Under the pilot program, the Secretary shall register persons who will participate in the pilot program through growing or cultivating industrial hemp. The Secretary shall certify the site where industrial hemp will be cultivated by each person registered under this chapter. A person who intends to participate in the pilot program and grow industrial hemp shall register with the Secretary and submit on a form provided by the Secretary the following:

(1) the name and address of the person;

(2) a statement that the seeds obtained for planting are of a type and variety that do not exceed the maximum concentration of tetrahydrocannabinol set forth in subdivision 562(3) of this title; and

(3) the location and acreage of all parcels sown and other field reference information as may be required by the Secretary.

(b) The form provided by the Secretary pursuant to subsection (a) of this section shall include a notice statement that, ~~until current federal law is amended to provide otherwise:~~

(1) cultivation and possession of industrial hemp in Vermont is a violation of the federal Controlled Substances Act unless the industrial hemp is grown, cultivated, or marketed under a pilot program authorized by section 7606 of the federal Agricultural Act of 2014, Pub. L. No. 113-79; and

(2) federal prosecution for growing hemp in violation of federal law may include criminal penalties, forfeiture of property, and loss of access to federal agricultural benefits, including agricultural loans, conservation programs, and insurance programs; and

(3) registrants may purchase or import hemp genetics from any state that complies with federal requirements for the cultivation of industrial hemp.

(c) A person registered with the Secretary pursuant to this section shall allow industrial hemp crops, throughout sowing, growing season, harvest, storage, and processing, to be inspected and tested by and at the discretion of the Secretary or his or her designee. The Secretary shall retain tests and inspection information collected under this section for the purposes of research of the growth and cultivation of industrial hemp.

(d) The Secretary may assess an annual registration fee of \$25.00 for the performance of his or her duties under this chapter.

§ 566. RULEMAKING AUTHORITY

(a) The Secretary may adopt rules to provide for the implementation of this chapter and the pilot project authorized under this chapter, which may include rules to require hemp to be tested during growth for tetrahydrocannabinol levels and to require inspection and supervision of hemp during sowing, growing season, harvest, storage, and processing. The Secretary shall not adopt under this or any other section a rule that would prohibit a person to grow hemp based on the legal status of hemp under federal law.

(b) The Secretary shall adopt rules establishing how the Agency of Agriculture, Food and Markets will conduct research within the pilot program for industrial hemp.

(c) The Secretary shall adopt rules establishing requirements for the registration of processors of hemp and hemp-infused products.

Sec. 6. TRANSITION; IMPLEMENTATION

All persons registered prior to July 1, 2018 with the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 34 to grow or cultivate hemp shall be deemed to be registered with the Secretary of Agriculture, Food and Markets as participants in the industrial hemp pilot project established by this act under 6 V.S.A. § 564, and those previously registered persons shall not be required to reregister with the Secretary of Agriculture, Food and Markets.

Sec. 7. 6 V.S.A. §§ 567 and 568 are added to read:

§ 567. AGENCY OF AGRICULTURE, FOOD AND MARKETS; TESTING

The Agency of Agriculture, Food and Markets shall establish a cannabis quality control program for the following purposes:

(1) to develop potency and contaminant testing protocols for hemp and hemp-infused products;

(2) to verify cannabinoid label guarantees of hemp and hemp-infused products;

(3) to test for pesticides, solvents, heavy metals, mycotoxins, and bacterial and fungal contaminants in hemp and hemp-infused products; and

(4) to certify testing laboratories that can offer the services in subdivisions (2) and (3) of this section.

§ 568. TEST RESULTS; ENFORCEMENT

(a) If the Secretary or a dispensary registered under 18 V.S.A. chapter 86 tests a hemp crop and the hemp has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis, the person registered with the Secretary as growing the hemp crop shall:

(1) enter into an agreement with a dispensary registered under 18 V.S.A. chapter 86 for the separation of the delta-9 tetrahydrocannabinol from the hemp crop, return of the hemp crop to the person registered with the Secretary, and retention of the separated delta-9 tetrahydrocannabinol by the dispensary;

(2) sell the hemp crop to a dispensary registered under 18 V.S.A. chapter 86; or

(3) arrange for the Secretary to destroy or order the destruction of the hemp crop.

(b) A person registered with the Secretary as growing the hemp crop shall not be subject to civil, criminal, or administrative liability or penalty under 18 V.S.A. chapter 84 if the tested industrial hemp has a delta-9 tetrahydrocannabinol concentration of one percent or less on a dry weight basis.

(c) A crop or product confirmed by the Secretary to meet the definition of hemp under State or federal law may be sold or transferred in interstate commerce to the extent authorized by federal law.

Sec. 8. 18 V.S.A. § 4474e is amended to read:

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

(a) A dispensary registered under this section may:

(1) Acquire, possess, cultivate, manufacture, process, transfer, transport, supply, sell, and dispense marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her dispensary and to his or her registered caregiver for the registered patient's use for symptom relief.

* * *

(5) Acquire, possess, manufacture, process, transfer, transport, market, and test hemp provided by persons registered with the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 34 to grow or cultivate hemp.

* * *

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

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

An act relating to municipal regulation of accessory on-farm businesses and to hemp cultivation.

(For text see House Journal February 8, 2018)

H. 707

An act relating to the prevention of sexual harassment

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. 21 V.S.A. § 495h is amended to read:

§ 495h. SEXUAL HARASSMENT

(a)(1) All employers, employment agencies, and labor organizations have an obligation to ensure a workplace free of sexual harassment.

(2) All persons who engage a person to perform work or services have an obligation to ensure a working relationship with that person that is free from sexual harassment.

* * *

~~(c)(1) Employers shall provide individual copies of their written policies to current employees no later than November 1, 1993, and to new employees upon their being hired. Employers who have provided individual written notice to all employees within the 12 months prior to October 1, 1993, shall be exempt from having to provide an additional notice during the 1993 calendar year.~~

(2) If an employer makes changes to its policy against sexual harassment, it shall provide to all employees a written copy of the updated policy.

* * *

(f)(1) Employers and labor organizations are encouraged to conduct an education and training program within one year after September 30, 1993 for all current employees and members, and for all new employees and members thereafter within one year of commencement of employment, that includes at a minimum all the information outlined in this section within one year after commencement of employment.

(2) Employers and labor organizations are encouraged to conduct an annual education and training program for all employees and members that includes at a minimum all the information outlined in this section.

(3) Employers are encouraged to conduct additional training for current supervisory and managerial employees and members within one year of September 30, 1993, and for new supervisory and managerial employees and members within one year of after commencement of employment or membership, which should include at a minimum the information outlined in subsection (b) of this section and, the specific responsibilities of supervisory and managerial employees, and the methods actions that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

(4) Employers, labor organizations, and appropriate State agencies are encouraged to cooperate in making this training available.

(g)(1) An employer shall not require any employee or prospective employee, as a condition of employment, to sign an agreement or waiver that does either of the following:

(A) prohibits, prevents, or otherwise restricts the employee or prospective employee from opposing, disclosing, reporting, or participating in an investigation of sexual harassment; or

(B) except as otherwise permitted by State or federal law, purports to waive a substantive or procedural right or remedy available to the employee with respect to a claim of sexual harassment.

(2) Any provision of an agreement that violates subdivision (1) of this subsection shall be void and unenforceable.

(h)(1) An agreement to settle a claim of sexual harassment shall not prohibit, prevent, or otherwise restrict the employee from working for the employer or any parent company, subsidiary, division, or affiliate of the

employer.

(2) An agreement to settle a sexual harassment claim shall expressly state that:

(A) it does not prohibit, prevent, or otherwise restrict the individual who made the claim from doing any of the following:

(i) lodging a complaint of sexual harassment committed by any person with the Attorney General, a State's Attorney, the Human Rights Commission, the Equal Employment Opportunity Commission, or any other State or federal agency;

(ii) testifying, assisting, or participating in any manner with an investigation related to a claim of sexual harassment conducted by the Attorney General, a State's Attorney, the Human Rights Commission, the Equal Employment Opportunity Commission, or any other State or federal agency;

(iii) complying with a valid request for discovery in relation to civil litigation or testifying in a hearing or trial related to a claim of sexual harassment that is conducted by a court, pursuant to an arbitration agreement, or before another appropriate tribunal; or

(iv) exercising any right the individual may have pursuant to State or federal labor relations laws to engage in concerted activities with other employees for the purposes of collective bargaining or mutual aid and protection; and

(B) it does not waive any rights or claims that may arise after the date the settlement agreement is executed.

(3) Any provision of an agreement to settle a sexual harassment claim that violates subdivision (1) or (2) of this subsection shall be void and unenforceable with respect to the individual who made the claim.

(4) Nothing in subdivision (2) of this subsection shall be construed to prevent an agreement to settle a sexual harassment claim from waiving or releasing the claimant's right to seek or obtain any remedies relating to sexual harassment of the claimant by another party to the agreement that occurred before the date on which the agreement is executed.

(i)(1)(A)(i) For the purpose of assessing compliance with the provisions of this section, the Attorney General or designee, or, if the employer is the State, the Human Rights Commission or designee, may, with 48 hours' notice, at reasonable times and without unduly disrupting business operations enter and inspect any place of business or employment, question any person who is authorized by the employer to receive or investigate complaints of sexual

harassment, and examine an employer's records, policies, procedures, and training materials related to the prevention of sexual harassment and the requirements of this section.

(ii) An employer may agree to waive or shorten the 48-hour notice period.

(iii) As used in this subsection (i), the term "records" includes de-identified data regarding the number of complaints of sexual harassment received and the resolution of each complaint.

(B) The employer shall at reasonable times and without unduly disrupting business operations make any persons who are authorized by the employer to receive or investigate complaints of sexual harassment and any records, policies, procedures, and training materials related to the prevention of sexual harassment and the requirements of this section available to the Attorney General or designee or, if the employer is the State, the Human Rights Commission or designee.

(2) Following an inspection and examination pursuant to subdivision (1) of this subsection (i), the Attorney General or the Human Rights Commission shall notify the employer of the results of the inspection and examination, including any issues or deficiencies identified, provide resources regarding practices and procedures for the prevention of sexual harassment that the employer may wish to adopt or utilize, and identify any technical assistance that the Attorney General or the Human Rights Commission may be able to provide to help the employer address any identified issues or deficiencies. If the Attorney General or the Human Rights Commission determines that it is necessary to ensure the employer's workplace is free from sexual harassment, the employer may be required, for a period of up to three years, to provide an annual education and training program that satisfies the provisions of subdivision (4) of this subsection to all employees or to conduct an annual, anonymous working-climate survey, or both.

(3)(A) The Attorney General shall keep records, materials, and information related to or obtained through an inspection carried out pursuant to this subsection (i) confidential as provided pursuant to 9 V.S.A. § 2460(a)(4).

(B) The Human Rights Commission shall keep records, materials, and information related to or obtained through an inspection carried out pursuant to this subsection (i) confidential as provided pursuant to 9 V.S.A. § 4555.

(4) If required by the Attorney General or Human Rights Commission pursuant to subdivision (2) of this subsection, an employer shall conduct:

(A) an annual education and training program for all employees that includes at a minimum all the information outlined in this section; and

(B) an annual education and training program for supervisory and managerial employees that includes at a minimum all the information outlined in this section, the specific responsibilities of supervisory and managerial employees, and the actions that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

(j) The Attorney General shall adopt rules as necessary to implement the provisions of this section.

Sec. 2. 21 V.S.A. § 495b is amended to read:

§ 495b. PENALTIES AND ENFORCEMENT

(a)(1) The Attorney General or a State's Attorney may enforce the provisions of this subchapter by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458-2461 as though an unlawful employment practice were an unfair act in commerce. Any employer, employment agency, or labor organization complained against shall have the same rights and remedies as specified therein. The Superior Courts are authorized to impose the same civil penalties and investigation costs and to order other relief to the State of Vermont or an aggrieved employee for violations of this subchapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(2) Any charge or formal complaint filed by the Attorney General or a State's Attorney against a person for unlawful discrimination or sexual harassment in violation of the provisions of this chapter shall include a statement setting forth the prohibition against retaliation pursuant to subdivision 495(a)(8) of this title.

* * *

Sec. 3. 9 V.S.A. § 4552 is amended to read:

§ 4552. DUTIES; JURISDICTION

* * *

(b)(1) The Commission shall have jurisdiction to investigate and enforce complaints of unlawful discrimination in violation of chapter 139 of this title, discrimination in public accommodations and rental and sale of real estate.

The Commission shall also have jurisdiction when the party complained against is a State agency in matters for which the Attorney General would otherwise have jurisdiction under subsection (c) of this section.

(2) In any case relating to unlawful discrimination or sexual harassment in violation of 21 V.S.A. § 495 et seq. that the Commission has jurisdiction over pursuant to this subsection, it shall include a statement setting forth the prohibition against retaliation pursuant to 21 V.S.A. § 495(a)(8) with any formal complaint that is sent to a respondent.

(c) All complaints of unlawful discrimination in violation of 21 V.S.A. §§ 495 et seq. and 710, the Fair Employment Practices Act and the provisions for workers' compensation discrimination, respectively, and of 21 V.S.A. § 471 et seq. shall be referred to the Attorney General's office, for investigation and enforcement.

Sec. 4. ATTORNEY GENERAL; HUMAN RIGHTS COMMISSION;
ENHANCED REPORTING OF DISCRIMINATION AND SEXUAL
HARASSMENT

(a) On or before December 15, 2018, the Attorney General and the Human Rights Commission shall develop and implement enhanced mechanisms for employees and members of the public to submit complaints of discrimination and sexual harassment in employment or in the course of a working relationship.

(b) The methods shall include, at a minimum, an easy-to-use portal on the Attorney General's or Human Rights Commission's website and a telephone hotline. Each method shall provide a clear statement that information submitted may be referred to the Office of the Attorney General, a State's Attorney, the Vermont Human Rights Commission, the Equal Employment Opportunity Commission, or another State or federal agency that has jurisdiction over the complaint.

Sec. 5. PUBLIC EDUCATION AND OUTREACH; VERMONT
COMMISSION ON WOMEN

(a) On or before December 15, 2018, the Vermont Commission on Women, in consultation with the Attorney General and the Human Rights Commission, shall develop a public education and outreach program that is designed to make Vermont employees, employers, businesses, and members of the public aware of:

(1) methods for reporting employment and work-related discrimination and sexual harassment;

(2) where to find information regarding:

(A) the laws related to employment and work-related discrimination and sexual harassment; and

(B) best practices for preventing employment and work-related discrimination and sexual harassment; and

(3) methods for preventing and addressing sexual harassment in the workplace.

(b) The sum of \$125,000.00 is appropriated to the Vermont Commission on Women from the General Fund in fiscal year 2018 to carry forward to fiscal year 2019 for the purpose of creating and implementing the public education and outreach program.

(c) The program may include:

(1) public service announcements;

(2) print and electronic advertisements;

(3) web-based and electronic training materials;

(4) printed informational and training materials;

(5) model educational programs and curricula; and

(6) in-person seminars and workshops.

Sec. 6. REPORT REGARDING ENHANCED REPORTING MECHANISMS

On or before January 15, 2020, the Attorney General, in consultation with the Human Rights Commission and the Vermont Commission on Women, shall submit to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs a report regarding the implementation of the enhanced reporting mechanisms for instances of employment and work-related discrimination and sexual harassment. The report shall include:

(1) a detailed description of how any existing reporting mechanisms were enhanced and any new reporting mechanisms that were implemented;

(2) a summary of changes, if any, in the annual number of complaints of employment and work-related discrimination and sexual harassment received and the number of complaints resulting in an investigation, settlement, or State court action during calendar years 2018 and 2019 in comparison to calendar years 2016 and 2017;

(3) the number of employees and other persons that reported employment or work-related discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint in comparison to the number that did not, and the reasons

that employees and other persons gave for not reporting the discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint; and

(4) any suggestion for legislative action to enhance further the reporting mechanisms or to reduce the amount of employment and work-related discrimination and sexual harassment.

Sec. 7. 21 V.S.A. § 495n is added to read:

§ 495n. SEXUAL HARASSMENT COMPLAINTS; NOTICE TO
ATTORNEY GENERAL AND HUMAN RIGHTS COMMISSION

(a) A person that files a claim of sexual harassment pursuant to section 495b of this subchapter in which neither the Attorney General nor the Human Rights Commission is a party shall provide notice of the action to the Attorney General and the Human Rights Commission within 14 days after filing the complaint. The notice may be submitted electronically and shall include a copy of the filed complaint.

(b)(1) Upon receiving notice of a complaint in which the State is a party, the Human Rights Commission may elect to:

(A) intervene in the action to seek remedies pursuant to section 495b of this subchapter; or

(B) without becoming a party to the action, file a statement with the court addressing questions of law related to the provisions of this subchapter.

(2) Upon receiving notice of a complaint in which the State is not a party, the Attorney General may elect to:

(A) intervene in the action to seek remedies pursuant to section 495b of this subchapter; or

(B) without becoming a party to the action, file a statement with the court addressing questions of law related to the provisions of this subchapter.

Sec. 8. COMMISSIONER OF LABOR; POSTER

On or before September 15, 2018, the Commissioner of Labor shall update the model policy and model poster created pursuant to 21 V.S.A. § 495h(d) to reflect the provisions of this act.

Sec. 9. [Deleted.]

Sec. 10. PRIOR HARASSMENT CLAIMS; IDENTIFICATION; RELEASE
FROM NONDISCLOSURE AGREEMENT; REPORT

(a) On or before January 15, 2019, the Office of Legislative Council shall submit a written report to the Senate Committee on Economic Development,

Housing and General Affairs and the House Committee on General, Housing, and Military Affairs that examines mechanisms to:

(1) provide the Attorney General and the Human Rights Commission with notice of agreements to settle sexual harassment claims that contain a provision that prohibits or restricts the individual who made the claim from disclosing information related to the claim of sexual harassment; and

(2) render provisions of agreements to settle sexual harassment claims that prohibit or restrict the individual who made the claim from disclosing information related to the claim of sexual harassment void and unenforceable if, in relation to a separate claim, the alleged harasser is later adjudicated by a court or tribunal of competent jurisdiction to have engaged in sexual harassment or retaliation in relation to a claim of sexual harassment.

(b) In particular, the report shall:

(1) identify potential mechanism to accomplish the potential changes described in subdivisions (a)(1) and (2) of this section;

(2) review and examine laws and pending legislation in other states that are related to subdivisions (a)(1) and (2) of this section;

(3) identify and examine potential legal issues, advantages, disadvantages, and obstacles to the mechanisms identified; and

(4) identify and examine any alternative mechanisms that would accomplish substantially similar policy outcomes to the potential changes described in subdivisions (a)(1) and (2) of this section.

(c) The Office of Legislative Council shall consult with the Attorney General's Office and the Human Rights Commission when preparing this report.

(d) As used in this section, "information related to the claim of sexual harassment" does not include the specific terms of the related settlement agreement or the amount of any monetary settlement.

Sec. 11. EFFECTIVE DATES

(a) This section and, in Sec. 5, subsection (b) shall take effect on passage. The remaining provisions of Sec. 5 shall take effect on July 1, 2018.

(b) The remaining sections of this act shall take effect on July 1, 2018.

(For text see House Journal March 13, 2018)

H. 728

An act relating to bail reform

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. 13 V.S.A. § 7551 is amended to read:

§ 7551. IMPOSITION OF BAIL, SECURED APPEARANCE BONDS, AND APPEARANCE BONDS; GENERALLY

(a) Bonds; generally. A bond given by a person charged with a criminal offense or by a witness in a criminal prosecution under section 6605 of this title, conditioned for the appearance of the person or witness before the court in cases where the offense is punishable by fine or imprisonment, and in appealed cases, shall be taken to the Criminal Division of the Superior Court where the prosecution is pending, and shall remain binding upon parties until discharged by the court or until sentencing. The person or witness shall appear at all required court proceedings.

(b) Limitation on imposition of bail, secured appearance bonds, and appearance bonds.

(1) No bond may be imposed Except as provided in subdivision (2) of this subsection, no bail, secured appearance bond, or appearance bond may be imposed:

(A) at the initial appearance of a person charged with a misdemeanor if the person was cited for the offense in accordance with Rule 3 of the Vermont Rules of Criminal Procedure; or

(B) at the initial appearance or upon the temporary release pursuant to Rule 5(b) of the Vermont Rules of Criminal Procedure of a person charged with a violation of a misdemeanor offense that is eligible for expungement pursuant to subdivision 7601(4)(A) of this title.

(2) In the event the court finds that imposing bail is necessary to mitigate the risk of flight from prosecution for a person charged with a violation of a misdemeanor offense that is eligible for expungement pursuant to subdivision 7601(4)(A) of this title, the court may impose bail in a maximum amount of \$200.00.

(3) This subsection shall not be construed to restrict the court's ability to impose conditions on such persons to reasonably ensure his or her appearance at future proceedings mitigate the risk of flight from prosecution or to reasonably protect the public in accordance with section 7554 of this title.

Sec. 2. Rule 3(k) of the Vermont Rules of Criminal Procedure is amended to read:

(k) Temporary Release. A Either a law enforcement officer arresting a person or the prosecuting attorney shall contact a judicial officer for determination of temporary release pursuant to Rule 5(b) of these rules without

unnecessary delay. The law enforcement officer or prosecuting attorney shall provide the judicial officer with the information and affidavit or sworn statement required by Rule 4(a) of these rules.

Sec. 3. 13 V.S.A. § 7554 is amended to read:

§ 7554. RELEASE PRIOR TO TRIAL

(a) Release; conditions of release. Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance before a judicial officer be ordered released pending trial in accordance with this section.

(1) The defendant shall be ordered released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release will not reasonably ~~ensure the appearance of the person~~ mitigate the risk of flight from prosecution as required. In determining whether the defendant presents a risk of ~~nonappearance~~ flight from prosecution, the judicial officer shall consider, in addition to any other factors, the seriousness of the offense charged and the number of offenses with which the person is charged. If the officer determines that ~~such a release will not reasonably ensure the appearance of the defendant as required~~ the defendant presents a risk of flight from prosecution, the officer shall, either in lieu of or in addition to the methods of release in this section, impose the least restrictive of the following conditions or the least restrictive combination of the following conditions that will reasonably ~~ensure the appearance~~ mitigate the risk of flight of the defendant as required:

(A) Place the defendant in the custody of a designated person or organization agreeing to supervise him or her if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

(B) Place restrictions on the travel, or ~~association, or place of abode~~ of the defendant during the period of release.

(C) Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources.

(D) ~~Require~~ Upon consideration of the defendant's financial means, ~~require~~ the execution of a secured appearance bond in a specified amount and the deposit with the clerk of the ~~Court~~ court, in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the appearance of the defendant as required.

(E) ~~Require~~ Upon consideration of the defendant's financial means, require the execution of a surety bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(F) Impose any other condition found reasonably necessary to ~~ensure appearance~~ mitigate the risk of flight as required, including a condition requiring that the defendant return to custody after specified hours.

(G) Place the defendant in a program of community-based electronic monitoring in accordance with section 7554d of this title.

(2) If the judicial officer determines that conditions of release imposed to ~~ensure appearance~~ mitigate the risk of flight will not reasonably protect the public, the judicial officer may impose in addition the least restrictive of the following conditions or the least restrictive combination of the following conditions that will reasonably ensure protection of the public:

(A) Place the defendant in the custody of a designated person or organization agreeing to supervise him or her if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

(B) Place restrictions on the travel, association, or place of abode of the defendant during the period of release.

(C) Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources.

(D) Impose any other condition found reasonably necessary to protect the public, except that a physically restrictive condition may only be imposed in extraordinary circumstances.

(E) ~~If the defendant is a State, county, or municipal officer charged with violating section 2537 of this title, the court may suspend~~ Suspend the officer's duties in whole or in part, if the defendant is a State, county, or municipal officer charged with violating section 2537 of this title and the court finds that it is necessary to protect the public.

(F) Place the defendant in a program of community-based electronic monitoring in accordance with section 7554d of this title.

(3) A judicial officer may order that a defendant not harass or contact or cause to be harassed or contacted a victim or potential witness. This order shall take effect immediately, regardless of whether the defendant is incarcerated or released.

(b) Judicial considerations in imposing conditions of release. In

determining which conditions of release to impose ~~under subsection~~.

(1) In subdivision (a)(1) of this section, the judicial officer, on the basis of available information, shall take into account the nature and circumstances of the offense charged; the weight of the evidence against the accused; the accused's employment; financial resources, including the accused's ability to post bail; the accused's character and mental condition; the accused's length of residence in the community; and the accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(2) In subdivision (a)(2) of this section, the judicial officer shall, on the basis of available information, shall take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, ~~financial resources~~, character and mental condition, ~~the~~ length of residence in the community, record of convictions, and record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings. Recent history of actual violence or threats of violence may be considered by the judicial officer as bearing on the character and mental condition of the accused.

(c) Order. A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any; shall inform such person of the penalties applicable to violations of the conditions of release; and shall advise him or her that a warrant for his or her arrest will be issued immediately upon any such violation.

(d) Review of conditions.

(1) A person for whom conditions of release are imposed and who is detained as a result of his or her inability to meet the conditions of release or who is ordered released on a condition that he or she return to custody after specified hours, or the State, following a material change in circumstances, shall, within 48 hours ~~of~~ following application, be entitled to have the conditions reviewed by a judge in the court having original jurisdiction over the offense charged. A ~~person~~ party applying for review shall be given the opportunity for a hearing. Unless the conditions of release are amended as requested, the judge shall set forth in writing or orally on the record a reasonable basis for continuing the conditions imposed. In the event that a judge in the court having original jurisdiction over the offense charged is not available, any Superior judge may review such conditions.

(2) A person for whom conditions of release are imposed shall, within five working days ~~of~~ following application, be entitled to have the conditions reviewed by a judge in the court having original jurisdiction over the offense

charged. A person applying for review shall be given the opportunity for a hearing. Unless the conditions of release are amended as requested, the judge shall set forth in writing or orally on the record a reasonable basis for continuing the conditions imposed. In the event that a judge in the court having original jurisdiction over the offense charged is not available, any Superior judge may review such conditions.

(e) Amendment of order. A judicial officer ordering the release of a person on any condition specified in this section may at any time amend the order to impose additional or different conditions of release; provided that the provisions of subsection (d) of this section shall apply.

(f) Definition. The term “judicial officer” as used in this section and section 7556 of this title shall mean a clerk of a Superior Court or a Superior Court judge.

(g) Admissibility of evidence. Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(h) Forfeiture. Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where if such disposition is authorized by the court.

(i) Forms. The Court Administrator shall establish forms for appearance bonds, secured appearance bonds, surety bonds, and for use in the posting of bail. Each form shall include the following information:

(1) The bond or bail may be forfeited in the event that the defendant or witness fails to appear at any required court proceeding.

(2) The surety or person posting bond or bail has the right to be released from the obligations under the bond or bail agreement upon written application to the judicial officer and detention of the defendant or witness.

(3) The bond will continue through sentencing in the event that bail is continued after final adjudication.

(j) Juveniles. Any juvenile between 14 and 16 years of age who is charged with a listed crime as defined in subdivision 5301(7) of this title shall appear before a judicial officer and be ordered released pending trial in accordance with this section within 24 hours of following the juvenile’s arrest.

Sec. 4. 13 V.S.A. § 7575 is amended to read:

§ 7575. REVOCATION OF THE RIGHT TO BAIL

The right to bail may be revoked entirely if the judicial officer finds that the accused has:

(1) intimidated or harassed a victim, potential witness, juror, or judicial officer in violation of a condition of release; or

(2) repeatedly violated conditions of release in a manner that impedes the prosecution of the accused; or

(3) violated a condition or conditions of release ~~which~~ that constitute a threat to the integrity of the judicial system; or

(4) without just cause, failed to appear at a specified time and place ordered by a judicial officer; or

(5) in violation of a condition of release, been charged with a felony or a crime against a person or an offense ~~like~~ similar to the underlying charge, for which, after hearing, probable cause is found.

Sec. 5. 13 V.S.A. § 7576 is amended to read:

§ 7576. DEFINITIONS

As used in this chapter:

* * *

(9) “Flight from prosecution” means any action or behavior undertaken by a person charged with a criminal offense to avoid court proceedings.

Sec. 6. INCARCERATION RATES OF PEOPLE OF COLOR; STUDY COMMITTEE; REPORT

(a) Study Committee. The Commissioner of the Department of Corrections, the Commissioner of the Department of Public Safety, the Attorney General, the Executive Director of the Department of State’s Attorneys and Sheriffs, and the Director of the Vermont State Police shall meet during the 2018 legislative interim to examine data regarding people of color who are incarcerated in Vermont. To the extent possible, the Committee shall also review data regarding people of color incarcerated in Maine and New Hampshire.

(b) On or before October 15, 2018, the committee shall report to the Joint Legislative Justice Oversight Committee on:

(1) data regarding all nonwhite offenders in the custody of the Department of Corrections, including:

(A) demographic information about the offender, including race and ethnicity and all known places of residence;

(B) the crime or crimes for which the offender is serving a sentence or being detained; and

(C) the length of the sentence being served by the offender or the

length of his or her detention;

(2) sentence length comparison data between white and nonwhite offenders who committed the same offense; and

(3) comparison data among Vermont, Maine, and New Hampshire regarding sentence lengths and incarceration rates of people of color.

Sec. 7. 13 V.S.A. § 7554b is amended to read:

§ 7554b. HOME DETENTION PROGRAM

(a) Definition. As used in this section, “home detention” means a program of confinement and supervision that restricts a defendant to a preapproved residence continuously, except for authorized absences, and is enforced by appropriate means of surveillance and electronic monitoring by the Department of Corrections. The court may authorize scheduled absences such as for work, school, or treatment. Any changes in the schedule shall be solely at the discretion of the Department of Corrections. A defendant who is on home detention shall remain in the custody of the Commissioner of Corrections with conditions set by the court.

(b) Procedure. At the request of the court, the Department of Corrections, or the defendant, the status of a defendant who is detained pretrial in a correctional facility for ~~lack of~~ inability to pay bail after bail has been set by the court may be reviewed by the court to determine whether the defendant is appropriate for home detention. The review shall be scheduled upon the court’s receipt of a report from the Department determining that the proposed residence is suitable for the use of electronic monitoring. A defendant held without bail pursuant to section 7553 or 7553a of this title shall not be eligible for release to the Home Detention Program on or after June 1, 2018. At arraignment or after a hearing, the court may order that the defendant be released to the Home Detention Program, ~~providing~~ provided that the court finds placing the defendant on home detention will reasonably assure his or her appearance in court when required and the proposed residence is appropriate for home detention. In making such a determination, the court shall consider:

(1) the nature of the offense with which the defendant is charged;

(2) the defendant’s prior convictions, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

(3) any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

* * *

Sec. 8. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;

HOME DETENTION PROGRAM REVIEW

During the 2018 legislative interim, the Joint Legislative Justice Oversight Committee shall evaluate the Home Detention Program established under 13 V.S.A. § 7554b and recommend how to improve and expand the Program and what entity should manage the Program. Any resulting legislative recommendations shall be introduced as a bill in the 2019 legislative session.

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(For text see House Journal March 2, 2018)

H. 731

An act relating to miscellaneous workers' compensation and occupational safety amendments

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

* * * Workers' Compensation; Protection Against Retaliation * * *

Sec. 1. 21 V.S.A. § 710 is amended to read:

§ 710. UNLAWFUL DISCRIMINATION

(a) No person, firm, or corporation shall refuse to employ any applicant for employment because ~~such~~ the applicant asserted a claim for workers' compensation benefits under this chapter or under the law of any state or of the United States. Nothing in this section shall require a person to employ an applicant who does not meet the qualifications of the position sought.

(b) No person shall discharge or discriminate against an employee from employment because ~~such~~ the employee asserted or attempted to assert a claim for benefits under this chapter or under the law of any state or of the United States.

(c) The Department shall not include in any publication or public report the name or contact information of any individual who has alleged that an employer has made a false statement or misclassified any employees, unless it is required by law or necessary to enable enforcement of this chapter.

(d) An employer shall not retaliate or take any other negative action against an individual because the employer knows or suspects that the individual has filed a complaint ~~with the Department or other authority~~, or reported a violation of this chapter, or has testified, assisted, or cooperated in any manner with the Department or other appropriate governmental agency or department in an investigation of misclassification, discrimination, or other violation of

this chapter.

(e) The Attorney General or a State's Attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458-2461 as though ~~discrimination under~~ a violation of this section were an unfair act in commerce.

(f) The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this ~~subchapter~~ section.

* * * Workers' Compensation Administration Fund * * *

Sec. 2. WORKERS' COMPENSATION RATE OF CONTRIBUTION

For fiscal year 2019, after consideration of the formula in 21 V.S.A. § 711(b) and historical rate trends, the General Assembly has established that the rate of contribution for the direct calendar year premium for workers' compensation insurance shall remain at the rate of 1.4 percent. The contribution rate for self-insured workers' compensation losses and workers' compensation losses of corporations approved under 21 V.S.A. chapter 9 shall remain at one percent.

Sec. 3. POTENTIAL DELEGATION OF RATE SETTING AUTHORITY; REPORT

On or before January 15, 2019, the Commissioner of Labor shall submit a written report to the House Committees on Commerce and Economic Development and on Ways and Means and the Senate Committees on Economic Development, Housing and General Affairs and on Finance regarding the potential for delegating the authority to set the Workers' Compensation Administration Fund rate of contribution for the direct calendar year premium for workers' compensation insurance to the Commissioner of Labor. In particular, the report shall:

(1) describe how the Department calculates the rate of contribution that it annually proposes to the General Assembly pursuant to 21 V.S.A. § 711(b);

(2) identify any advantages and disadvantages of the General Assembly's delegating to the Commissioner of Labor authority to establish annually the rate of contribution for the direct calendar year premium for workers' compensation insurance; and

(3) identify any legislative, regulatory, and administrative changes that would need to be made in order to delegate to the Commissioner the authority to establish annually the rate of contribution for the direct calendar year

premium for workers' compensation insurance.

* * * Discontinuance of Workers' Compensation Benefits * * *

Sec. 4. 2014 Acts and Resolves No. 199, Sec. 54a is amended to read:

Sec. 54a. REPEAL

21 V.S.A. § 643a shall be repealed on July 1, ~~2018~~ 2023.

Sec. 5. 2014 Acts and Resolves No. 199, Sec. 69 is amended to read:

Sec. 69. EFFECTIVE DATES

* * *

(b) Sec. 54b (reinstatement of current law governing discontinuance of workers' compensation insurance benefits) shall take effect on July 1, ~~2018~~ 2023.

* * *

* * * Vermont Occupational Safety and Health Act * * *

Sec. 6. 21 V.S.A. § 225 is amended to read:

§ 225. CITATIONS

(a)(1) If, upon inspection or investigation, the Commissioner or the Director, or the agent of either of them, finds that an employer has violated a requirement of the VOSHA Code, the Commissioner shall with reasonable promptness issue a citation to the employer and serve it on the employer by certified mail or in the same manner as a summons to the Superior Court. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the statute, standard, rule, or order alleged to have been violated, as well as the penalty, if any, proposed to be assessed pursuant to section 210 of this title. In addition, the citation shall fix a reasonable time for the abatement of the violation.

(2) By rule, the Commissioner shall ~~prescribe~~ adopt procedures for issuance of a notice in lieu of a citation with respect to ~~de minimus~~ minimis violations ~~which~~ that have no direct or immediate relationship to safety or health, and for hearing interested parties before a civil penalty is assessed.

(b) Each citation issued under this section, or a copy or copies ~~thereof~~ of the citation, shall be prominently posted, as prescribed in rules ~~promulgated~~ adopted by the Commissioner, at or near each place a violation referred to in the citation occurred or existed.

* * *

Sec. 7. 21 V.S.A. § 226 is amended to read:

§ 226. ENFORCEMENT

~~(a)(1) After issuing a citation under section 225 of this title, the Commissioner shall notify the employer by certified mail or by service by an agent, of the penalty, if any, proposed to be assessed under section 210 of this title. The An employer shall have, within 20 days after personal service or receipt of the notice within which to a citation issued under section 225 of this title, notify the Commissioner that he or she wishes to appeal the citation or proposed assessment of penalty, and if no notice is filed by.~~

(2) If an employer does not notify the Commissioner as provided in this subsection and an employee does not file a notice under subsection (c) of this section, the citation and assessment penalty, as proposed, shall be deemed a final order of the Review Board and not subject to review by any court or agency.

~~(b)(1)(A) If the Commissioner on inspection or investigation finds that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Review Board in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, or on the day the citation and assessment becomes final under subsection (a) of this section), the Commissioner shall notify the employer by certified mail of such the failure and of the penalty proposed to be assessed under section 210 of this title by reason of such the failure.~~

(B) The period to correct a violation shall begin to run:

(i) when a final order is entered by the Review Board in relation to review proceedings under this section that are initiated by an employer in good faith and not solely for delay or avoidance of penalties; or

(ii) on the day the citation and penalty become final under subsection (a) of this section.

(2) The employer shall have 20 days after the receipt of the notice within which to notify the Commissioner that he or she wishes to appeal the Commissioner's notification citation or the proposed assessment of penalty. If within 20 days from the receipt of the notification issued by the Commissioner, the employer fails to notify the Commissioner that he or she intends to appeal the notification or proposed assessment of penalty, the notification citation and assessment, as proposed, shall be deemed a final order of the Review Board and not subject to review by any court or agency.

~~(c) If an employer notifies the Commissioner that he or she intends to contest a citation issued under section 225 of this title or notification issued~~

~~under subsection (a) or (b) of this section, or if, within 20 days of after the issuance of a citation issued under section 225 of this title, any employee or representative of employees files a notice with the Commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Commissioner shall immediately advise the Review Board of such the notification and the Review Board shall afford an opportunity for a hearing. Unless the a notice is timely filed, the proposed penalty and, in appropriate cases, the notification of the Commissioner citation shall be deemed a final order of the Review Board not subject to review by any court or agency.~~

(d) After hearing an appeal, the Review Board shall thereafter issue an order based on findings of fact ~~affirming, modifying, or vacating that affirms, modifies, or vacates the Commissioner's citation or proposed penalty, or both, or directing provides other appropriate relief, and the.~~ The order shall become final 30 days after its issuance unless judicial review is timely taken under section 227 of this title. The rules of procedure prescribed adopted by the Review Board shall provide affected employees or their representatives with an opportunity to participate as parties in hearings a hearing under this subsection.

* * * Report on Debarment * * *

Sec. 8. DEBARMENT; OFFICE OF LEGISLATIVE COUNCIL; REPORT

(a) On or before January 15, 2019, the Office of Legislative Council shall submit to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development a written report on the use of debarment in relation to the laws against employee misclassification. In particular, the report shall:

(1) summarize Vermont's laws, rules, and procedures related to debarment, including the violations that can trigger a debarment proceeding;

(2) describe the use of Vermont's debarment procedures and why they have not been used more frequently to date;

(3) identify any obstacles that prevent or hinder the use of Vermont's debarment procedures;

(4) summarize the actions taken by the Agencies of Administration and of Transportation and the Departments of Labor, of Financial Regulation, and of Buildings and General Services to utilize debarment to ensure that the State is not contracting with employers that misclassify employees in violation of Vermont law;

(5) identify other states that utilize debarment as a means of enforcing the laws against employee misclassification and summarize the manner and

frequency of debarment proceedings in those states;

(6) summarize specific characteristics of other states' laws, rules, and procedures related to debarment that have been identified as either enhancing or limiting their effectiveness in enforcing those states' laws against employee misclassification; and

(7) summarize any legislative, regulatory, or administrative changes that are identified by the Agency of Administration, Agency of Transportation, Department of Labor, Department of Financial Regulation, or Department of Buildings and General Services as necessary to make debarment a more effective tool for reducing the occurrence of and enforcing the laws against employee misclassification.

(b) In preparing the report, the Office of Legislative Council shall consult with the Agencies of Administration and of Transportation and the Departments of Labor, of Financial Regulation, and of Buildings and General Services.

(c) The Secretaries of Administration and of Transportation and the Commissioners of Labor, of Financial Regulation, and of Buildings and General Services shall, upon request, promptly provide the Office of Legislative Council with any pertinent information related to debarment procedures and the use of debarment as a means of enforcing Vermont's laws against employee misclassification.

* * * Effective Dates * * *

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 4, 5, 6, and 7 shall take effect on passage.

(b) The remaining sections shall take effect on July 1, 2018.

(For text see House Journal February 28, 2018)

H. 764

An act relating to data brokers and consumer protection

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. FINDINGS AND INTENT

(a) The General Assembly finds the following:

(1) Providing consumers with more information about data brokers, their data collection practices, and the right to opt out.

(A) While many different types of business collect data about consumers, a "data broker" is in the business of aggregating and selling data

about consumers with whom the business does not have a direct relationship.

(B) A data broker collects many hundreds or thousands of data points about consumers from multiple sources, including: Internet browsing history; online purchases; public records; location data; loyalty programs; and subscription information. The data broker then scrubs the data to ensure accuracy; analyzes the data to assess content; and packages the data for sale to a third party.

(C) Data brokers provide information that is critical to services offered in the modern economy, including: targeted marketing and sales; credit reporting; background checks; government information; risk mitigation and fraud detection; people search; decisions by banks, insurers, or others whether to provide services; ancestry research; and voter targeting and strategy by political campaigns.

(D) While data brokers offer many benefits, there are also risks associated with the widespread aggregation and sale of data about consumers, including risks related to consumers' ability to know and control information held and sold about them and risks arising from the unauthorized or harmful acquisition and use of consumer information.

(E) There are important differences between "data brokers" and businesses with whom consumers have a direct relationship.

(i) Consumers who have a direct relationship with traditional and e-commerce businesses may have some level of knowledge about and control over the collection of data by those business, including: the choice to use the business's products or services; the ability to review and consider data collection policies; the ability to opt out of certain data collection practices; the ability to identify and contact customer representatives; the ability to pursue contractual remedies through litigation; and the knowledge necessary to complain to law enforcement.

(ii) By contrast, consumers may not be aware that data brokers exist, who the companies are, or what information they collect, and may not be aware of available recourse.

(F) The State of Vermont has the legal authority and duty to exercise its traditional "Police Powers" to ensure the public health, safety, and welfare, which includes both the right to regulate businesses that operate in the State and engage in activities that affect Vermont consumers as well as the right to require disclosure of information to protect consumers from harm.

(G) To provide consumers with necessary information about data brokers, Vermont should adopt a narrowly tailored definition of "data broker" and require data brokers to register annually with the Secretary of State and

provide information about their data collection activities, opt out policies, purchaser credentialing practices, and security breaches.

(2) Ensuring that data brokers have adequate security standards.

(A) News headlines in the past several years demonstrate that large and sophisticated businesses, governments, and other public and private institutions are constantly subject to cyberattacks, which have compromised sensitive personal information of literally billions of consumers worldwide.

(B) While neither government nor industry can prevent every security breach, the State of Vermont has the authority and the duty to enact legislation to protect its consumers where possible.

(C) One approach to protecting consumer data has been to require government agencies and certain regulated businesses to adopt an “information security program” that has “appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records” and “to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm.” Federal Privacy Act; 5 U.S.C. § 552a.

(D) The requirement to adopt such an information security program currently applies to “financial institutions” subject to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq; to certain entities regulated by the Vermont Department of Financial Regulation pursuant to rules adopted by the Department; to persons who maintain or transmit health information regulated by the Health Insurance Portability and Accountability Act; and to various types of businesses under laws in at least 13 other states.

(E) Vermont can better protect its consumers from data broker security breaches and related harm by requiring data brokers to adopt an information security program with appropriate administrative, technical, and physical safeguards to protect sensitive personal information.

(3) Prohibiting the acquisition of personal information through fraudulent means or with the intent to commit wrongful acts.

(A) One of the dangers of the broad availability of sensitive personal information is that it can be used with malicious intent to commit wrongful acts, such as stalking, harassment, fraud, discrimination, and identity theft.

(B) While various criminal and civil statutes prohibit these wrongful acts, there is currently no prohibition on acquiring data for the purpose of committing such acts.

(C) Vermont should create new causes of action to prohibit the acquisition of personal information through fraudulent means, or for the purpose of committing a wrongful act, to enable authorities and consumers to

take action.

(4) Removing financial barriers to protect consumer credit information.

(A) In one of several major security breaches that have occurred in recent years, the names, Social Security numbers, birth dates, addresses, driver's license numbers, and credit card numbers of over 145 million Americans were exposed, including over 247,000 Vermonters.

(B) In response to concerns about data security, identity theft, and consumer protection, the Vermont Attorney General and the Department of Financial Regulation have outlined steps a consumer should take to protect his or her identity and credit information. One important step a consumer can take is to place a security freeze on his or her credit file with each of the national credit reporting agencies.

(C) Under State law, when a consumer places a security freeze, a credit reporting agency issues a unique personal identification number or password to the consumer. The consumer must provide the PIN or password, and his or her express consent, to allow a potential creditor to access his or her credit information.

(D) Except in cases of identity theft, current Vermont law allows a credit reporting agency to charge a fee of up to \$10.00 to place a security freeze, and up to \$5.00 to lift temporarily or remove a security freeze.

(E) Vermont should exercise its authority to prohibit these fees to eliminate any financial barrier to placing or removing a security freeze.

(b) Intent.

(1) Providing consumers with more information about data brokers, their data collection practices, and the right to opt out. It is the intent of the General Assembly to provide Vermonters with access to more information about the data brokers that collect consumer data and their collection practices by:

(A) adopting a narrowly tailored definition of "data broker" that:

(i) includes only those businesses that aggregate and sell the personal information of consumers with whom they do not have a direct relationship; and

(ii) excludes businesses that collect information from their own customers, employees, users, or donors, including: banks and other financial institutions; utilities; insurers; retailers and grocers; restaurants and hospitality businesses; social media websites and mobile "apps"; search websites; and businesses that provide services for consumer-facing businesses and maintain a direct relationship with those consumers, such as website, "app,"

and e-commerce platforms; and

(B) requiring a data broker to register annually with the Secretary of State and make certain disclosures in order to provide consumers, policy makers, and regulators with relevant information.

(2) Ensuring that data brokers have adequate security standards. It is the intent of the General Assembly to protect against potential cyber threats by requiring data brokers to adopt an information security program with appropriate technical, physical, and administrative safeguards.

(3) Prohibiting the acquisition of personal information with the intent to commit wrongful acts. It is the intent of the General Assembly to protect Vermonters from potential harm by creating new causes of action that prohibit the acquisition or use of personal information for the purpose of stalking, harassment, fraud, identity theft, or discrimination.

(4) Removing financial barriers to protect consumer credit information. It is the intent of the General Assembly to remove any financial barrier for Vermonters who wish to place a security freeze on their credit report by prohibiting credit reporting agencies from charging a fee to place or remove a freeze.

Sec. 2. 9 V.S.A. chapter 62 is amended to read:

CHAPTER 62. PROTECTION OF PERSONAL INFORMATION

Subchapter 1. General Provisions

§ 2430. DEFINITIONS

~~The following definitions shall apply throughout this chapter unless otherwise required~~ As used in this chapter:

(1) “Biometric record” means an individual’s psychological, biological, or behavioral characteristics that can be used, singly or in combination with each other or with other identifying data, to establish individual identity, including:

(A) imagery of the iris, retina, fingerprint, face, hand, palm, or vein patterns, and voice recordings, from which an identifier template, such as a face print or a minutiae template or voiceprint, can be extracted;

(B) keystroke patterns or rhythms;

(C) gait patterns or rhythms; and

(D) sleep health or exercise data that contain identifying information.

(2)(A) “Brokered personal information” means:

(i) one or more of the following computerized data elements about

a consumer:

(I) name;

(II) address;

(III) a personal identifier, including a Social Security number, other government-issued identification number, or biometric record;

(IV) an indirect identifier, including date of birth, place of birth, or mother's maiden name; or

(V) other information that, alone or in combination, is linked or linkable to the consumer that would allow a reasonable person to identify the consumer with reasonable certainty; and

(ii) the computerized data element or elements are:

(I) categorized by characteristic for dissemination to third parties; or

(II) combined with nonpublic information.

(B) "Brokered personal information" does not include publicly available information that is solely related to a consumer's business or profession.

(3) "Business" means a commercial entity, including a sole proprietorship, partnership, corporation, association, limited liability company, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the United States, or any other country, or the parent, affiliate, or subsidiary of a financial institution, but in no case shall it does not include the State, a State agency, or any political subdivision of the State, or a vendor acting solely on behalf of, and at the direction of, the State.

(2)(4) "Consumer" means an individual residing in this State.

(5)(A) "Data broker" means:

(i) A business that:

(I) provides people search services; or

(II) collects and sells or licenses to one or more third parties the brokered personal information of a consumer with whom the business does not have a direct relationship.

(ii) "Data broker" includes each affiliated business that is under common ownership or control if one business collects brokered personal information and provides it to another to sell or license.

(B) “Data broker” does not include:

(i) a business that solely develops or maintains third-party e-commerce or application platforms; or

(ii) a business that solely provides publicly available information via real-time or near-real-time alert services for health or safety purposes.

(C) For purposes of subdivision (5)(A)(i)(II) of this subsection, examples of a direct relationship with a business include if the consumer is a past or present:

(i) customer, client, subscriber, or user of the business’s goods or services;

(ii) employee, contractor, or agent of the business;

(iii) investor in the business; or

(iv) donor to the business.

(D) For purposes of subdivision (5)(A)(i)(II) of this subsection, a business does not sell or license brokered personal information within the meaning of the definition of “data broker” if the sale or license is merely incidental to one of its lines of business.

(6)(A) “Data broker security breach” means an unauthorized acquisition or a reasonable belief of an unauthorized acquisition of more than one element of brokered personal information maintained by a data broker when the brokered personal information is not encrypted, redacted, or protected by another method that renders the information unreadable or unusable by an unauthorized person.

(B) “Data broker security breach” does not include good faith but unauthorized acquisition of brokered personal information by an employee or agent of the data broker for a legitimate purpose of the data broker, provided that the brokered personal information is not used for a purpose unrelated to the data broker’s business or subject to further unauthorized disclosure.

(C) In determining whether brokered personal information has been acquired or is reasonably believed to have been acquired by a person without valid authorization, a data broker may consider the following factors, among others:

(i) indications that the brokered personal information is in the physical possession and control of a person without valid authorization, such as a lost or stolen computer or other device containing brokered personal information;

(ii) indications that the brokered personal information has been

downloaded or copied;

(iii) indications that the brokered personal information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported; or

(iv) that the brokered personal information has been made public.

~~(3)(7)~~ “Data collector” may include the State, State agencies, political subdivisions of the State, public and private universities, privately and publicly held corporations, limited liability companies, financial institutions, retail operators, and any other entity that, means a person who, for any purpose, whether by automated collection or otherwise, handles, collects, disseminates, or otherwise deals with nonpublic personal information personally identifiable information, and includes the State, State agencies, political subdivisions of the State, public and private universities, privately and publicly held corporations, limited liability companies, financial institutions, and retail operators.

~~(4)(8)~~ “Encryption” means use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key.

(9) “License” means a grant of access to, or distribution of, data by one person to another in exchange for consideration. A use of data for the sole benefit of the data provider, where the data provider maintains control over the use of the data, is not a license.

(10)(A) “People search services” means an Internet-based service in which an individual can pay a fee to search for a specific consumer, and which provides information about the consumer such as the consumer’s address, age, maiden name, alias, name or addresses of relatives, financial records, criminal records, background reports, or property details, where the consumer whose data is provided does not have a direct relationship with the business.

(B) “People search services” does not include a service that solely provides publicly available information related to a consumer’s business or profession.

~~(5)(11)(A)~~ “Personally identifiable information” means an individual’s a consumer’s first name or first initial and last name in combination with any one or more of the following digital data elements, when either the name or the data elements are not encrypted or redacted or protected by another method that renders them unreadable or unusable by unauthorized persons:

(i) Social Security number;

(ii) motor vehicle operator’s license number or nondriver

identification card number;

(iii) financial account number or credit or debit card number, if circumstances exist in which the number could be used without additional identifying information, access codes, or passwords;

(iv) account passwords or personal identification numbers or other access codes for a financial account.

(B) “Personally identifiable information” does not mean publicly available information that is lawfully made available to the general public from federal, State, or local government records.

~~(6)~~(12) “Records Record” means any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

~~(7)~~(13) “Redaction” means the rendering of data so that ~~it is~~ the data are unreadable or is are truncated so that no more than the last four digits of the identification number are accessible as part of the data.

~~(8)~~(14)(A) “Security breach” means unauthorized acquisition of, ~~electronic data~~ or a reasonable belief of an unauthorized acquisition of, ~~electronic data that compromises the security, confidentiality, or integrity of a consumer’s~~ personally identifiable information maintained by the a data collector.

(B) “Security breach” does not include good faith but unauthorized acquisition of personally identifiable information by an employee or agent of the data collector for a legitimate purpose of the data collector, provided that the personally identifiable information is not used for a purpose unrelated to the data collector’s business or subject to further unauthorized disclosure.

(C) In determining whether personally identifiable information has been acquired or is reasonably believed to have been acquired by a person without valid authorization, a data collector may consider the following factors, among others:

(i) indications that the information is in the physical possession and control of a person without valid authorization, such as a lost or stolen computer or other device containing information;

(ii) indications that the information has been downloaded or copied;

(iii) indications that the information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported; or

(iv) that the information has been made public.

§ 2433. ACQUISITION OF BROKERED PERSONAL INFORMATION;
PROHIBITIONS

(a) Prohibited acquisition and use.

(1) A person shall not acquire brokered personal information through fraudulent means.

(2) A person shall not acquire or use brokered personal information for the purpose of:

(A) stalking or harassing another person;

(B) committing a fraud, including identity theft, financial fraud, or e-mail fraud; or

(C) engaging in unlawful discrimination, including employment discrimination and housing discrimination.

(b) For purposes of this section, brokered personal information includes information acquired from people search services.

(c) Enforcement.

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

(2) The Attorney General has the same authority to adopt rules to implement the provisions of this section and to conduct civil investigations, enter into assurances of discontinuance, bring civil actions, and take other enforcement actions as provided under chapter 63, subchapter 1 of this title.

* * *

Subchapter 5. Data Brokers

§ 2446. ANNUAL REGISTRATION

(a) Annually, on or before January 31 following a year in which a person meets the definition of data broker as provided in section 2430 of this title, a data broker shall:

(1) register with the Secretary of State;

(2) pay a registration fee of \$100.00; and

(3) provide the following information:

(A) the name and primary physical, e-mail, and Internet addresses of the data broker;

(B) the nature and type of sources used to compile data;

(C) if the data broker permits a consumer to opt out of the data broker's collection of brokered personal information, opt out of its databases, or opt out of certain sales of data:

(i) the method for requesting an opt out;

(ii) if the opt out applies to only certain activities or sales, which ones; and

(iii) whether the data broker permits a consumer to authorize a third party to perform the opt out on the consumer's behalf;

(D) a statement specifying the data collection, databases, or sales activities from which a consumer may not opt out;

(E) a statement whether the data broker implements a purchaser credentialing process;

(F) the number of data broker security breaches that the data broker has experienced during the prior year, and if known, the total number of consumers affected by the breaches;

(G) where the data broker has actual knowledge that it possesses the brokered personal information of minors, a separate statement detailing the data collection practices, databases, sales activities, and opt out policies that are applicable to the brokered personal information of minors; and

(H) any additional information or explanation the data broker chooses to provide concerning its data collection practices.

(b) A data broker that fails to register pursuant to subsection (a) of this section is liable to the State for:

(1) a civil penalty of \$50.00 for each day, not to exceed a total of \$10,000.00 for each year, it fails to register pursuant to this section;

(2) an amount equal to the fees due under this section during the period it failed to register pursuant to this section; and

(3) other penalties imposed by law.

(c) The Attorney General may maintain an action in the Civil Division of the Superior Court to collect the penalties imposed in this section and to seek appropriate injunctive relief.

§ 2447. DATA BROKER DUTY TO PROTECT INFORMATION; STANDARDS; TECHNICAL REQUIREMENTS

(a) Duty to protect personally identifiable information.

(1) A data broker shall develop, implement, and maintain a comprehensive information security program that is written in one or more

readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to:

(A) the size, scope, and type of business of the data broker obligated to safeguard the personally identifiable information under such comprehensive information security program;

(B) the amount of resources available to the data broker;

(C) the amount of stored data; and

(D) the need for security and confidentiality of personally identifiable information.

(2) A data broker subject to this subsection shall adopt safeguards in the comprehensive security program that are consistent with the safeguards for protection of personally identifiable information and information of a similar character set forth in other State rules or federal regulations applicable to the data broker.

(b) Information security program; minimum features. A comprehensive information security program shall at minimum have the following features:

(1) designation of one or more employees to maintain the program;

(2) identification and assessment of reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of any electronic, paper, or other records containing personally identifiable information, and a process for evaluating and improving, where necessary, the effectiveness of the current safeguards for limiting such risks, including:

(A) ongoing employee training, including training for temporary and contract employees;

(B) employee compliance with policies and procedures; and

(C) means for detecting and preventing security system failures;

(3) security policies for employees relating to the storage, access, and transportation of records containing personally identifiable information outside business premises;

(4) disciplinary measures for violations of the comprehensive information security program rules;

(5) measures that prevent terminated employees from accessing records containing personally identifiable information;

(6) supervision of service providers, by:

(A) taking reasonable steps to select and retain third-party service providers that are capable of maintaining appropriate security measures to

protect personally identifiable information consistent with applicable law; and

(B) requiring third-party service providers by contract to implement and maintain appropriate security measures for personally identifiable information;

(7) reasonable restrictions upon physical access to records containing personally identifiable information and storage of the records and data in locked facilities, storage areas, or containers;

(8)(A) regular monitoring to ensure that the comprehensive information security program is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of personally identifiable information; and

(B) upgrading information safeguards as necessary to limit risks;

(9) regular review of the scope of the security measures:

(A) at least annually; or

(B) whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing personally identifiable information; and

(10)(A) documentation of responsive actions taken in connection with any incident involving a breach of security; and

(B) mandatory post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of personally identifiable information.

(c) Information security program; computer system security requirements. A comprehensive information security program required by this section shall at minimum, and to the extent technically feasible, have the following elements:

(1) secure user authentication protocols, as follows:

(A) an authentication protocol that has the following features:

(i) control of user IDs and other identifiers;

(ii) a reasonably secure method of assigning and selecting passwords or use of unique identifier technologies, such as biometrics or token devices;

(iii) control of data security passwords to ensure that such passwords are kept in a location and format that do not compromise the security of the data they protect;

(iv) restricting access to only active users and active user

accounts; and

(v) blocking access to user identification after multiple unsuccessful attempts to gain access; or

(B) an authentication protocol that provides a higher level of security than the features specified in subdivision (A) of this subdivision (c)(1).

(2) secure access control measures that:

(A) restrict access to records and files containing personally identifiable information to those who need such information to perform their job duties; and

(B) assign to each person with computer access unique identifications plus passwords, which are not vendor-supplied default passwords, that are reasonably designed to maintain the integrity of the security of the access controls or a protocol that provides a higher degree of security;

(3) encryption of all transmitted records and files containing personally identifiable information that will travel across public networks and encryption of all data containing personally identifiable information to be transmitted wirelessly or a protocol that provides a higher degree of security;

(4) reasonable monitoring of systems for unauthorized use of or access to personally identifiable information;

(5) encryption of all personally identifiable information stored on laptops or other portable devices or a protocol that provides a higher degree of security;

(6) for files containing personally identifiable information on a system that is connected to the Internet, reasonably up-to-date firewall protection and operating system security patches that are reasonably designed to maintain the integrity of the personally identifiable information or a protocol that provides a higher degree of security;

(7) reasonably up-to-date versions of system security agent software that must include malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions and is set to receive the most current security updates on a regular basis or a protocol that provides a higher degree of security; and

(8) education and training of employees on the proper use of the computer security system and the importance of personally identifiable information security.

(d) Enforcement.

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

(2) The Attorney General has the same authority to adopt rules to implement the provisions of this chapter and to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under chapter 63, subchapter 1 of this title.

Sec. 3. 9 V.S.A. § 2480b is amended to read:

§ 2480b. DISCLOSURES TO CONSUMERS

(a) A credit reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer all information available to users at the time of the request pertaining to the consumer, including:

(1) any credit score or predictor relating to the consumer, in a form and manner that complies with such comments or guidelines as may be issued by the Federal Trade Commission;

(2) the names of users requesting information pertaining to the consumer during the prior 12-month period and the date of each request; and

(3) a clear and concise explanation of the information.

(b) As frequently as new telephone directories are published, the credit reporting agency shall cause to be listed its name and number in each telephone directory published to serve communities of this State. In accordance with rules adopted by the Attorney General, the credit reporting agency shall make provision for consumers to request by telephone the information required to be disclosed pursuant to subsection (a) of this section at no cost to the consumer.

(c) Any time a credit reporting agency is required to make a written disclosure to consumers pursuant to 15 U.S.C. § 1681g, it shall disclose, in at least 12 point type, and in bold type as indicated, the following notice:

“NOTICE TO VERMONT CONSUMERS

(1) Under Vermont law, you are allowed to receive one free copy of your credit report every 12 months from each credit reporting agency. If you would like to obtain your free credit report from [INSERT NAME OF COMPANY], you should contact us by [[writing to the following address: [INSERT ADDRESS FOR OBTAINING FREE CREDIT REPORT]] or [calling the following number: [INSERT TELEPHONE NUMBER FOR OBTAINING FREE CREDIT REPORT]], or both].

(2) Under Vermont law, no one may access your credit report without

your permission except under the following limited circumstances:

- (A) in response to a court order;
- (B) for direct mail offers of credit;
- (C) if you have given ongoing permission and you have an existing relationship with the person requesting a copy of your credit report;
- (D) where the request for a credit report is related to an education loan made, guaranteed, or serviced by the Vermont Student Assistance Corporation;
- (E) where the request for a credit report is by the Office of Child Support Services when investigating a child support case;
- (F) where the request for a credit report is related to a credit transaction entered into prior to January 1, 1993; ~~and~~ or
- (G) where the request for a credit report is by the Vermont State Tax Department of Taxes and is used for the purpose of collecting or investigating delinquent taxes.

(3) If you believe a law regulating consumer credit reporting has been violated, you may file a complaint with the Vermont Attorney General's Consumer Assistance Program, 104 Morrill Hall, University of Vermont, Burlington, Vermont 05405.

Vermont Consumers Have the Right to Obtain a Security Freeze

You have a right to place a "security freeze" on your credit report pursuant to 9 V.S.A. § 2480h at no charge ~~if you are a victim of identity theft. All other Vermont consumers will pay a fee to the credit reporting agency of up to \$10.00 to place the freeze on their credit report.~~ The security freeze will prohibit a credit reporting agency from releasing any information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail.

The security freeze is designed to help prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gains access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, ~~internet~~ Internet credit card transaction, or other services, including an extension of credit at point of sale.

When you place a security freeze on your credit report, within ten business

days you will be provided a personal identification number ~~or~~, password, or other equally or more secure method of authentication to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a specific party, parties, or period of time after the freeze is in place. To provide that authorization, you must contact the credit reporting agency and provide all of the following:

(1) The unique personal identification number ~~or~~, password, or other method of authentication provided by the credit reporting agency.

(2) Proper identification to verify your identity.

(3) The proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

~~A credit reporting agency may charge a fee of up to \$5.00 to a consumer who is not a victim of identity theft to remove the freeze on your credit report or authorize the release of your credit report for a specific party, parties, or period of time after the freeze is in place. For a victim of identity theft, there is no charge when the victim submits a copy of a police report, investigative report, or complaint filed with a law enforcement agency about unlawful use of the victim's personal information by another person.~~

A credit reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days after receiving the request.

A security freeze will not apply to “preauthorized approvals of credit.” If you want to stop receiving preauthorized approvals of credit, you should call [INSERT PHONE NUMBERS] [ALSO INSERT ALL OTHER CONTACT INFORMATION FOR PRESCREENED OFFER ~~OPT-OUT~~ OPT-OUT.]

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account, provided you have previously given your consent to this use of your credit reports. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a credit reporting agency or a user of your credit report.”

(d) The information required to be disclosed by this section shall be disclosed in writing. The information required to be disclosed pursuant to subsection (c) of this section shall be disclosed on one side of a separate

document, with text no smaller than that prescribed by the Federal Trade Commission for the notice required under 15 U.S.C. ~~§ 1681q~~ § 1681g. The information required to be disclosed pursuant to subsection (c) of this section may accurately reflect changes in numerical items that change over time (such as the ~~phone~~ telephone number or address of Vermont State agencies), and remain in compliance.

(e) The Attorney General may revise this required notice by rule as appropriate from time to time so long as no new substantive rights are created therein.

Sec. 4. 9 V.S.A. § 2480h is amended to read:

§ 2480h. SECURITY FREEZE BY CREDIT REPORTING AGENCY; TIME IN EFFECT

(a)(1) ~~Any~~ A Vermont consumer may place a security freeze on his or her credit report. A credit reporting agency shall not charge a fee to ~~victims of identity theft but may charge a fee of up to \$10.00 to all other~~ Vermont consumers for placing ~~and \$5.00 for~~ or removing, removing for a specific party or parties, or removing for a specific period of time after the freeze is in place, a security freeze on a credit report.

(2) ~~A consumer who has been the victim of identity theft may place a security freeze on his or her credit report by making a request in writing by certified mail to a credit reporting agency with a valid copy of a police report, investigative report, or complaint the consumer has filed with a law enforcement agency about unlawful use of his or her personal information by another person. All other Vermont consumers may place a security freeze on his or her credit report by making a request in writing by certified mail to a credit reporting agency.~~

(3) A security freeze shall prohibit, subject to the exceptions in subsection (1) of this section, the credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. ~~When a security freeze is in place, information from a consumer's credit report shall not be released to a third party without prior express authorization from the consumer.~~

(4) This subsection does not prevent a credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A credit reporting agency shall place a security freeze on a consumer's credit report ~~no~~ not later than five business days after receiving a written request from the consumer.

(c) The credit reporting agency shall send a written confirmation of the

security freeze to the consumer within 10 business days and shall provide the consumer with a unique personal identification number or password, other than the customer's Social Security number, or another method of authentication that is equally or more secure than a PIN or password, to be used by the consumer when providing authorization for the release of his or her credit for a specific party, parties, or period of time.

(d) If the consumer wishes to allow his or her credit report to be accessed for a specific party, parties, or period of time while a freeze is in place, he or she shall contact the credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) ~~Proper~~ proper identification;

(2) ~~The~~ the unique personal identification number ~~or~~, password, or other method of authentication provided by the credit reporting agency pursuant to subsection (c) of this section; and

(3) ~~The~~ the proper information regarding the third party, parties, or time period for which the report shall be available to users of the credit report.

(e) A credit reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to lift temporarily ~~lift~~ a freeze on a credit report pursuant to subsection (d) of this section in an expedited manner.

(f) A credit reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request ~~no~~ not later than three business days after receiving the request.

(g) A credit reporting agency shall remove or lift temporarily ~~lift~~ a freeze placed on a consumer's credit report only in the following cases:

(1) Upon consumer request, pursuant to subsection (d) or (j) of this section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a credit reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the credit reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a credit report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze pursuant to this section, the credit reporting agency shall disclose to the consumer the process of placing and lifting temporarily ~~lifting~~ a security freeze and the process for allowing access to information from the consumer's credit report for a specific party, parties, or period of time while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A credit reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer who provides both of the following:

(1) ~~Proper~~ proper identification; and

(2) ~~The~~ the unique personal identification number, or password, or other method of authentication provided by the credit reporting agency pursuant to subsection (c) of this section.

(k) A credit reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section, including the security freeze, do not apply to the use of a consumer report by the following:

(1) A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt, or extending credit to a consumer with a prior or existing account, contract, or debtor-creditor relationship, subject to the requirements of section 2480e of this title. For purposes of this subdivision, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.

(3) Any person acting pursuant to a court order, warrant, or subpoena.

(4) The Office of Child Support when investigating a child support case pursuant to Title IV-D of the Social Security Act (42 U.S.C. et seq.) and 33 V.S.A. § 4102.

(5) The Economic Services Division of the Department for Children and Families or the Department of Vermont Health Access or its agents or assignee acting to investigate welfare or Medicaid fraud.

(6) The Department of Taxes, municipal taxing authorities, or the Department of Motor Vehicles, or any of their agents or assignees, acting to

investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or acting to fulfill any of their other statutory or charter responsibilities.

(7) A person's use of credit information for the purposes of prescreening as provided by the federal Fair Credit Reporting Act.

(8) Any person for the sole purpose of providing a credit file monitoring subscription service to which the consumer has subscribed.

(9) A credit reporting agency for the sole purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(10) Any property and casualty insurance company for use in setting or adjusting a rate or underwriting for property and casualty insurance purposes.

Sec. 5. REPORTS

(a) On or before March 1, 2019, the Attorney General and Secretary of State shall submit a preliminary report concerning the implementation of this act to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

(b) On or before January 15, 2020, the Attorney General and Secretary of State shall update its preliminary report and provide additional information concerning the implementation of this act to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

(c) On or before January 15, 2019, the Attorney General shall:

(1) review and consider additional legislative and regulatory approaches to protecting the data security and privacy of Vermont consumers, including:

(A) whether to create or designate a Chief Privacy Officer and if so, the appropriate duties for, and the resources necessary to support, that position; and

(B) whether to expand the scope of regulation to businesses with direct relationships to consumers; and

(2) report its findings and recommendations to the House Committees on Commerce and Economic Development and on Energy and Technology and to the Senate Committee on Economic Development, Housing and General Affairs.

Sec. 6. ONE-STOP FREEZE NOTIFICATION

(a) The Attorney General, in consultation with industry stakeholders, shall

consider one or more methods to ease the burden on consumers when placing or lifting a credit security freeze, including the right to place a freeze with a single nationwide credit reporting agency and require that agency to initiate a freeze with other agencies.

(b) On or before January 15, 2019, the Attorney General shall report his or her findings and recommendations to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

Sec. 7. EFFECTIVE DATES

(a) This section, Secs. 1 (findings and intent), 3–4 (eliminating fees for placing or removing a credit freeze), and 5–6 (reports) shall take effect on passage.

(b) Sec. 2 (data brokers) shall take effect on January 1, 2019.

(For text see House Journal February 15, 2018)

H. 777

An act relating to the Clean Water State Revolving Loan Fund

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

First: In Sec. 1, Declaration of Policy, in the last sentence, after “promote” by striking out “public-private partnerships and expenditures by private entities for”

Second: In Sec.5, 24 V.S.A. § 4755(a), by striking out subdivision (C) and inserting in lieu thereof the following:

(C) without voter approval for a natural resources project under the sponsorship program, as defined in 24 V.S.A. § 4752, provided that:

(i) the amount of the debt incurred does not exceed an amount to be forgiven or cancelled upon the completion of the project; and

(ii) the municipality obtains voter approval for the paired water pollution abatement and control facilities project under the sponsorship program, pursuant to the requirements set forth in 24 V.S.A. chapter 53.

(For text see House Journal March 20, 2018)

S. 150

An act relating to automated license plate recognition systems

The Senate concurs in the House proposal of amendment thereto as follows:

In Sec. 1, by striking out “2019” and inserting in lieu thereof 2020

(For House Proposal of Amendment see House Journal May 3, 2018)

S. 262

An act relating to miscellaneous changes to the Medicaid program and the Department of Vermont Health Access

The Senate concurs in the House proposal of amendment thereto as follows:

First: In Sec. 12, 33 V.S.A. § 1814, by striking out subdivision (a)(1) and inserting a new subdivision (a)(1) to read as follows:

(a)(1) Notwithstanding any provision of 8 V.S.A. § 4089i to the contrary, the Green Mountain Care Board may approve modifications to the out-of-pocket prescription drug limit established in 8 V.S.A. § 4089i for one or more bronze-level plans, as long as the Board finds that the offering of such plans will not adversely impact the plan options available to consumers with high prescription drug needs who benefit from the out-of-pocket prescription drug limit established in 8 V.S.A. § 4089i.

Second: By adding a reader assistance heading and a new section to be Sec. 14a to read as follows:

* * * Membership of Health Reform Oversight Committee * * *

Sec. 14a. 2 V.S.A. § 691 is amended to read:

§ 691. COMMITTEE CREATION

There is created the legislative Health Reform Oversight Committee. The Committee shall be composed of the following eight members:

* * *

(8) ~~the Chair of the Senate Committee on Economic Development, Housing and General Affairs~~ one member of the Senate appointed by the Committee on Committees.

(For House Proposal of Amendment see House Journal May 3, 2018)

S. 281

An act relating to the mitigation of systemic racism

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

Sec. 1. LEGISLATIVE INTENT

It is the intent of the General Assembly to promote racial justice reform throughout the State by mitigating systemic racism in all systems of State government and creating a culture of inclusiveness.

Sec. 2. 3 V.S.A. § 2102 is amended to read:

§ 2102. POWERS AND DUTIES

(a) The Governor's Cabinet shall adopt and implement a program of continuing coordination and improvement of the activities carried on at all levels of State and local government.

(b) The Cabinet shall work collaboratively with the Executive Director of Racial Equity and shall provide the Director with access to all relevant records and information as permitted by law.

Sec. 3. 3 V.S.A. chapter 68 is added to read:

CHAPTER 68. EXECUTIVE DIRECTOR OF RACIAL EQUITY

§ 5001. POSITION

(a) There is created within the Executive Branch the position of Executive Director of Racial Equity to identify and work to eradicate systemic racism within State government.

(b) The Executive Director of Racial Equity shall have the powers and duties enumerated within section 2102 of this title and shall work collaboratively with and act as a liaison between the Governor's Workforce Equity and Diversity Council, the Vermont Human Rights Commission, and the Governor's Cabinet.

(c) The Director shall be housed within and have the administrative, legal, and technical support of the Agency of Administration.

§ 5002. RACIAL EQUITY ADVISORY PANEL

(a) The Racial Equity Advisory Panel is established. The Panel shall be organized and have the duties and responsibilities as provided in this section. The Panel shall have the administrative, legal, and technical support of the Agency of Administration.

(b)(1) The Panel shall consist of five members, as follows:

(A) one member appointed by the Senate Committee on Committees who shall not be a current legislator;

(B) one member appointed by the Speaker of the House who shall not be a current legislator;

(C) one member appointed by the Chief Justice of the Supreme Court who shall not be a current legislator;

(D) one member appointed by the Governor who shall not be a current legislator; and

(E) one member appointed by the Human Rights Commission who shall not be a current legislator.

(2) Members shall be drawn from diverse backgrounds to represent the interests of communities of color throughout the State, have experience working to implement racial justice reform and, to the extent possible, represent geographically diverse areas of the State.

(3) The term of each member shall be three years, except, so that the term of one regular member expires in each ensuing year of the members first appointed, one shall serve a term of: one year, to be appointed by the Human Rights Commission; two years, to be appointed by the Governor; three years, to be appointed by the Speaker of the House; four years, to be appointed by the Senate Committee on Committees; and five years, to be appointed by the Chief Justice of the Supreme Court. As terms of currently serving members expire, appointments of successors shall be in accord with the provisions of this subsection. Appointments of members to fill vacancies or expired terms shall be made by the authority that made the initial appointment to the vacated or expired term. Members shall serve until their successors are elected or appointed. Members shall serve not more than three consecutive terms in any capacity.

(4) Members of the Panel shall elect by majority vote the Chair of the Panel, who shall serve for a term of three years after the implementation period. Members of the Panel shall be appointed on or before September 1, 2018 in order to prepare as they deem necessary for the establishment of the Panel, including the election of the Chair of the Panel. Terms of members shall officially begin on January 1, 2019.

(c) The Panel shall have the following duties and responsibilities:

(1) work with the Executive Director of Racial Equity to implement the reforms identified as necessary in the comprehensive organizational review as required by subsection 5003(a) of this title; and

(2) oversee and advise the Executive Director to ensure ongoing compliance with the purpose of this chapter, and advise the Governor on strategies for remediating systemic racial disparities in statewide systems of government.

(d) Only the Panel may remove the Executive Director of Racial Equity. The Panel shall adopt rules pursuant to chapter 25 of this title to define the basis and process for removal.

(e) Each member of the Panel shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.

§ 5003. DUTIES OF EXECUTIVE DIRECTOR OF RACIAL EQUITY

(a) The Executive Director of Racial Equity (Director) shall work with the agencies and departments to implement a program of continuing coordination and improvement of activities in State government in order to combat systemic racial disparities and measure progress toward fair and impartial governance, including:

(1) overseeing a comprehensive organizational review to identify systemic racism in each of the three branches of State government and inventory systems in place that engender racial disparities;

(2) managing and overseeing the statewide collection of race-based data to determine the nature and scope of racial discrimination within all systems of State government; and

(3) developing a model fairness and diversity policy and review and make recommendations regarding the fairness and diversity policies held by all State government systems.

(b) Pursuant to section 2102 of this title, work collaboratively with State agencies and departments to gather relevant existing data and records necessary to carry out the purpose of this chapter and to develop best practices for remediating systemic racial disparities throughout State government.

(c) The Director shall work with the agencies and departments and with the Chief Performance Officer to develop performance targets and performance measures for the General Assembly, the Judiciary, and the agencies and departments to evaluate respective results in improving systems. These performance measures shall be included in the agency's or department's quarterly reports to the Director, and the Director shall include each agency's or department's performance targets and performance measures in his or her annual reports to the General Assembly.

(d) The Director shall, in consultation with the Department of Human Resources and the agencies and departments, develop and conduct trainings for agencies and departments regarding the nature and scope of systemic racism and the institutionalized nature of race-based bias. Nothing in this subsection shall be construed to discharge the existing duty of the Department of Human Resources to conduct trainings.

(e) On or before January 15, 2020, and annually thereafter, the Director shall report to the House and Senate Committees on Government Operations demonstrating the State's progress in identifying and remediating systemic racial bias within State government.

§ 5004. INFORMATION; DISCLOSURE AND CONFIDENTIALITY

(a) Confidentiality of records.

(1) Any records transmitted to or obtained by the Executive Director of Racial Equity and the Racial Equity Advisory Panel that are exempt from public inspection and copying under the Public Records Act shall remain exempt and shall be kept confidential to the extent required by law.

(2) Draft reports, working papers, and internal correspondence between the Director and the Panel shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential. The completed reports shall be public records.

(b) Exceptions.

(1) The Director and Panel members may make records available to each other, the Governor, and the Governor's Cabinet as necessary to fulfill their duties as set forth in this chapter. They may also make records pertaining to any alleged violations of antidiscrimination statutes available to any State or federal law enforcement agency authorized to enforce such statutes.

(2) Absent a court order for good cause shown or the prior written consent of an individual providing information or lawfully-obtained records to the Director or the Panel, the Director and Panel Members may decline to disclose:

(A) the identity of the individual if good cause exists to protect his or her confidentiality; and

(B) materials pertaining to the individual, including written communications among the individual, the Director and the Panel, and recordings, notes, or summaries reflecting interviews or discussions among the individual, the Director and the Panel.

§ 5005. NOMINATION AND APPOINTMENT PROCESS

(a) The Racial Equity Advisory Panel shall select for consideration by the Panel, by majority vote, provided that a quorum is present, from the applications for the position of Executive Director of Racial Equity as many candidates as it deems qualified for the position.

(b) The Panel shall submit to the Governor the names of the candidates deemed most qualified to be appointed to fill the position.

(c) The Governor shall make the appointment to the Executive Director position from the list of qualified candidates submitted pursuant to subsection (b) of this section. The names of candidates submitted and not selected shall remain confidential.

Sec. 4. AUTHORIZATION FOR EXECUTIVE DIRECTOR OF RACIAL EQUITY POSITION

One new permanent, exempt position of Executive Director of Racial Equity is created within the Agency of Administration.

Sec. 5. EXECUTIVE DIRECTOR OF RACIAL EQUITY; RACIAL EQUITY ADVISORY PANEL; FUNDING SOURCE; SURCHARGE; REPEAL

(a) Surcharge.

(1) Notwithstanding the provisions of 3 V.S.A. § 2283(c) setting forth the purpose and rate of charges collected in the Human Resource Services Internal Service Fund, in fiscal year 2019, a surcharge of up to 1.65 percent, and in fiscal year 2020 and thereafter, a surcharge of up to 3.3 percent, but not greater than the cost of both the Racial Equity Advisory Panel and the position of Executive Director of Racial Equity set forth in Sec. 3 of this act, on the per-position portion of the charges authorized in 3 V.S.A. § 2283(c)(2) shall be assessed to all Executive Branch agencies, departments, and offices and shall be paid by all assessed entities solely with State funds.

(2) The amount collected shall be accounted for within the Human Resource Services Internal Service Fund and used solely for the purposes of funding the Racial Equity Advisory Panel and the position of the Executive Director of Racial Equity set forth in Sec. 3 of this act.

(b) Repeal. This section shall be repealed on June 30, 2024.

Sec. 6. FISCAL YEAR 2019 APPROPRIATION

There is appropriated to the Agency of Administration from the Human Resource Services Internal Service Fund for fiscal year 2019 the amount of \$75,000.00 for the Racial Equity Advisory Panel and the position of Executive Director of Racial Equity.

Sec. 7. SECRETARY OF ADMINISTRATION; RACIAL EQUITY ADVISORY PANEL; EXECUTIVE DIRECTOR OF RACIAL EQUITY; REPORT

(a) On or before September 1, 2018, the Racial Equity Advisory Panel shall be appointed.

(b) On or before November 1, 2018, the Racial Equity Advisory Panel shall, in consultation with the Secretary of Administration and with the assistance and advice of the Department of Human Resources, have developed and posted a job description for the Executive Director of Racial Equity.

(c) On or before January 1, 2019, the Racial Equity Advisory Panel shall submit to the Governor the names of the candidates for the Executive Director of Racial Equity position.

(d) On or before February 1, 2019, the Governor shall appoint the Executive Director of Racial Equity.

(e) On or before May 1, 2019, the Executive Director of Racial Equity shall update the House and Senate Committees on Government Operations regarding how best to complete a comprehensive organizational review to identify systemic racism pursuant to 3 V.S.A. § 5003, and potential private and public sources of funding to achieve the review.

Sec. 8. REPEAL

On June 30, 2024:

(1) Sec. 3 of this act (creating the Executive Director of Racial Equity and Racial Equity Advisory Panel in 3 V.S.A. chapter 68) is repealed and the Executive Director position and Panel shall cease to exist; and

(2) Sec. 4 of this act (authorization for the Executive Director of Racial Equity position) is repealed.

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

(For House Proposal of Amendment see House Journal May 1, 2018)

Committee of Conference Report

H. 562

An act relating to parentage proceedings

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House Bill entitled:

H. 562 An act relating to parentage proceedings

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. Title 15C is added to read:

TITLE 15C. PARENTAGE PROCEEDINGS

CHAPTER 1. SHORT TITLE; DEFINITIONS; SCOPE; GENERAL PROVISIONS

§ 101. SHORT TITLE

This title may be cited as the Vermont Parentage Act.

§ 102. DEFINITIONS

As used in this title:

(1) “Acknowledged parent” means a person who has established a parent-child relationship under chapter 3 of this title.

(2) “Adjudicated parent” means a person who has been adjudicated by a court of competent jurisdiction to be a parent of a child.

(3) “Alleged genetic parent” means a person who is alleged to be, or alleges that the person is, a genetic parent or possible genetic parent of a child whose parentage has not been adjudicated. The term includes an alleged genetic father and alleged genetic mother. The term does not include:

(A) a presumed parent;

(B) a person whose parental rights have been terminated or declared not to exist; or

(C) a donor.

(4) “Assisted reproduction” means a method of causing pregnancy other than sexual intercourse and includes:

(A) intrauterine, intracervical, or vaginal insemination;

(B) donation of gametes;

(C) donation of embryos;

(D) in vitro fertilization and transfer of embryos; and

(E) intracytoplasmic sperm injection.

(5) “Birth” includes stillbirth.

(6) “Child” means a person of any age whose parentage may be determined under this title.

(7) “Domestic assault” shall include any offense as set forth in 13 V.S.A. chapter 19, subchapter 6 (domestic assault).

(8) “Donor” means a person who contributes a gamete or gametes or an embryo or embryos to another person for assisted reproduction or gestation, whether or not for consideration. This term does not include:

(A) a person who gives birth to a child conceived by assisted reproduction except as otherwise provided in chapter 8 of this title; or

(B) a parent under chapter 7 of this title or an intended parent under chapter 8 of this title.

(9) “Embryo” means a cell or group of cells containing a diploid

complement of chromosomes or a group of such cells, not including a gamete, that has the potential to develop into a live born human being if transferred into the body of a person under conditions in which gestation may be reasonably expected to occur.

(10) “Gamete” means a sperm, egg, or any part of a sperm or egg.

(11) “Genetic population group” means, for purposes of genetic testing, a recognized group that a person identifies as all or part of the person’s ancestry or that is so identified by other information.

(12) “Gestational carrier” means an adult person who is not an intended parent and who enters into a gestational carrier agreement to bear a child conceived using the gametes of other persons and not the gestational carrier’s own, except that a person who carries a child for a family member using the gestational carrier’s own gametes and who fulfills the requirements of chapter 8 of this title is a gestational carrier.

(13) “Gestational carrier agreement” means a contract between an intended parent or parents and a gestational carrier intended to result in a live birth.

(14) “Intended parent” means a person, whether married or unmarried, who manifests the intent to be legally bound as a parent of a child resulting from assisted reproduction or a gestational carrier agreement.

(15) “Marriage” includes civil union and any legal relationship that provides substantially the same rights, benefits, and responsibilities as marriage and is recognized as valid in the state or jurisdiction in which it was entered.

(16) “Parent” means a person who has established parentage that meets the requirements of this title.

(17) “Parentage” means the legal relationship between a child and a parent as established under this title.

(18) “Presumed parent” means a person who is recognized as the parent of a child under section 401 of this title.

(19) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(20) “Sexual assault” shall include sexual assault as provided in 13 V.S.A. § 3252(a), (b), (d), and (e); aggravated sexual assault as provided in 13 V.S.A. § 3253; aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a; lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602; and similar offenses in other jurisdictions.

(21) “Sexual exploitation” shall include sexual exploitation of an inmate as provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A. § 1379, and similar offenses in other jurisdictions.

(22) “Sign” means, with the intent to authenticate or adopt a record, to:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(23) “Signatory” means a person who signs a record and is bound by its terms.

(24) “Spouse” includes a partner in a civil union or a partner in a legal relationship that provides substantially the same rights, benefits, and responsibilities as marriage and is recognized as valid in the state or jurisdiction in which it was entered.

§ 103. SCOPE AND APPLICATION

(a) Scope. This title applies to determination of parentage in this State.

(b) Choice of law. The court shall apply the law of this State to adjudicate parentage.

(c) Effect on parental rights. This title does not create, enlarge, or diminish parental rights and responsibilities under other laws of this State or the equitable powers of the courts, except as provided in this title.

§ 104. PARENTAGE PROCEEDING

(a) Proceeding authorized. A proceeding to adjudicate the parentage of a child shall be maintained in accordance with this title and with the Vermont Rules for Family Proceedings, except that proceedings for birth orders under sections 708 and 804 of this title shall be maintained in accordance with the Vermont Rules of Probate Procedure.

(b) Actions brought by the Office of Child Support. If the complaint is brought by the Office of Child Support, the complaint shall be accompanied by an affidavit of the parent whose rights have been assigned. In cases where the assignor is not a genetic parent or is a genetic parent who refuses to provide an affidavit, the affidavit may be submitted by the Office of Child Support, but the affidavit alone shall not support a default judgment on the issue of parentage.

(c) Original actions. Original actions to adjudicate parentage may be commenced in the Family Division of the Superior Court, except that proceedings for birth orders under sections 708 and 804 of this title shall be

commenced in the Probate Division of the Superior Court.

(d) No right to jury. There shall be no right to a jury trial in an action to determine parentage.

(e) Disclosure of Social Security numbers. A person who is a party to a parentage action shall disclose that person's Social Security number to the court. The Social Security number of a person subject to a parentage adjudication shall be placed in the court records relating to the adjudication. The court shall disclose a person's Social Security number to the Office of Child Support.

§ 105. STANDING TO MAINTAIN PROCEEDING

Subject to other provisions of this chapter, a proceeding to adjudicate parentage may be maintained by:

(1) the child;

(2) the person who gave birth to the child unless a court has adjudicated that the person is not a parent or the person is a gestational carrier who is not a parent under subdivision 803(1)(A) of this title;

(3) a person whose parentage is to be adjudicated;

(4) a person who is a parent under this title;

(5) the Department for Children and Families, including the Office of Child Support; or

(6) a representative authorized by law to act for a person who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

§ 106. NOTICE OF PROCEEDING

(a) A petitioner under this chapter shall give notice of the proceeding to adjudicate parentage to the following:

(1) the person who gave birth to the child unless a court has adjudicated that the person is not a parent;

(2) a person who is a parent of the child under this chapter;

(3) a presumed, acknowledged, or adjudicated parent of the child;

(4) a person whose parentage of the child is to be adjudicated; and

(5) the Office of Child Support, in cases in which either party is a recipient of public assistance benefits from the Economic Services Division and has assigned the right to child support, or in cases in which either party has requested the services of the Office of Child Support.

(b) A person entitled to notice under subsection (a) of this section and the Office of Child Support, where the Office is involved pursuant to subdivision (a)(5), has a right to intervene in the proceeding.

(c) Lack of notice required by subsection (a) of this section shall not render a judgment void. Lack of notice does not preclude a person entitled to notice under subsection (a) from bringing a proceeding under this title.

(d) This section shall not apply to petitions for birth orders under chapters 7 and 8 of this title.

§ 107. FORM OF NOTICE

Notice shall be by first-class mail to the person's last known address.

§ 108. PERSONAL JURISDICTION

(a) Personal jurisdiction. A person shall not be adjudicated a parent unless the court has personal jurisdiction over the person.

(b) Personal jurisdiction over nonresident. A court of this State having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident person, or the guardian or conservator of the person, if the conditions prescribed in Title 15B are fulfilled.

(c) Adjudication. Lack of jurisdiction over one person does not preclude the court from making an adjudication of parentage binding on another person over whom the court has personal jurisdiction.

§ 109. VENUE

Venue for a proceeding to adjudicate parentage shall be in the county in which:

(1) the child resides or is present or, for purposes of chapter 7 or 8 of this title, is or will be born;

(2) any parent or intended parent resides;

(3) the respondent resides or is present if the child does not reside in this State;

(4) a proceeding for probate or administration of the parent or alleged parent's estate has been commenced; or

(5) a child protection proceeding with respect to the child has been commenced.

§ 110. JOINDER OF PROCEEDINGS

(a) Joinder permitted. Except as otherwise provided in subsection (b) of this section, a proceeding to adjudicate parentage may be joined with a

proceeding for parental rights and responsibilities, parent-child contact, child support, child protection, termination of parental rights, divorce, annulment, legal separation, guardianship, probate or administration of an estate or other appropriate proceeding, or a challenge or rescission of acknowledgment of parentage. Such proceedings shall be in the Family Division of the Superior Court.

(b) Joinder not permitted. A respondent may not join a proceeding described in subsection (a) of this section with a proceeding to adjudicate parentage brought as part of an interstate child support enforcement action under Title 15B.

§ 111. ORDERS

(a) Interim order for support. In a proceeding under this title, the court may issue an interim order for support of a child in accordance with the child support guidelines under 15 V.S.A. § 654 with respect to a person who is:

- (1) a presumed, acknowledged, or adjudicated parent of the child;
- (2) petitioning to have parentage adjudicated;
- (3) identified as the genetic parent through genetic testing under chapter 6 of this title;
- (4) an alleged genetic parent who has declined to submit to genetic testing;
- (5) shown by a preponderance of evidence to be a parent of the child;
- (6) the person who gave birth to the child, other than a gestational carrier; or
- (7) a parent under this chapter.

(b) Interim order for parental rights and responsibilities. In a proceeding under this title, the court may make an interim order regarding parental rights and responsibilities on a temporary basis.

(c) Final orders. Final orders concerning child support or parental rights and responsibilities shall be governed by Title 15.

§ 112. ADMISSION OF PARENTAGE AUTHORIZED

(a) Admission of parentage. A respondent in a proceeding to adjudicate parentage may admit parentage of a child when making an appearance or during a hearing in a proceeding involving the child or by filing a pleading to such effect. An admission of parentage pursuant to this section is different from an acknowledgment of parentage as provided in chapter 3 of this title.

(b) Order adjudicating parentage. If the court finds an admission to be

consistent with the provisions of this chapter and rejects any objection filed by another party, the court may issue an order adjudicating the child to be the child of the person admitting parentage.

§ 113. ORDER ON DEFAULT

The court may issue an order adjudicating the parentage of a person who is in default, providing:

- (1) the person was served with notice of the proceeding; and
- (2) the person is found by the court to be the parent of the child.

§ 114. ORDER ADJUDICATING PARENTAGE

(a) Issuance of order. In a proceeding under this chapter, the court shall issue a final order adjudicating whether a person alleged or claiming to be a parent is the parent of a child.

(b) Identify child. A final order under subsection (a) of this section shall identify the child by name and date of birth.

(c) Change of name. On request of a party and for good cause shown, the court may order that the name of the child be changed.

(d) Amended birth record. If the final order under subsection (a) of this section is at variance with the child's birth certificate, the Department of Health shall issue an amended birth certificate.

§ 115. BINDING EFFECT OF DETERMINATION OF PARENTAGE

(a) Determination binding. Except as otherwise provided in subsection (b) of this section, a determination of parentage shall be binding on:

(1) all signatories to an acknowledgment of parentage or denial of parentage as provided in chapter 3 of this title; and

(2) all parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of section 108 of this title.

(b) Adjudication in proceeding to dissolve marriage. In a proceeding to dissolve a marriage, the court is deemed to have made an adjudication of the parentage of a child if:

(1) the court acts under circumstances that satisfy the jurisdictional requirements of section 108 of this title; and

(2) the final order:

(A) expressly identifies a child as a "child of the marriage" or "issue of the marriage" or by similar words indicates that the parties are the parents of the child; or

(B) provides for support of the child by the parent or parents.

(c) Determination a defense. Except as otherwise provided in this chapter, a determination of parentage shall be a defense in a subsequent proceeding seeking to adjudicate parentage by a person who was not a party to the earlier proceeding.

(d) Challenge to adjudication.

(1) Challenge by a person who was a party to an adjudication. A party to an adjudication of parentage may challenge the adjudication only by appeal or in a manner otherwise consistent with the Vermont Rules for Family Proceedings.

(2) Challenge by a person who was not a party to an adjudication. A person who has standing under section 105 of this title, but who did not receive notice of the adjudication of parentage under section 106 of this title and was not a party to the adjudication, may challenge the adjudication within two years after the effective date of the adjudication. The court, in its discretion, shall permit the proceeding only if it finds that it is in the best interests of the child. If the court permits the proceeding, the court shall adjudicate parentage under section 206 of this title.

(e) Child not bound. A child is not bound by a determination of parentage under this chapter unless:

(1) the determination was based on an unrescinded acknowledgment of parentage and the acknowledgment is consistent with the results of genetic testing;

(2) the determination was based on a finding consistent with the results of genetic testing;

(3) the determination of parentage was made under chapter 7 or 8 of this title; or

(4) the child was a party or was represented by an attorney, guardian ad litem, or similar person in the proceeding in which the child's parentage was adjudicated.

§ 116. FULL FAITH AND CREDIT

A court of this State shall give full faith and credit to a determination of parentage and to an acknowledgment of parentage from another state if the determination is valid and effective in accordance with the law of the other state.

CHAPTER 2. ESTABLISHMENT OF PARENTAGE

§ 201. RECOGNIZED PARENTS

A person may establish parentage by any of the following:

(1) Birth. Giving birth to the child, except as otherwise provided in chapter 8 of this title.

(2) Adoption. Adoption of the child pursuant to Title 15A.

(3) Acknowledgment. An effective voluntary acknowledgment of parentage under chapter 3 of this title.

(4) Adjudication. An adjudication based on an admission of parentage under section 112 of this title.

(5) Presumption. An unrebutted presumption of parentage under chapter 4 of this title.

(6) De facto parentage. An adjudication of de facto parentage, under chapter 5 of this title.

(7) Genetic parentage. An adjudication of genetic parentage under chapter 6 of this title.

(8) Assisted reproduction. Consent to assisted reproduction under chapter 7 of this title.

(9) Gestational carrier agreement. Consent to a gestational carrier agreement by the intended parent or parents under chapter 8 of this title.

§ 202. NONDISCRIMINATION

Every child has the same rights under law as any other child without regard to the marital status or gender of the parents or the circumstances of the birth of the child.

§ 203. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE

Unless parentage has been terminated by a court order or an exception has been stated explicitly in this title, parentage established under this title applies for all purposes, including the rights and duties of parentage under the law.

§ 204. DETERMINATION OF MATERNITY AND PATERNITY

Provisions of this title relating to determination of paternity may apply to determination of maternity as needed to determine parentage consistent with this title.

§ 205. NO LIMITATION ON CHILD

Nothing in this chapter limits the right of a child to bring an action to adjudicate parentage.

§ 206. ADJUDICATING COMPETING CLAIMS OF PARENTAGE

(a) Competing claims of parentage. Except as otherwise provided in section 616 of this title, in a proceeding to adjudicate competing claims of parentage or challenges to a child's parentage by two or more persons, the court shall adjudicate parentage in the best interests of the child, based on the following factors:

(1) the age of the child;

(2) the length of time during which each person assumed the role of parent of the child;

(3) the nature of the relationship between the child and each person;

(4) the harm to the child if the relationship between the child and each person is not recognized;

(5) the basis for each person's claim to parentage of the child; and

(6) other equitable factors arising from the disruption of the relationship between the child and each person or the likelihood of other harm to the child.

(b) Preservation of parent-child relationship. Consistent with the establishment of parentage under this chapter, a court may determine that a child has more than two parents if the court finds that it is in the best interests of the child to do so. A finding of best interests of the child under this subsection does not require a finding of unfitness of any parent or person seeking an adjudication of parentage.

CHAPTER 3. VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

§ 301. ACKNOWLEDGMENT OF PARENTAGE

(a) The following persons may sign an acknowledgment of parentage to establish parentage of a child:

(1) a person who gave birth to the child;

(2) a person who is the alleged genetic parent of the child;

(3) a person who is an intended parent to the child pursuant to chapter 7 or 8 of this title; and

(4) a presumed parent pursuant to chapter 4 of this title.

(b) The acknowledgment shall be signed by both the person who gave birth to the child and by the person seeking to establish a parent-child relationship and shall be witnessed and signed by at least one other person.

§ 302. ACKNOWLEDGMENT OF PARENTAGE VOID

An acknowledgment of parentage shall be void if, at the time of signing:

(1) a person other than the person seeking to establish parentage is a

presumed parent, unless a denial of parentage in a signed record has been filed with the Department of Health; or

(2) a person, other than the person who gave birth, is an acknowledged, admitted, or adjudicated parent, or an intended parent under chapter 7 or 8 of this title.

§ 303. DENIAL OF PARENTAGE

A person presumed to be a parent or an alleged genetic parent may sign a denial of parentage only in the limited circumstances set forth in this section. A denial of parentage shall be valid only if:

(1) an acknowledgment of parentage by another person has been filed pursuant to this chapter;

(2) the denial is in a record and is witnessed and signed by at least one other person; and

(3) the person executing the denial has not previously:

(A) acknowledged parentage, unless the previous acknowledgment has been rescinded pursuant to section 307 of this title or successfully challenged the acknowledgment pursuant to section 308 of this title; or

(B) been adjudicated to be the parent of the child.

§ 304. CONDITIONS FOR ACKNOWLEDGMENT OR DENIAL OF PARENTAGE

(a) Completed forms for acknowledgment of parentage and denial of parentage shall be filed with the Department of Health.

(b) An acknowledgment of parentage or denial of parentage may be signed before or after the birth of a child.

(c) An acknowledgment of parentage or denial of parentage takes effect on the date of the birth of the child or the filing of the document with the Department of Health, whichever occurs later.

(d) An acknowledgment of parentage or denial of parentage signed by a minor shall be valid provided it is otherwise in compliance with this title.

§ 305. EQUIVALENT TO ADJUDICATION; NO RATIFICATION REQUIRED

(a) Acknowledgment. Except as otherwise provided in sections 307 and 308 of this title, a valid acknowledgment of parentage under section 301 of this title filed with the Department of Health is equivalent to an adjudication of parentage of a child and confers upon the acknowledged parent all of the rights and duties of a parent.

(b) Ratification. Judicial or administrative ratification is neither permitted nor required for an unrescinded or unchallenged acknowledgment of parentage.

(c) Denial. Except as otherwise provided in sections 307 and 308 of this title, a valid denial of parentage under section 303 of this title filed with the Department of Health in conjunction with a valid acknowledgment of parentage under section 301 of this title is equivalent to an adjudication of the nonparentage of the presumed parent or alleged genetic parent and discharges the presumed parent or alleged genetic parent from all rights and duties of a parent.

(d) Rescission or challenge. A signatory of an acknowledgment of parentage may rescind or challenge the acknowledgment in accordance with sections 307-309 of this title.

§ 306. NO FILING FEE

The Department of Health shall not charge a fee for filing an acknowledgment of parentage or denial of parentage.

§ 307. TIMING OF RESCISSION

(a) A person may rescind an acknowledgment of parentage or denial of parentage under this chapter by any of the following methods:

(1) Filing a rescission with the Department of Health within 60 days after the effective date of the acknowledgment or denial. The signing of the rescission shall be witnessed and signed by at least one other person.

(2) Commencing a court proceeding within 60 days after:

(A) the effective date of the acknowledgment or denial, as provided in section 304 of this title; or

(B) the date of the first court hearing in a proceeding in which the signatory is a party to adjudicate an issue relating to the child, including a proceeding seeking child support.

(b) If an acknowledgment of parentage is rescinded under this section, any associated denial of parentage becomes invalid, and the Department of Health shall notify the person who gave birth to the child and any person who signed a denial of parentage of the child that the acknowledgment of parentage has been rescinded. Failure to give notice required by this section does not affect the validity of the rescission.

§ 308. CHALLENGE TO ACKNOWLEDGMENT AFTER EXPIRATION OF PERIOD FOR RESCISSION

(a) Challenge by signatory. After the period for rescission under section

307 of this title has expired, a signatory of an acknowledgment of parentage or denial of parentage may commence a proceeding to challenge the acknowledgment or denial only:

(1) on the basis of fraud, duress, coercion, threat of harm, or material mistake of fact; and

(2) within two years after the acknowledgment or denial is effective in accordance with section 304 of this title.

(b) Challenge by person not a signatory. If an acknowledgment of parentage has been made in accordance with this chapter, a person who is neither the child nor a signatory to the acknowledgment who seeks to challenge the validity of the acknowledgment and adjudicate parentage shall commence a proceeding within two years after the effective date of the acknowledgment unless the person did not know and could not reasonably have known of the person's potential parentage due to a material misrepresentation or concealment, in which case the proceeding shall be commenced within two years after the discovery of the person's potential parentage.

(c) Burden of proof. A person challenging an acknowledgment of parentage or denial of parentage pursuant to this section has the burden of proof by clear and convincing evidence.

(d) Consolidation. A court proceeding in which the validity of an acknowledgment of parentage is challenged shall be consolidated with any other pending court actions regarding the child.

§ 309. PROCEDURE FOR RESCISSION OR CHALLENGE

(a) Every signatory party. Every signatory to an acknowledgment of parentage and any related denial of parentage shall be made a party to a proceeding under section 307 or 308 of this title to rescind or challenge the acknowledgment or denial.

(b) Submission to personal jurisdiction. For the purpose of rescission of or challenge to an acknowledgment of parentage or denial of parentage, a signatory submits to personal jurisdiction of this State by signing the acknowledgment or denial, effective upon the filing of the document with the Department of Health pursuant to section 304 of this title.

(c) Suspension of legal responsibilities. Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of parentage or denial of parentage, the court shall not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

(d) Proceeding to rescind or challenge. A proceeding to rescind or challenge an acknowledgment of parentage or denial of parentage shall be conducted as a proceeding to adjudicate parentage pursuant to chapter 1 of this title.

(e) Amendment to birth record. At the conclusion of a proceeding to rescind or challenge an acknowledgment of parentage or denial of parentage, the court shall order the Department of Health to amend the birth record of the child, if appropriate.

§ 310. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PARENTAGE

(a) The Department of Health shall develop an acknowledgment of parentage form and denial of parentage form for execution of parentage under this chapter.

(b) The acknowledgment of parentage form shall provide notice of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the acknowledgment and shall state that:

(1) there is no other presumed parent of the child or, if there is another presumed parent, shall state that parent's full name;

(2) there is no other acknowledged parent, adjudicated parent, or person who is an intended parent under chapter 7 or 8 of this title other than the person who gave birth to the child; and

(3) the signatories understand that the acknowledgment is the equivalent of a court determination of parentage of the child and that a challenge to the acknowledgment is permitted only under limited circumstances.

(c) A valid acknowledgment of parentage or denial of parentage is not affected by a later modification of the prescribed form.

§ 311. RELEASE OF INFORMATION

The Department of Health may release information relating to an acknowledgment of parentage under section 301 of this title as provided in 18 V.S.A. § 5002.

§ 312. ADOPTION OF RULES

The Department of Health may adopt rules to implement this chapter.

CHAPTER 4. PRESUMED PARENTAGE

§ 401. PRESUMPTION OF PARENTAGE

(a) Except as otherwise provided in this title, a person is presumed to be a parent of a child if:

(1) the person and the person who gave birth to the child are married to each other and the child is born during the marriage; or

(2) the person and the person who gave birth to the child were married to each other and the child is born not later than 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution; or

(3) the person and the person who gave birth to the child married each other after the birth of the child and the person at any time asserted parentage of the child and the person agreed to be and is named as a parent of the child on the birth certificate of the child; or

(4) the person resided in the same household with the child for the first two years of the life of the child, including periods of temporary absence, and the person and another parent of the child openly held out the child as the person's child.

(b) A presumption of parentage shall be rebuttable and may be overcome and competing claims to parentage resolved only by court order or a valid denial of parentage pursuant to chapter 3 of this title.

§ 402. CHALLENGE TO PRESUMED PARENT

(a) Except as provided in subsection (b) of this section, a proceeding to challenge the parentage of a person whose parentage is presumed under section 401 of this title shall be commenced within two years after the birth of the child.

(b) A proceeding to challenge the parentage of a person whose parentage is presumed under section 401 of this title may be commenced two years or more after the birth of the child in the following circumstances:

(1) A presumed parent who is not the genetic parent of a child and who could not reasonably have known about the birth of the child may commence a proceeding under this section within two years after learning of the child's birth.

(2) An alleged genetic parent who did not know of the potential genetic parentage of a child and who could not reasonably have known on account of material misrepresentation or concealment may commence a proceeding under this section within two years after discovering the potential genetic parentage. If the person is adjudicated to be the genetic parent of the child, the court may not disestablish a presumed parent.

(3) Regarding a presumption under subdivision 401(a)(4) of this title, another parent of the child may challenge a presumption of parentage if that parent openly held out the child as the presumptive parent's child due to

duress, coercion, or threat of harm. Evidence of duress, coercion, or threat of harm may include whether within the prior ten years, the person presumed to be a parent pursuant to subdivision 401(a)(4) of this title has been convicted of domestic assault, sexual assault, or sexual exploitation of the child or another parent of the child, was subject to a final abuse protection order pursuant to 15 V.S.A. chapter 21 because the person was found to have committed abuse against the child or another parent of the child, or was substantiated for abuse against the child or another parent of the child pursuant to 33 V.S.A. chapter 49 or 33 V.S.A. chapter 69.

§ 403. MULTIPLE PRESUMPTIONS

If two or more conflicting presumptions arise under this chapter, the court shall adjudicate parentage pursuant to section 206 of this title.

CHAPTER 5. DE FACTO PARENTAGE

§ 501. STANDARD; ADJUDICATION

(a)(1) In a proceeding to adjudicate the parentage of a person who claims to be a de facto parent of the child, if there is only one other person who is a parent or has a claim to parentage of the child, the court shall adjudicate the person who claims to be a de facto parent to be a parent of the child if the person demonstrates by clear and convincing evidence that:

(A) the person resided with the child as a regular member of the child's household for a significant period of time;

(B) the person engaged in consistent caretaking of the child;

(C) the person undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;

(D) the person held out the child as the person's child;

(E) the person established a bonded and dependent relationship with the child which is parental in nature;

(F) the person and another parent of the child fostered or supported the bonded and dependent relationship required under subdivision (E) of this subdivision (1); and

(G) continuing the relationship between the person and the child is in the best interests of the child.

(2) A parent of the child may use evidence of duress, coercion, or threat of harm to contest an allegation that the parent fostered or supported a bonded and dependent relationship as provided in subdivision (1)(F) of this subsection. Such evidence may include whether within the prior ten years, the person seeking to be adjudicated a de facto parent has been convicted of domestic

assault, sexual assault, or sexual exploitation of the child or another parent of the child, was subject to a final abuse protection order pursuant to 15 V.S.A. chapter 21 because the person was found to have committed abuse against the child or another parent of the child, or was substantiated for abuse against the child or another parent of the child pursuant to 33 V.S.A. chapter 49 or 33 V.S.A. chapter 69.

(b) In a proceeding to adjudicate the parentage of a person who claims to be a de facto parent of the child, if there is more than one other person who is a parent or has a claim to parentage of the child and the court determines that the requirements of subsection (a) of this section are met by clear and convincing evidence, the court shall adjudicate parentage under section 206 of this title, subject to other applicable limitations in this title.

(c) The adjudication of a person as a de facto parent under this chapter does not disestablish the parentage of any other parent.

§ 502. STANDING; PETITION

(a) A person seeking to be adjudicated a de facto parent of a child shall file a petition with the Family Division of the Superior Court before the child reaches 18 years of age. Both the person seeking to be adjudicated a de facto parent and the child must be alive at the time of the filing. The petition shall include a verified affidavit alleging facts to support the existence of a de facto parent relationship with the child. The petition and affidavit shall be served on all parents and legal guardians of the child and any other party to the proceeding.

(b) An adverse party, parent, or legal guardian may file a pleading and verified affidavit in response to the petition that shall be served on all parties to the proceeding.

(c) The court shall determine on the basis of the pleadings and affidavits whether the person seeking to be adjudicated a de facto parent has presented prima facie evidence of the criteria for de facto parentage as provided in subsection 501(a) of this title and, therefore, has standing to proceed with a parentage action. The court, in its sole discretion, may hold a hearing to determine disputed facts that are necessary and material to the issue of standing.

(d) The court may enter an interim order concerning contact between the child and a person with standing seeking adjudication under this chapter as a de facto parent of the child.

CHAPTER 6. GENETIC PARENTAGE

§ 601. SCOPE

This chapter governs procedures and requirements of genetic testing and genetic testing results of a person to determine parentage and adjudication of parentage based on genetic testing, whether the person voluntarily submits to testing or is tested pursuant to an order of the court. Genetic testing shall not be used to challenge the parentage of a person who is a parent by operation of law under chapter 7 or 8 of this title or to establish the parentage of a person who is a donor.

§ 602. REQUIREMENTS FOR GENETIC TESTING

Genetic testing shall be of a type reasonably relied upon by scientific and medical experts in the field of genetic testing and performed in a testing laboratory accredited by a national association of blood banks or an accrediting body designated by the Secretary of the U.S. Department of Health and Human Services. As used in this chapter, “genetic testing” shall have the same meaning as provided in 18 V.S.A. § 9331.

§ 603. COURT ORDER FOR TESTING

(a) Order to submit to genetic testing. Except as provided in section 615 of this title or as otherwise provided in this chapter, upon motion the court may order a child and other persons to submit to genetic testing.

(b) Presumption of genetic parentage. Genetic testing of the person who gave birth to a child shall not be ordered to prove that such person is the genetic parent unless there is a reasonable, good faith basis to dispute genetic parentage.

(c) In utero testing. A court shall not order in utero genetic testing.

(d) Concurrent or sequential testing. If two or more persons are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

§ 604. GENETIC TESTING RESULTS

(a) A person shall be identified as a genetic parent of a child if the genetic testing of the person complies with this chapter and the results of testing disclose that the individual has at least a 99 percent probability of parentage as determined by the testing laboratory.

(b) Identification of a genetic parent through genetic testing does not establish parentage absent adjudication under this chapter and a court may rely on nongenetic evidence to determine parentage, including parentage by acknowledgment pursuant to chapter 3 of this title or by admission pursuant to section 112 of this title, presumed parentage under chapter 4 of this title, de facto parentage under chapter 5 of this title, and parentage by intended parents under chapter 7 or 8 of this title.

(c) A person identified under subsection (a) of this section as a genetic parent of a child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this chapter that:

(1) excludes the person as a genetic parent of the child; or

(2) identifies a person other than the person who gave birth to the child as a possible genetic parent of the child.

§ 605. REPORT OF GENETIC TESTING

(a) A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this chapter is self-authenticating.

(b) A party in possession of results of genetic testing shall provide such results to all other parties to the parentage action upon receipt of the results and not later than 15 days before any hearing at which the results may be admitted into evidence.

§ 606. ADMISSIBILITY OF RESULTS OF GENETIC TESTING

(a) Production of results; notice. Unless waived by the parties, a party intending to rely on the results of genetic testing shall do all of the following:

(1) make the test results available to the other parties to the parentage action at least 15 days prior to any hearing at which the results may be admitted into evidence;

(2) give notice to the court and other parties to the proceeding of the intent to use the test results at the hearing; and

(3) give the other parties notice of this statutory section, including the need to object in a timely fashion.

(b) Objection. Any motion objecting to genetic test results shall be made in writing to the court and to the party intending to introduce the evidence at least seven days prior to any hearing at which the results may be introduced into evidence. If no timely objection is made, the written results shall be admissible as evidence without the need for foundation testimony or other proof of authenticity or accuracy.

(c) Results inadmissible; exceptions. If a child has a presumed parent, acknowledged parent, or adjudicated parent, the results of genetic testing shall be admissible to adjudicate parentage only:

(1) with the consent of each person who is a parent of the child under this title, unless the court finds that admission of the testing is in the best interests of the child as provided in subsection 615(b) of this title; or

(2) pursuant to an order of the court under section 603 of this title.

§ 607. ADDITIONAL GENETIC TESTING

The court shall order additional genetic testing upon the request of a party who contests the result of the initial testing. If the initial genetic testing identified a person as a genetic parent of the child under section 604 of this title, the court shall not order additional testing unless the party provides advance payment for the testing.

§ 608. CONSEQUENCES OF DECLINING GENETIC TESTING

(a) If a person whose parentage is being determined under this chapter declines to submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage contrary to the position of that person.

(b) Genetic testing of the person who gave birth to a child is not a condition precedent to testing the child and an individual whose parentage is being determined under this chapter. If the person who gave birth is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every person whose genetic parentage is being adjudicated.

§ 609. ADJUDICATION OF PARENTAGE BASED ON GENETIC TESTING

(a)(1) If genetic testing results pursuant to section 604 of this title exclude a person as the genetic parent of a child, the court shall find that person is not a genetic parent of the child and may not adjudicate the person as the child's parent on the basis of genetic testing.

(2) If genetic testing results pursuant to section 604 of this title identify a person as the genetic parent of a child, the court shall find that person to be the genetic parent and may adjudicate the person as the child's parent, unless otherwise provided by this title.

(3) Subdivisions (1) and (2) of this subsection do not apply if the results of genetic testing are admitted for the purpose of rebutting results of other genetic testing.

(b) If the court finds that genetic testing pursuant to section 604 of this title neither identifies nor excludes a person as the genetic parent of a child, the court shall not dismiss the proceeding. In that event, the results of genetic testing and other evidence are admissible to adjudicate the issue of parentage, including testimony relating to the sexual conduct of the person who gave birth to the child but only if it is alleged to have occurred during a time when conception of the child was probable.

§ 610. COSTS OF GENETIC TESTING

(a) The costs of initial genetic testing shall be paid:

(1) by the Office of Child Support in a proceeding in which the Office is providing services, if the Office requests such testing;

(2) as agreed by the parties or, if the parties cannot agree, by the person who made the request for genetic testing; or

(3) as ordered by the court.

(b) Notwithstanding subsection (a) of this section, a person who challenges a presumption, acknowledgment, or admission of parentage shall bear the cost for any genetic testing requested by such person.

(c) In cases in which the payment for the costs of initial genetic testing is advanced pursuant to subsection (a) of this section, the Office of Child Support may seek reimbursement from the genetic parent whose parent-child relationship is established.

§ 611. GENETIC TESTING WHEN SPECIMENS NOT AVAILABLE

(a) If a genetic testing specimen is not available from an alleged genetic parent of a child, for good cause the court may order the following persons to submit specimens for genetic testing:

(1) the parents of the alleged genetic parent;

(2) a sibling of the alleged genetic parent;

(3) another child of the alleged genetic parent and the person who gave birth to that other child; and

(4) another relative of the alleged genetic parent necessary to complete genetic testing.

(b) Prior to issuing an order under subsection (a) of this section, the court shall provide notice and opportunity to be heard to the person from whom a genetic sample is requested. If the court does order a person to be tested pursuant to subsection (a) of this section, it shall make a written finding that the need for genetic testing outweighs the legitimate interests, including the privacy and bodily integrity interests, of the person sought to be tested.

(c) A genetic specimen taken pursuant to this section shall be destroyed after final determination of the parentage case.

§ 612. DECEASED PERSON

For good cause shown, the court may order genetic testing of a deceased person.

§ 613. IDENTICAL SIBLING

(a) The court may order genetic testing of a person who is believed to have an identical sibling if evidence suggests the sibling may be the genetic parent of the child.

(b) If more than one sibling is identified as a genetic parent of the child, the court may rely on nongenetic evidence to adjudicate which sibling is a genetic parent of the child.

§ 614. CONFIDENTIALITY OF GENETIC TESTING

(a) A report of genetic testing for parentage is exempt from public inspection and copying under the Public Records Act and shall be kept confidential and released only as provided in this title.

(b) A person shall not intentionally release a report of genetic testing or the genetic material of another person for a purpose not relevant to a parentage proceeding without the written permission of the person who furnished the genetic material. A person who violates this section shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

§ 615. AUTHORITY TO DENY REQUESTED ORDER FOR GENETIC TESTING OR ADMISSION OF TEST RESULTS

(a) Grounds for denial. In a proceeding to adjudicate parentage, the court may deny a motion seeking an order for genetic testing or deny admissibility of the test results at trial if it determines that:

(1) the conduct of the parties estops a party from denying parentage; or

(2) it would be an inequitable interference with the relationship between the child and an acknowledged, adjudicated, de facto, presumed, or intended parent, or would otherwise be contrary to the best interests of the child as provided in subsection (b) of this section.

(b) Factors. In determining whether to deny a motion seeking an order for genetic testing under this title or a request for admission of such test results at trial, the court shall consider the best interests of the child, including the following factors, if relevant:

(1) the length of time between the proceeding to adjudicate parentage and the time that a parent was placed on notice that genetic parentage is at issue;

(2) the length of time during which the parent has assumed a parental role for the child;

(3) the facts surrounding discovery that genetic parentage is at issue;

(4) the nature of the relationship between the child and the parent;

(5) the age of the child;

(6) any adverse effect on the child that may result if parentage is successfully disproved;

(7) the nature of the relationship between the child and any alleged parent;

(8) the extent to which the passage of time reduces the chances of establishing the parentage of another person and a child support obligation in favor of the child; and

(9) any additional factors that may affect the equities arising from the disruption of the relationship between the child and the parent or the chance of an adverse effect on the child.

(c) Order. In cases involving an acknowledged or presumed parent, if the court denies a motion seeking an order for genetic testing, the court shall issue an order adjudicating the acknowledged or presumed parent to be the parent of the child.

§ 616. PRECLUDING ESTABLISHMENT OF PARENTAGE BY PERPETRATOR OF SEXUAL ASSAULT

(a) In a proceeding in which a person is alleged to have committed a sexual assault that resulted in the birth of a child, the person giving birth may seek to preclude the establishment of the other person's parentage.

(b) This section shall not apply if the person alleged to have committed a sexual assault has previously been adjudicated to be a parent of the child.

(c) In a parentage proceeding, the person giving birth may file a pleading making an allegation under subsection (a) of this section at any time.

(d) The standard of proof that a child was conceived as a result of the person sexually assaulting the person who gave birth to the child may be proven by the petitioner by either of the following:

(1) clear and convincing evidence that the person was convicted of a sexual assault against the person giving birth and that the child was conceived as a result of the sexual assault; or

(2) clear and convincing evidence that the person sexually assaulted or sexually exploited the person who gave birth to the child and that the child was conceived as a result of the sexual assault or sexual exploitation, regardless of whether criminal charges were brought against the person.

(e) If the court finds that the burden of proof under subsection (d) of this section is met, the court shall enter an order:

(1) adjudicating that the person alleged to have committed a sexual assault is not a parent of the child;

(2) requiring that the Department of Health amend the birth certificate to delete the name of the person precluded as a parent; and

(3) requiring that the person alleged to have committed a sexual assault to pay child support or birth-related costs, or both, unless the person giving birth requests otherwise.

CHAPTER 7. PARENTAGE BY ASSISTED REPRODUCTION

§ 701. SCOPE

This chapter does not apply to the birth of a child conceived by sexual intercourse or assisted reproduction under a surrogacy agreement under chapter 8 of this title.

§ 702. PARENTAL STATUS OF DONOR

(a) A donor is not a parent of a child conceived through assisted reproduction.

(b) Notwithstanding subsection (a) of this section:

(1) a person who provides a gamete or gametes or an embryo or embryos to be used for assisted reproduction for the person's spouse is a parent of the resulting child; and

(2) a person who provides a gamete or an embryo for assisted reproduction is a parent of the resulting child if the person has a written agreement or agreements with the person giving birth that the person providing the gamete or the embryo is intended to be a parent.

§ 703. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION

A person who consents under section 704 of this title to assisted reproduction by another person with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

§ 704. CONSENT TO ASSISTED REPRODUCTION

(a)(1) A person who intends to be a parent of a child born through assisted reproduction shall consent to such in a signed record that is executed by each intended parent and provides that the signatories consent to the use of assisted reproduction to conceive a child with the intent to parent the child.

(2) Consent pursuant to subdivision (1) of this subsection, executed via a form made available by the Department of Health, shall be accepted and relied upon for purposes of issuing a birth record.

(b) In the absence of a record pursuant to subsection (a) of this section, a

court may adjudicate a person as the parent of a child if it finds by a preponderance of the evidence that:

(1) prior to conception or birth of the child, the parties entered into an agreement that they both intended to be the parents of the child; or

(2) the person resided with the child after birth and undertook to develop a parental relationship with the child.

§ 705. LIMITATION ON SPOUSE'S DISPUTE OF PARENTAGE

(a) Except as otherwise provided in subsection (b) of this section, a spouse may commence a proceeding to challenge his or her parentage of a child born by assisted reproduction during the marriage within two years after the birth of the child if the court finds that the spouse did not consent to the assisted reproduction before, on, or after the birth of the child or that the spouse withdrew consent pursuant to section 706 of this title.

(b) A spouse or the person who gave birth to the child may commence a proceeding to challenge the spouse's parentage of a child born by assisted reproduction at any time if the court determines:

(1) the spouse neither provided a gamete for, nor consented to, the assisted reproduction;

(2) the spouse and the person who gave birth to the child have not cohabited since the probable time of assisted reproduction; and

(3) the spouse never openly held out the child as the spouse's child.

(c) This section shall apply to a spouse's dispute of parentage even if the spouse's marriage is declared invalid after assisted reproduction occurs.

§ 706. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL OF CONSENT

(a) If a marriage is dissolved before transfer or implantation of gametes or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a signed record with notice to the other spouse and the person giving birth that, if assisted reproduction were to occur after a divorce, the former spouse would be a parent of the child.

(b) Consent of a person to assisted reproduction pursuant to section 704 of this title may be withdrawn by that person in a signed record with notice to the person giving birth and any other intended parent before transfer or implantation of gametes or embryos. A person who withdraws consent under this subsection is not a parent of the resulting child.

§ 707. PARENTAL STATUS OF DECEASED PERSON

(a) If a person who intends to be a parent of a child conceived by assisted reproduction dies during the period between the transfer of a gamete or embryo and the birth of the child, the person's death does not preclude the establishment of the person's parentage of the child if the person otherwise would be a parent of the child under this chapter.

(b)(1) If a person who consented in a record to assisted reproduction by the person giving birth to the child dies before transfer or implantation of gametes or embryos, the deceased person is not a parent of a child conceived by assisted reproduction unless:

(A) the deceased person consented in a record that if assisted reproduction were to occur after the death of the deceased person, the deceased person would be a parent of the child; or

(B) the deceased person's intent to be a parent of a child conceived by assisted reproduction after the person's death is established by a preponderance of the evidence.

(2) A person is a parent of a child conceived by assisted reproduction under subdivision (1) of this subsection only if:

(A) the embryo is in utero not later than 36 months after the person's death; or

(B) the child is born not later than 45 months after the person's death.

§ 708. BIRTH ORDERS

(a) A party consenting to assisted reproduction, a person who is a parent pursuant to sections 702-704 of this title, an intended parent or parents, or the person giving birth may commence a proceeding in the Probate Division of the Superior Court to obtain an order:

(1) declaring that the intended parent or parents are the parent or parents of the resulting child and ordering that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the child;

(2) sealing the record from the public to protect the privacy of the child and the parties;

(3) designating the contents of the birth certificate and directing the Department of Health to designate the intended parent or parents as the parent or parents of the child; or

(4) for any relief that the court determines necessary and proper.

(b) A proceeding under this section may be commenced before or after the

birth of the child.

(c) Neither the State nor the Department of Health is a necessary party to a proceeding under this section.

(d) The intended parent or parents and any resulting child shall have access to the court records relating to the proceeding at any time.

§ 709. LABORATORY ERROR

If due to a laboratory error the child is not genetically related to either of the intended parents, the intended parents are the parents of the child unless otherwise determined by the court.

CHAPTER 8. PARENTAGE BY GESTATIONAL CARRIER AGREEMENT

§ 801. ELIGIBILITY TO ENTER GESTATIONAL CARRIER AGREEMENT

(a) In order to execute an agreement to act as a gestational carrier, a person shall:

(1) be at least 21 years of age;

(2) have completed a medical evaluation that includes a mental health consultation;

(3) have had independent legal representation of the person's own choosing and paid for by the intended parent or parents regarding the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement; and

(4) not have contributed gametes that will ultimately result in an embryo that the gestational carrier will attempt to carry to term, unless the gestational carrier is entering into an agreement with a family member.

(b) Prior to executing a gestational carrier agreement, a person or persons intending to become a parent or parents, whether genetically related to the child or not, shall:

(1) be at least 21 years of age;

(2) have completed a medical evaluation and mental health consultation; and

(3) have retained independent legal representation regarding the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement.

§ 802. GESTATIONAL CARRIER AGREEMENT

(a) Written agreement. A prospective gestational carrier, that person's

spouse, and the intended parent or parents may enter into a written agreement that:

(1) the prospective gestational carrier agrees to pregnancy by means of assisted reproduction;

(2) the prospective gestational carrier and that person's spouse have no rights and duties as the parents of a child conceived through assisted reproduction; and

(3) the intended parent or parents will be the parents of any resulting child.

(b) Enforceability. A gestational carrier agreement is enforceable only if it meets the following requirements:

(1) The agreement shall be in writing and signed by all parties.

(2) The agreement shall not require more than a one-year term to achieve pregnancy.

(3) At least one of the parties shall be a resident of this State.

(4) The agreement shall be executed before the commencement of any medical procedures other than the medical evaluations required by section 801 of this title and, in every instance, before transfer of embryos.

(5) The gestational carrier and the intended parent or parents shall meet the eligibility requirements of section 801 of this title.

(6) If any party is married, the party's spouse shall be a party to the agreement.

(7) The gestational carrier and the intended parent or parents shall be represented by independent legal counsel in all matters concerning the agreement and each counsel shall affirmatively so state in a written declaration attached to the agreement. The declarations shall state that the agreement meets the requirements of this title and shall be solely relied upon by health care providers and staff at the time of birth and by the Department of Health for birth registration and certification purposes.

(8) The parties to the agreement shall sign a written acknowledgment of having received a copy of the agreement.

(9) The signing of the agreement shall be witnessed and signed by at least one other person.

(10) The agreement shall expressly provide that the gestational carrier:

(A) shall undergo assisted reproduction and attempt to carry and give birth to any resulting child;

(B) has no claim to parentage of all resulting children to the intended parent or parents immediately upon the birth of the child or children regardless of whether a court order has been issued at the time of birth; and

(C) shall acknowledge the exclusive parentage of the intended parent or parents of all resulting children.

(11) If the gestational carrier is married, the carrier's spouse:

(A) shall acknowledge and agree to abide by the obligations imposed on the gestational carrier by the terms of the gestational carrier agreement;

(B) has no claim to parentage of any resulting children to the intended parent or parents immediately upon the birth of the children regardless of whether a court order has been issued at the time of birth; and

(C) shall acknowledge the exclusive parentage of the intended parent or parents of all resulting children.

(12) The gestational carrier shall have the right to use the services of a health care provider or providers of the gestational carrier's choosing to provide care during the pregnancy.

(13) The intended parent or parents shall:

(A) be the exclusive parent or parents and accept parental rights and responsibilities of all resulting children immediately upon birth regardless of the number, gender, or mental or physical condition of the child or children; and

(B) assume responsibility for the financial support of all resulting children immediately upon the birth of the children.

(c) Medical evaluations. If requested by a party or the court, a party shall provide records to the court and other parties related to the medical evaluations conducted pursuant to section 801 of this title.

(d) Reasonable consideration and expenses. Except as provided in section 809 of this title, a gestational carrier agreement may include provisions for payment of consideration and reasonable expenses to a prospective gestational carrier, provided they are negotiated in good faith between the parties.

(e) Decision of gestational carrier. A gestational agreement shall permit the gestational carrier to make all health and welfare decisions regarding the gestational carrier's health and pregnancy, and shall not enlarge or diminish the gestational carrier's right to terminate the pregnancy.

§ 803. PARENTAGE; PARENTAL RIGHTS AND RESPONSIBILITIES

(a)(1) If a gestational carrier agreement satisfies the requirements of this

chapter, the intended parent or parents are the parent or parents of the resulting child immediately upon the birth of the child, and the resulting child is considered the child of the intended parent or parents immediately upon the birth of the child. Neither the gestational carrier nor the gestational carrier's spouse, if any, is the parent of the resulting child.

(2) A person who is determined to be a parent of the resulting child is obligated to support the child. The breach of the gestational carrier agreement by the intended parent or parents does not relieve the intended parent or parents of the obligation to support the resulting child.

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

(b) Parental rights and responsibilities shall vest exclusively in the intended parent or parents immediately upon the birth of the resulting child.

(c) If due to a laboratory error, the resulting child is not genetically related to either the intended parent or parents or any donor who donated to the intended parent or parents, the intended parent or parents are considered the parent or parents of the child.

§ 804. BIRTH ORDERS

(a) Before or after the birth of a resulting child, a party to a gestational carrier agreement may commence a proceeding in the Probate Division of the Superior Court to obtain an order doing any of the following:

(1) Declaring that the intended parent or parents are the parent or parents of the resulting child and ordering that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the child.

(2) Designating the contents of the birth certificate and directing the Department of Health to designate the intended parent or parents as the parent or parents of the child. The Department of Health may charge a reasonable fee for the issuance of a birth certificate.

(3) Sealing the record from the public to protect the privacy of the child and the parties.

(4) Providing any relief the court determines necessary and proper.

(b) Neither the State nor the Department of Health is a necessary party to a proceeding under subsection (a) of this section.

(c) The intended parent or parents and any resulting child shall have access

to their court records at any time.

§ 805. EXCLUSIVE, CONTINUING JURISDICTION

Subject to the jurisdictional standards of 15 V.S.A. § 1071, the court conducting a proceeding under this chapter has exclusive, continuing jurisdiction of all matters arising out of the gestational carrier agreement until a child born to the gestational carrier during the period governed by the agreement attains the age of 180 days.

§ 806. TERMINATION OF GESTATIONAL CARRIER AGREEMENT

(a) A party to a gestational carrier agreement may withdraw consent to any medical procedure and may terminate the gestational carrier agreement at any time prior to any embryo transfer or implantation by giving written notice of termination to all other parties.

(b) Upon termination of the gestational carrier agreement under subsection (a) of this section, the parties are released from all obligations recited in the agreement except that the intended parent or parents remain responsible for all expenses that are reimbursable under the agreement incurred by the gestational carrier through the date of termination. The gestational carrier is entitled to keep all payments received and obtain all payments to which the gestational carrier is entitled. Neither a prospective gestational carrier nor the gestational carrier's spouse, if any, is liable to the intended parent or parents for terminating a gestational carrier agreement.

§ 807. GESTATIONAL CARRIER AGREEMENT; EFFECT OF
SUBSEQUENT CHANGE OF MARITAL STATUS

Unless a gestational carrier agreement expressly provides otherwise:

(1) the marriage of a gestational carrier or of an intended parent after the agreement has been signed by all parties does not affect the validity of the agreement, the gestational carrier's spouse's consent or intended parent's spouse's consent to the agreement is not required, and the gestational carrier's spouse or intended parent's spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement; and

(2) the divorce, dissolution, annulment, or legal separation of the gestational carrier or of an intended parent after the agreement has been signed by all parties does not affect the validity of the agreement.

§ 808. EFFECT OF NONCOMPLIANCE; STANDARD OF REVIEW;
REMEDIES

(a) Not enforceable. A gestational carrier agreement that does not meet the requirements of this chapter is not enforceable.

(b) Standard of review. In the event of noncompliance with the requirements of this chapter or with a gestational carrier agreement, the Family Division of the Superior Court shall determine the respective rights and obligations of the parties to the gestational carrier agreement, including evidence of the intent of the parties at the time of execution.

(c) Remedies. Except as expressly provided in a gestational carrier agreement and in subsection (d) of this section, in the event of a breach of the gestational carrier agreement by the gestational carrier or the intended parent or parents, the gestational carrier or the intended parent or parents are entitled to all remedies available at law or in equity.

(d) Genetic testing. If a person alleges that the parentage of a child born to a gestational carrier is not the result of assisted reproduction, and this question is relevant to the determination of parentage, the court may order genetic testing.

(e) Specific performance. Specific performance is not an available remedy for a breach by the gestational carrier of any term in a gestational carrier agreement that requires the gestational carrier to be impregnated or to terminate a pregnancy. Specific performance is an available remedy for a breach by the gestational carrier of any term that prevents the intended parent or parents from exercising the full rights of parentage immediately upon the birth of the child.

§ 809. LIABILITY FOR PAYMENT OF GESTATIONAL CARRIER HEALTH CARE COSTS

(a) The intended parent or parents are liable for the health care costs of the gestational carrier that are not paid by insurance. As used in this section, “health care costs” means the expenses of all health care provided for assisted reproduction, prenatal care, labor, and delivery.

(b) A gestational carrier agreement shall explicitly detail how the health care costs of the gestational carrier are paid. The breach of a gestational carrier agreement by a party to the agreement does not relieve the intended parent or parents of the liability for health care costs imposed by subsection (a) of this section.

(c) This section is not intended to supplant any health insurance coverage that is otherwise available to the gestational carrier or an intended parent for the coverage of health care costs. This section does not change the health insurance coverage of the gestational carrier or the responsibility of the insurance company to pay benefits under a policy that covers a gestational carrier.

Sec. 2. REPEAL

15 V.S.A. chapter 5, subchapter 3A (parentage proceedings) is repealed.

Sec. 3. 33 V.S.A. § 4921(e)(1) is amended to read:

(e)(1) Upon request, relevant Department records or information created under this subchapter shall be disclosed to:

* * *

(F) a Family Division of the Superior Court involved in any proceeding in which:

(i) custody of a child or parent-child contact is at issue pursuant to 15 V.S.A. chapter 11, subchapter 3A;

(ii) a parent of a child challenges a presumption of parentage under 15C V.S.A. § 402(b)(3); or

(iii) a parent of a child contests an allegation that he or she fostered or supported a bonded and dependent relationship between the child and a person seeking to be adjudicated a de facto parent under 15C V.S.A. § 501(a)(2);

* * *

Sec. 4. 33 V.S.A. § 6911 is amended to read:

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

(a)(1) Information obtained through reports and investigations, including the identity of the reporter, shall remain confidential and shall not be released absent a court order, except as follows:

* * *

(C) Relevant information may be disclosed to a Family Division of the Superior Court, upon the request of that court, in any proceeding in which:

(i) a parent of a child challenges a presumption of parentage under 15C V.S.A. § 402(b)(3); or

(ii) a parent of a child contests an allegation that he or she fostered or supported a bonded and dependent relationship between the child and a person seeking to be adjudicated a de facto parent under 15C V.S.A. § 501(a)(2).

* * *

(c) The Commissioner or designee may disclose Registry information only to:

* * *

(11) A Family Division of the Superior Court upon request of that court if it is involved in any proceeding in which:

(A) a parent of a child challenges a presumption of parentage under 15C V.S.A. § 402(b)(3); or

(B) a parent of a child contests an allegation that he or she fostered or supported a bonded and dependent relationship between the child and a person seeking to be adjudicated a de facto parent under 15C V.S.A. § 501(a)(2).

* * *

Sec. 5. TRANSITIONAL PROVISION

This title applies to a pending proceeding to adjudicate parentage commenced before the effective date of this act for an issue on which a judgment has not been rendered.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

*ALICE W. NITKA
RICHARD W. SEARS
JOSEPH C. BENNING*

*Committee on the part of the
Senate*

*MARTIN J. LALONDE
MAXINE JO GRAD
EILEEN LYNN'G. DICKINSON*

Committee on the part of the House

Ordered to Lie

H. 219

An act relating to the Vermont spaying and neutering program.

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

S. 267

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

Pending Question: Shall the report of the committee on Judiciary be substituted by the amendment offered by Rep. LaLonde of South Burlington and other?

Action Postponed Indefinitely

H. 167

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