

Senate Calendar

THURSDAY, APRIL 19, 2018

SENATE CONVENES AT: 1:00 P.M.

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ACTION CALENDAR

NEW BUSINESS

GOVERNOR VETO

S. 103.

An act relating to the regulation of toxic substances and hazardous materials.

Pending Question (to be voted by call of the roll): Shall the bill pass, notwithstanding the Governor's refusal to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

Text of Communication from the Governor

The text of the communication from His Excellency, the Governor, whereby he *vetoed* and returned unsigned **Senate Bill No. 103** to the Senate is as follows:

April 16, 2018

The Honorable John Bloomer, Jr.
Secretary of the Senate
115 State House
Montpelier, VT 05633-5401

Dear Mr. Bloomer:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning S.103, *An act relating to the regulation of toxic substances and hazardous materials*, without my signature because of my objections described herein:

During the second half of this Legislative Biennium, I have been consistent in my commitment to support legislation that makes Vermont more affordable, grows the economy, and protects the most vulnerable. My concerns with this bill center around these priorities, because – while it aims to protect Vermonters – it is duplicative to existing measures that already achieve its desired protections. In my view S.103 will jeopardize jobs and make Vermont less competitive for businesses. However, as I detail below, we have a path forward to work together to enact this bill if the Legislature desires.

The State has taken clear and decisive action since the discovery of PFOA in the drinking water of Bennington and North Bennington in 2016 to address this public health crisis, hold the responsible parties accountable, and provide

stronger protections from this happening again. This includes the enactment of Act 55 of 2017, which I proudly signed in to law last June. Act 55 has helped strengthen the State's response to PFOA contamination by establishing a process to hold parties that contaminate groundwater responsible for connecting impacted Vermonters to municipal water. We will continue to stand with the affected communities, and act forcefully, until we reach a complete resolution for those affected. This has resulted in one settlement agreement which provides a substantial although partial resolution. This case will be completely resolved either through an additional settlement agreement or as a result of litigation. Either way, we will ensure the polluter is held responsible for the contamination and the cleanup.

No community should have to endure what the impacted communities are going through. The patience and perseverance of these communities, as we work together to resolve this crisis, has been amazing. We will continue to ensure all Vermonters have clean drinking water, however S.103 does nothing to enhance our ability to hold violators accountable, reconnect water lines, or directly address our ongoing response to the Per- and Polyfluoroalkyl Substances (PFAS) contamination. The bill ultimately has many negative unintended consequences, threatening our manufacturers' ability to continue to do business in Vermont, and therefore, our ability to retain and recruit more and better paying jobs.

In July of 2017, I established, via Executive Order, the Interagency Committee on Chemical Management (ICCM) and the Citizens Advisory Panel (CAP). My primary intent behind establishing these bodies was to better coordinate chemical management and identify gaps in management. Through the ICCM we continue to work to prevent future contamination and minimize the risk of harmful chemicals. This is one of several reasons many of the State's manufacturing employers have expressed opposition to this legislation. The ICCM and CAP in EO 13-17 have similar membership and responsibilities to those envisioned by S.103, making these sections duplicative. Instead of creating a redundant body, I propose we work together to align Sections 1 and 2 of S.103 to the existing ICCM and CAP membership and charge. That way the ICCM, which has been meeting for the better part of a year, can continue this important work unabated.

Further, to the extent this Executive branch entity has been given the resources of the Legislature's Council for legislative drafting and Joint Fiscal Office for fiscal and economic analyses with the goal of recommending legislation to the Legislature, this bill presents a separation of powers issue by improperly allocating legislative resources to the Executive branch and charging the Executive branch with doing the work of the Legislature. Pursuant to Chapter II, Section 20 of the Vermont Constitution, the Governor has independent

authority to bring such business before the Legislature as he deems necessary. Pursuant to Chapter II, Section 6, the Legislature has separate Constitutional authority to prepare bills and enact them into laws. The Legislature does not have the authority to enlist the Executive branch to provide services necessary to the Legislature for purposes of developing its own legislative initiatives. Also, since the bill originally created an “intergovernmental” hybrid Committee, which the Legislature must have recognized was constitutionally suspect under our tripartite system of government, the bill still includes unnecessary language on meeting structure and operations, which hampers the ability of the committee to effectively carry on its work.

The existing ICCM has already conducted a thorough review of current state chemical management, evaluated what it would take to create a unified chemical reporting system and which programs make sense to participate. It has also identified proposed changes to the Toxics Use and Hazardous Waste Use Reduction Act, and has identified a proposed process to conduct ongoing review of chemical management to ensure dynamic responses to changing health and use information. That work has been proposed to the CAP, and the CAP is scheduled to provide written comments by April 25. The ICCM is due to report its first round of recommendations to me on July 1, which if we align and codify the Committee in statute, can also be presented to the Legislature.

It is possible to continue to keep Vermonters safe without harming the economy or costing the state good jobs. We cannot afford to give manufacturers another reason to look elsewhere for their location or expansion needs. In Vermont, this sector has not rebounded as well from the Great Recession as compared to other parts of the country, and other states are more aggressively recruiting good paying manufacturing jobs. We must pursue policies that enhance and encourage the possibility for more production and jobs for Vermonters, not fewer. Section 8 of this bill puts the growth of this sector at risk by creating more uncertainty and unpredictability for business operations by disturbing a process laid out in Act 188 of 2014. Act 188 creates a robust regulatory process that requires manufacturers of children’s products disclose to the Department of Health whether a product contains any of the 66 chemicals listed in the law. The Department has collected millions of lines of data since the enactment of Act 188 and asks for more information than any other state. This information is maintained in a public database for interested consumers and parents. While it took Washington State eight years to get such a program up and running, it took Vermont only two and a half years; manufacturers started reporting on January 1, 2017.

In addition, Act 188 addresses how to review other chemicals that may be added to the list by rule. The law directs the Commissioner of Health to provide to an established Working Group no fewer than two listed chemicals

every year, for review, to determine whether that chemical should be labeled and/or banned from sale in children's or consumer products in Vermont. It would be virtually unprecedented when compared to other states with similar authority for there not to be a secondary review from a technical and practicality standpoint providing a check and balance when evolving the list. This Working Group met for the first time in July of 2017; its work is underway with a collaborative approach to responsible regulation. The regulatory process is working and should proceed as originally envisioned. With a robust process in place, children will not be any safer as a result of the proposed changes contained in this bill.

Additionally, the changes contained in Section 8 to the "weight of credible scientific evidence" and exposure requirements will make Vermont an outlier. Vermont will be a less friendly place for the manufacturers to locate and sell their products here. Furthermore, there are many federal laws and safety standards which are relevant to the regulation of chemicals. Our economy is diverse but still very small. We must not put ourselves at another competitive disadvantage versus other states in the region and nation.

In 2016 the manufacturing sector alone accounted \$1.67 billion in Vermont wages. As of the last reported quarter (3rdq17), it accounted for \$418 million in wages with 29,584 Vermonters employed in the manufacturing sector. If we add the natural resources and mining, and construction sectors to the above it would represent \$658 million in wages and 50,300 persons total working in the goods producing domain.

There is an economic multiplier for these sectors since most of the manufactured product is exported out of state thereby bringing more dollars into Vermont than a limited local market for the goods. To put these producers at risk without giving the ICCM, CAP and Act 188 Working Group time to do their work and formulate recommendations puts the employees engaged in those activities, and the state's overall economy, at greater risk.

If the Legislature agrees to make the changes I am seeking – simple codification of EO 13-17 in Sections 1 and 2, and removal of Section 8 – we can together enact legislation that will continue to contribute to public health and safety. Sections 3 through 6 will enable consumers to have greater information about potential contaminants that may affect their health while at the same time not impacting the marketability of people's homes. I believe greater knowledge and understanding of threats to people's drinking water will help protect the most vulnerable Vermonters.

As noted, based on the outstanding objections outlined above I cannot support this legislation as written and must return it without my signature pursuant to Chapter II, §11 of the Vermont Constitution.

Sincerely,

/s/ Philip B. Scott

Philip B. Scott
Governor

PBS/kp

Text of Bill As Passed By Senate and House

The text of the bill as passed by the Senate and House of Representatives is as follows:

S.103 An act relating to the regulation of toxic substances and hazardous materials

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Toxics Use Reduction and Reporting * * *

Sec. 1. 10 V.S.A. § 6633 is added to read:

§ 6633. INTERAGENCY COMMITTEE ON CHEMICAL MANAGEMENT

(a) Creation. There is created the Interagency Committee on Chemical Management in the State to:

- (1) evaluate chemical inventories in the State on an annual basis;
- (2) identify potential risks to human health and the environment from chemical inventories in the State; and
- (3) propose measures or mechanisms to address the identified risks from chemical inventories in the State.

(b) Membership. The Interagency Committee on Chemical Management shall be composed of the following eight members:

- (1) the Secretary of Agriculture, Food and Markets or designee;
- (2) the Secretary of Natural Resources or designee;
- (3) the Commissioner of Health or designee;
- (4) the Commissioner of Labor or designee;
- (5) the Commissioner of Public Safety or designee;
- (6) the Secretary of Commerce and Community Development or designee;

(7) the Commissioner of Information and Innovation, or the Commissioner of the successor department, or designee;

(8) the Secretary of Transportation or designee.

(c) Powers and duties. The Interagency Committee on Chemical Management shall:

(1) Convene a citizen advisory panel to provide input and expertise to the Committee. The citizen advisory panel shall consist of persons with expertise in:

(A) toxicology;

(B) environmental law;

(C) manufacturing products;

(D) environmental health;

(E) public health;

(F) risk analysis;

(G) maternal and child health care;

(H) occupational health;

(I) industrial hygiene;

(J) public policy;

(K) chemical management by academic institutions;

(L) retail sales; and

(M) development and administration of information reporting technology or databases.

(2) Monitor actions taken by the U.S. Environmental Protection Agency (EPA) to regulate chemicals under the Toxic Substances Control Act, 15 U.S.C. chapter 53, and notify relevant State agencies of any EPA action relevant to the jurisdiction of the agency.

(3) Annually review chemical inventories in the State in relation to emerging scientific evidence in order to identify chemicals of high concern not regulated by the State.

(d) Assistance. The Interagency Committee on Chemical Management shall have the administrative, technical, and legal assistance of the Agency of Natural Resources; the Agency of Agriculture, Food and Markets; the Department of Health; the Department of Public Safety; the Department of Labor; the Agency of Commerce and Community Development; and the

Department of Information and Innovation. The Interagency Committee on Chemical Management shall have the assistance of the Office of Legislative Council for legislative drafting and the assistance of the Joint Fiscal Office for the fiscal and economic analyses.

(e) Report. On or before January 15, and annually thereafter, the Interagency Committee on Chemical Management shall report to the Senate Committees on Natural Resources and Energy; on Health and Welfare; and on Economic Development, Housing and General Affairs and the House Committees on Natural Resources, Fish and Wildlife; on Human Services; and on Commerce and Economic Development regarding the actions of the Committee. The provisions of 2 V.S.A. § 20(d) regarding expiration of required reports shall not apply to the report to be made under this section. The report shall include:

(1) an estimate or summary of the known chemical inventories in the State, as determined by metrics or measures established by the Committee;

(2) a summary of any change under federal statute or rule affecting the regulation of chemicals in the State;

(3) recommended legislative or regulatory action to address the risks posed by new or emerging chemicals of high concern; and

(4) recommended legislative or regulatory action to reduce health risks from exposure to chemicals of high concern and reduce risks of harm to the natural environment.

(f) Meetings.

(1) The Secretary of Natural Resources shall be the chair of the Interagency Committee on Chemical Management.

(2) The Secretary of Natural Resources shall call the first meeting of the Interagency Committee on Chemical Management to occur on or before July 1, 2018.

(3) A majority of the membership of the Interagency Committee on Chemical Management shall constitute a quorum.

(4) The Interagency Committee on Chemical Management shall meet no more than four times in a calendar year.

(g) Authority of agencies. The establishment of the Interagency Committee on Chemical Management shall not limit the independent authority of a State agency to regulate chemical use or management under existing State or applicable federal law.

Sec. 2. INTERAGENCY COMMITTEE ON CHEMICAL MANAGEMENT;
REPORT ON TOXIC USE REDUCTION AND REPORTING

On or before February 15, 2019, after consultation with the citizen advisory panel and as part of the first report required under 10 V.S.A. § 6633(e), the Interagency Committee on Chemical Management shall:

(1) Recommend how the State shall establish a centralized or unified electronic reporting system to facilitate compliance by businesses and other entities with chemical reporting and other regulatory requirements in the State. The recommendation shall:

(A) identify a State agency or department to establish and administer the reporting system;

(B) estimate the staff and funding necessary to administer the reporting system;

(C) propose how businesses and the public can access information submitted to or maintained as part of the reporting systems, including whether access to certain information or categories of information should be limited due to statutory requirements, regulatory requirements, trade secret protection, or other considerations;

(D) propose how information maintained as part of the reporting system can be accessed, including whether the information should be searchable by: chemical name, common name, brand name, product model, Global Product Classification (GPC) product brick description, standard industrial classification, chemical facility, geographic area, zip code, or address;

(E) propose how manufacturers of consumer products or subsets of consumer products shall report or notify the State of the presence of designated chemicals of concern in a consumer product and how information reported by manufacturers is made available to the public;

(F) propose a method for displaying information or filtering or refining search results so that information maintained on the reporting system can be accessed or identified in a serviceable or functional manner for all users of the system, including governmental agencies or departments, commercial and industrial businesses reporting to the system, nonprofit associations, and citizens; and

(G) estimate a timeline for establishment of the reporting system.

(2) Recommend statutory amendments and regulatory revisions to existing State recordkeeping and reporting requirements for chemicals, hazardous materials, and hazardous wastes in order to facilitate assessment of

risks to human health and the environment posed by the use of chemicals in the State. The recommendations shall include:

(A) the thresholds or amounts of chemicals used, manufactured, or distributed, and hazardous materials and hazardous wastes generated or managed in the State that require recordkeeping and reporting;

(B) the persons or entities using, manufacturing, or distributing chemicals and generating or managing hazardous materials and hazardous wastes that are subject to recordkeeping and reporting requirements; and

(C) any changes required to streamline and modernize existing recordkeeping and reporting requirements to facilitate compliance by businesses and other entities.

(3) Recommend amendments to the requirements for Toxic Use Reduction and Hazardous Waste Reduction under 10 V.S.A. chapter 159, subchapter 2 that shall include:

(A) The list of chemicals or materials subject to the reporting and planning requirements. The list of chemicals or materials shall include and be in addition to the chemicals or substances listed under Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986 and 18 V.S.A. § 1773 (chemicals of high concern to children).

(B) The thresholds or amounts of chemicals used or hazardous waste generated by a person that require reporting and planning.

(C) The information to be reported, including:

(i) the quantity of hazardous waste generated and the quantity of hazardous waste managed during a year;

(ii) the quantity of toxic substances, or raw material resulting in hazardous waste, used during a year;

(iii) an assessment of the effect of each hazardous waste reduction measure and toxics use reduction measure implemented; and

(iv) a description of factors during a year that have affected toxics use, hazardous waste generation, releases into the environment, and on-site and off-site hazardous waste management.

(D) The persons or entities using chemicals or generating hazardous waste that are subject to reporting and planning;

(E) Proposed revisions to the toxic chemical or hazardous waste reduction planning requirements, including conditions or criteria that qualify a person to complete a plan.

(F) Any changes to streamline and modernize the program to improve its effectiveness.

(4) Draft legislation to implement the Committee's recommendations under subdivisions (1), (2), and (3) of this section.

* * * Testing Groundwater * * *

Sec. 3. 10 V.S.A. § 1982 is added to read:

§ 1982. TESTING OF GROUNDWATER SOURCES

(a) Definition. As used in this section, "groundwater source" means that portion of a potable water supply that draws water from the ground, including a drilled well, shallow well, driven well point, or spring.

(b) Testing prior to new use. Prior to use of a new groundwater source as a potable water supply, the person who owns or controls the groundwater source shall test the groundwater source for the parameters set forth in subsection (c) of this section.

(c) Parameters of testing. A water sample collected under this section shall be analyzed for, at a minimum: arsenic, lead, uranium, gross alpha radiation, total coliform bacteria, total nitrate and nitrite, fluoride, manganese, and any other parameters required by the Agency by rule. The Agency by rule may require testing for a parameter by region or specific geographic area of concern.

(d) Submission of test results. Results of the testing required under subsection (b) shall be submitted, on a form provided by the Department of Health, to the Department of Health and, when required by the Secretary pursuant to a permit, to the Secretary.

(e) Rulemaking. The Secretary, after consultation with the Department of Health, the Wastewater and Potable Water Supply Technical Advisory Committee, private laboratories, and other interested parties, shall adopt by rule requirements regarding:

(1) when, prior to use of a new groundwater source, the test required under subsection (b) of this section shall be conducted;

(2) who shall be authorized to sample the source for the test required under subsections (b) and (c) of this section, provided that the rule shall include the person who owns or controls the groundwater source and licensed well drillers among those authorized to sample the source;

(3) how a water sample shall be collected in order to comply with the requirements of the analyses to be performed; and

(4) any other requirements necessary to implement this section.

(f) Marketability of title. Noncompliance with the requirements of this section shall not affect the marketability of title or create a defect in title of a property, provided water test results required under this section are forwarded, prior to the conveyance of the property, to the Department of Health and, when required by the Secretary pursuant to a permit, to the Agency.

Sec. 4. AGENCY OF NATURAL RESOURCES; GROUNDWATER
SOURCE TESTING; RULEMAKING

The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 1982 on or before July 1, 2018. The Secretary shall adopt rules under 10 V.S.A. § 1982 on or before January 1, 2019.

Sec. 5. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

(a) The ~~commissioner~~ Commissioner may certify a laboratory that meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent to perform the testing and monitoring:

(1) required under 10 V.S.A. chapter 56 and the federal Safe Drinking Water Act; and

(2) of water from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6).

(b)(1) The ~~commissioner~~ Commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the ~~commissioner~~ Commissioner finds that the certificate holder has:

(A) submitted materially false or materially inaccurate information; or

(B) violated any material requirement, restriction, or condition of the certificate; or

(C) violated any statute, rule, or order relating to this title.

(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the certificate holder to reapply for certification if a previous certificate has been revoked.

(c) A person may appeal the suspension or revocation of the certificate to the ~~board~~ Board under section 128 of this title.

* * *

(f) A laboratory certified to conduct testing of groundwater sources or water supplies from for use by a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), including under the requirements of 10 V.S.A. § 1982, shall submit the results of groundwater analyses to the ~~department of health and the agency of natural resources~~ Department of Health in a format required by the ~~department of health~~ Department of Health.

Sec. 6. 10 V.S.A. § 1974 is amended to read:

§ 1974. EXEMPTIONS

Notwithstanding any other requirements of this chapter, the following projects and actions are exempt:

* * *

(8) From the permit required for operation of failed supply under subdivision 1973(a)(4) of this title for the use or operation of a failed supply that consists of only one groundwater source that provides water to only one single family residence.

* * * Chemicals of High Concern to Children * * *

Sec. 7. 18 V.S.A. § 1775(b) is amended to read:

(b) Format for notice. The Commissioner shall specify the format for submission of the notice required by subsection (a) of this section, provided that the required format shall be generally consistent with the format for submission of notice in other states with requirements substantially similar to the requirements of this section. Any notice submitted under subsection (a) shall contain the following information:

(1) the name of the chemical used or produced and its chemical abstracts service registry number;

(2) a description of the product or product component containing the chemical, including: the brand name, the product model, and the universal product code if the product has such a code;

(3) the amount of the chemical contained in each unit of the product or product component, reported by weight or parts per million as authorized by the Commissioner;

(4) the name and address of the manufacturer of the children's product and the name, address, and telephone number of a contact person for the manufacturer;

(5) any other information the manufacturer deems relevant to the appropriate use of the product; and

(6) any other information required by the Commissioner under rules adopted pursuant to 3 V.S.A. chapter 25.

Sec. 8. 18 V.S.A. § 1776 is amended to read:

§ 1776. RULEMAKING; ADDITIONAL CHEMICALS OF CONCERN TO CHILDREN; PROHIBITION OF SALE

* * *

(b) Additional chemicals of concern to children. The Commissioner may by rule add additional chemicals to the list of chemicals of high concern to children, provided that the Commissioner of Health, on the basis of ~~the weight of credible independent, peer-reviewed, scientific evidence~~ has research, determined ~~has~~ determines that a chemical proposed for addition to the list meets both of the following criteria in subdivisions (1) and (2) of this subsection:

(1) The Commissioner of Health has determined that an authoritative governmental entity or accredited research university has demonstrated that the chemical:

(A) harms the normal development of a fetus or child or causes other developmental toxicity;

(B) causes cancer, genetic damage, or reproductive harm;

(C) disrupts the endocrine system;

(D) damages the nervous system, immune system, or organs or causes other systemic toxicity; or

(E) is a persistent bioaccumulative toxic.

(2) The chemical has been found through:

(A) biomonitoring to be present in human blood, umbilical cord blood, breast milk, urine, or other bodily tissues or fluids;

(B) sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or

(C) monitoring to be present in fish, wildlife, or the natural environment.

* * *

(d) Rule to regulate sale or distribution.

(1) The Commissioner, ~~upon the recommendation of~~ after consultation with the Chemicals of High Concern to Children Working Group, may adopt a rule to regulate the sale or distribution of a children's product containing a chemical of high concern to children upon a determination that:

~~(A) children will~~ may be exposed to a chemical of high concern to children in the children's product; ~~and~~

~~(B) there is a probability that, due to the degree of exposure or frequency of exposure of a child to a chemical of high concern to children in a children's product, exposure could cause or contribute to one or more of the adverse health impacts listed under subdivision (b)(1) of this section.~~

(2) In determining whether children ~~will~~ may be exposed to a chemical of high concern in a children's product, the Commissioner shall review available, credible information regarding:

(A) the market presence of the children's product in the State;

(B) the type or occurrence of exposures to the relevant chemical of high concern to children in the children's product;

(C) the household and workplace presence of the children's product; or

(D) the potential ~~and frequency~~ of exposure of children to the chemical of high concern to children in the children's product.

(3) A rule adopted under this section may:

(A) prohibit the children's product containing the chemical of high concern to children from sale, offer for sale, or distribution in the State; or

(B) require that the children's product containing the chemical of high concern to children be labeled prior to sale, offer for sale, or distribution in the State.

(4) In any rule adopted under this subsection, the Commissioner shall adopt reasonable time frames for manufacturers, distributors, and retailers to comply with the requirements of the rules. No prohibition on sale or manufacture of a children's product in the State shall take effect sooner than two years after the adoption of a rule adopted under this section unless the Commissioner determines that an earlier effective date is required to protect human health and the new effective date is established by rule.

(5) The Chemicals of High Concern to Children Working Group may, at its discretion, submit to the House Committees on Natural Resources, Fish and Wildlife and on Human Services and the Senate Committees on Natural Resources and Energy and on Health and Welfare the recommendations or information from a consultation provided to the Commissioner under subdivision (1) of this subsection.

* * *

* * * Effective Dates * * *

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 1 (Interagency Committee on Chemical Management), 2 (report on toxic use reduction and reporting), and 4 (groundwater testing rulemaking) shall take effect on passage.

(b) Sec. 3 (groundwater source testing) shall take effect on July 1, 2019, except that 10 V.S.A. § 1982(e) shall take effect on passage.

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

Third Reading

H. 914.

An act relating to reporting requirements for the second year of the Vermont Medicaid Next Generation ACO Pilot Project.

J.R.H. 15.

Joint resolution requesting the Federal Trade Commission, the Federal Communications Commission, and Congress to adopt more effective measures to enforce the federal Do Not Call list and to police illegal robocalls.

Second Reading

Favorable with Proposal of Amendment

H. 608.

An act relating to creating an Older Vermonters Act working group.

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

The Committee recommends that the Senate propose to the House to amend the bill in Sec. 3, Older Vermonters Act working group; report, as follows:

First: In subsection (b), in the introductory paragraph, by striking out the number “15” and inserting in lieu thereof the number 18

Second: In subsection (b), by inserting a new subdivision to be subdivision (5) to read as follows:

(5) the Attorney General or designee;

And by renumbering the existing subdivisions (5)–(12) to be subdivisions (6)–(13)

Third: In subsection (b), by inserting two new subdivisions to be subdivisions (14) and (15) to read as follows:

(14) the Executive Director of the Alzheimer’s Association, Vermont Chapter, or designee;

(15) the Director of Support and Services at Home (SASH) or designee;

And by renumbering the existing subdivisions (13) and (14) to be subdivisions (16) and (17)

Fourth: In subsection (c), in the introductory paragraph, following “Community of Vermont Elders,” by striking out “the Alzheimer’s Association,”

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 27, 2018, pages 455-459 and February 28, 2018 page 466)

Reported favorably with recommendation of proposal of amendment by Senator Westman for the Committee on Appropriations.

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Health and Welfare with the following amendment thereto:

By striking out Sec. 3, Older Vermonters Act working group; report, in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. OLDER VERMONTERS ACT WORKING GROUP; REPORT

(a) Creation. There is created an Older Vermonters Act working group for the purpose of developing recommendations for an Older Vermonters Act that aligns with the federal Older Americans Act, the Vermont State Plan on Aging, and the Choices for Care program.

(b) Membership. The working group shall be composed of the following 18 members:

(1) the Commissioner of Disabilities, Aging, and Independent Living or designee;

(2) the Director of Health Promotion and Disease Prevention at the Department of Health or designee;

(3) the Commissioner of Labor or designee;

(4) the Attorney General or designee;

(5) the Executive Director of the Vermont Association of Area Agencies on Aging or designee;

(6) the State Long-Term Care Ombudsman;

(7) the Director of Vermont Associates for Training and Development or designee;

(8) a representative of the Vermont Association of Adult Day Services, appointed by the Association;

(9) a representative of home health agencies, appointed jointly by the VNAs of Vermont and Bayada Home Health Care;

(10) a representative of long-term care facilities, appointed by the Vermont Health Care Association;

(11) the Director of the Center on Aging at the University of Vermont or designee;

(12) a representative of the Vermont Association of Senior Centers and Meal Providers, appointed by the Association;

(13) the Executive Director of the Alzheimer's Association, Vermont Chapter, or designee;

(14) the Director of Support and Services at Home or designee;

(15) two older Vermonters from different regions of the State, appointed by the Advisory Board established by 33 V.S.A. § 505; and

(16) two family caregivers of older Vermonters, one of whom is a family member of an older Vermonter and one of whom is an informal provider of in-home and community care, appointed by the Advisory Board established by 33 V.S.A. § 505.

(c) Powers and duties. The working group, in consultation with elder care mental health clinicians, the Vermont Chamber of Commerce, the Community of Vermont Elders, AARP Vermont, the Elder Law Project at Vermont Legal Aid, the Vermont Public Transportation Association, and other interested stakeholders, shall develop recommendations on the following:

(1) the authority and responsibilities of the Vermont Department of Disabilities, Aging, and Independent Living as a State Unit on Aging;

(2) the authority and responsibilities of the Vermont Department of Disabilities, Aging, and Independent Living with respect to the management, approval, and oversight of services provided to eligible older Vermonters through the Choices for Care program;

(3) the roles and responsibilities of the Area Agencies on Aging as the designated regional planning organizations serving older Vermonters and family caregivers;

(4) the roles and responsibilities of the network of providers of services to older Vermonters and family caregivers;

(5) a description of a comprehensive and coordinated system of services

and supports for older Vermonters and family caregivers as envisioned by the Older Americans Act and the Choices for Care program, including supportive services, nutrition services, health promotion and disease prevention services, family caregiver services, employment services, and protective services;

(6) a description of how such a system would be coordinated across State agencies, provider networks, and geographic regions;

(7) how to ensure that such a system would target those in greatest economic and social need;

(8) ways to encourage and educate older Vermonters to continue in the workforce and to become or remain involved in their communities through participation in volunteer activities and opportunities for civic engagement; and

(9) ways to educate employers about the value of the older Vermont talent cohort and the benefits of maintaining a multigenerational workforce, as well as identification of models that may be replicated across sectors and industries.

(d) Assistance. The working group shall have the administrative, technical, and legal assistance of the Department of Disabilities, Aging, and Independent Living.

(e) Report. On or before December 1, 2019, the working group shall submit its recommendations to the House Committee on Human Services and the Senate Committee on Health and Welfare.

(f) Meetings.

(1) The Commissioner of Disabilities, Aging, and Independent Living or designee shall chair the working group and shall call the first meeting of the working group, which shall occur on or before September 15, 2018.

(2) The working group shall meet as often as reasonably necessary to develop its recommendations, but not less frequently than once every two months.

(3) The working group shall cease to exist upon submitting its report to the General Assembly on or before December 1, 2019.

(g) Compensation and reimbursement. Members of the working group who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance at meetings of the working group shall be entitled to reimbursement of expenses pursuant to 32 V.S.A. § 1010. Reimbursement payments to these members shall be made from monies appropriated to the Department of Disabilities, Aging, and Independent Living.

(Committee vote: 6-0-1)

H. 921.

An act relating to nursing home oversight.

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

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

First: In Sec. 1, nursing home oversight working group; report, in subsection (c), at the end of subdivision (4), by striking out the word “and” following the semicolon

Second: In Sec. 1, nursing home oversight working group; report, in subsection (c), at the end of subdivision (5)(C), by striking out the period and inserting in lieu thereof the following: ; and

Third: In Sec. 1, nursing home oversight working group; report, in subsection (c), by adding a subdivision (6) to read as follows:

(6) review the Division of Rate Setting’s rules regarding Medicaid reimbursements to nursing homes, including whether current reimbursement amounts support ongoing financial stability and whether a 90 percent occupancy level requirement continues to be necessary and appropriate.

Fourth: By striking out Secs. 3, transfer of ownership; expedited certificate of need process, and 4, effective dates, in their entirety and inserting in lieu thereof the following:

Sec. 3. TRANSFER OF NURSING HOME OWNERSHIP; INTERIM REVIEW PROCESS

(a) The Secretary of Human Services shall develop a process by which the Agency of Human Services shall accept and review applications for transfers of ownership of nursing homes in lieu of the certificate of need process, including:

(1) examining the potential buyer’s financial and administrative capacity to purchase and operate the nursing home in a manner that will provide high-quality services and a safe and stable environment for nursing home residents;

(2) allowing the Agency of Human Services 30 calendar days from the date the application is complete to review the application and to request and obtain any additional information the Agency deems necessary in order to approve or deny the application for transfer of nursing home ownership; provided that the time during which the applicant is responding to the Agency’s request for additional information shall not be included within the Agency’s 30-day review period; and

(3) requiring the Agency of Human Services to issue a written decision approving or denying the application for transfer of nursing home ownership within 45 calendar days following the 30-day review period.

(b) Applicants who filed a letter of intent or application for a certificate of need with the Green Mountain Care Board for transfer of nursing home ownership on or before July 1, 2018 may elect to have the proposed transfer reviewed under the process established in subsection (a) of this section in lieu of continuing with the certificate of need process. Any such applicant shall file an application with the Agency of Human Services in accordance with the process established by the Secretary.

Sec. 4. EFFECTIVE DATES

(a) Sec. 1 (Nursing Home Oversight Working Group) and this section shall take effect on passage.

(b) Sec. 2 (18 V.S.A. § 9434) shall take effect on July 1, 2018 and shall apply to all transfers of ownership initiated on or after that date.

(c) Sec. 3 (transfer of nursing home ownership; interim review process) shall take effect on July 1, 2018.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 20, 2018, page 718)

House Proposals of Amendment

S. 29

An act relating to decedents' estates.

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

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

CHAPTER 1. WILLS

§ 1. WHO MAY MAKE

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

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

~~(a) A testator may deposit a~~ A will may be deposited for safekeeping in the

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

(b) Each will so deposited shall be ~~inclosed~~ enclosed in a sealed wrapper ~~having inscribed thereon~~ envelope on which is written the name and residence address of the testator, ~~the day when and the person by whom it was deposited,~~ names and ~~the wrapper may also have indorsed thereon the name~~ addresses of the ~~person to whom~~ executors named in the will is ~~to be delivered after the death of the testator.~~ The wrapper will shall not be opened until it is delivered to a person entitled to receive it or until otherwise disposed of ~~as hereinafter provided~~ by the court.

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

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

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

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

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

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

~~A devise of land in a will shall convey all the estate which the deviser could~~

~~devise in such lands, unless it clearly appears by the will that he or she intended to convey a less estate. [Repealed.]~~

§ 5. EXECUTION OF WILL; REQUISITES

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

~~(1) in writing and;~~

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

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

§ 6. NUNCUPATIVE WILL

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

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

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

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

§ 8. SUBSEQUENT INCOMPETENCY OF WITNESSES

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

§ 10. DEVISE OR LEGACY TO WITNESS

~~If a person, other than an heir at law, attests the execution of a will whereby he or she or his wife or her husband is given a beneficial devise, legacy or~~

~~interest in or affecting real or personal estate, such devise, legacy or interest shall be void so far only as concerns such person or his wife or her husband or one claiming under such person, husband or wife, unless there are three other competent witnesses to such will. Such person so attesting shall be admitted as a witness as if such devise, legacy or interest had not been made or given. A mere charge on the real or personal estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. Any beneficial devise or legacy made or given in a will to a subscribing witness to the will or to the spouse of a subscribing witness shall be voidable unless there are two other competent, subscribing witnesses to the will. Notwithstanding this section, a provision in the will for payment of a debt shall not be void or disqualify the creditor as a witness to the will.~~

§ 11. HOW REVOKED

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

(a)(1) A will is revoked:

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

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

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

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

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

with the previous will, and each will is fully operative on the testator's death to the extent they are not inconsistent.

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

CHAPTER 3. PROBATE AND PROCEDURE FOR
CONSTRUCTION OF WILL

§ 101. WILL NOT EFFECTIVE UNTIL ALLOWED

~~A will shall not pass either real or personal estate unless it is proved and~~ To be effective, a will must be allowed in the probate division of the superior court Probate Division of the Superior Court, or by appeal in the superior or supreme court Civil Division of the Superior Court or the Supreme Court.

§ 102. ALLOWANCE CONCLUSIVE AS TO EXECUTION

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

§ 103. CUSTODIAN OF WILL TO DELIVER

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

§ 104. EXECUTOR TO PRESENT WILL AND ACCEPT OR REFUSE
TRUST

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

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

§ 105. PENALTY

~~Unless he or she gives a satisfactory excuse to the probate division of the superior court a person who neglects a duty required in sections 103 and 104~~

~~of this title shall forfeit \$10.00 for each month he or she so neglects after the 30 days mentioned therein, to be recovered with costs in an action on this statute by any person having an interest in the will. [Repealed.]~~

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

~~If, after the death of the testator, a person having the custody of a will neglects without reasonable cause to deliver the same to a probate division of the superior court where venue lies, after order by the court and failure to deliver it, the court may issue a warrant committing the person to the custody of the commissioner of corrections until compliance is given.~~

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

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

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

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

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

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

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

~~If a person does not appear to contest the allowance of a will at the time~~

~~appointed, the court may allow the will on the testimony of only one of the subscribing witnesses, if the witness testifies that the will was executed as provided in chapter 1 of this title. If the allowance of the instrument is consented to in writing by the surviving spouse of the deceased, if any, and by all the heirs at law and next of kin, it may be allowed without testimony. A will may be self-proved as to its execution, by the sworn acknowledgment of the testator and the witnesses, made before a notary public or other official authorized to administer oaths in the place of execution in the following circumstances:~~

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

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

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

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

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

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

~~§ 110. ABSENCE OF WITNESS, PROOF~~

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

preclude the court, in its discretion, from requiring ~~in addition the~~ additional testimony ~~in person or by deposition~~ of any available subscribing witness or proof of ~~such~~ other pertinent facts and circumstances as that the court ~~may deem~~ deems necessary to admit the will to probate.

§ 111. NOTICE TO BENEFICIARIES

Within 30 days after the allowance of a will ~~containing a devise or a bequest,~~ the court shall mail, postage paid, a written notice thereof to each beneficiary, devisee, or legatee named in the will, and to any other person who contested the allowance.

§ 112. WILLS MADE OUT OF STATE

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

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

§ 113. WILLS ALLOWED OUT OF STATE—GENERALLY

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

§ 114. PETITION AND HEARING ON

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

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

(2) A a duly authenticated certificate of the legal custodian of ~~such~~ the original will that the same is a true copy and that ~~such~~ the will has become

operative by the laws of such the state or country ~~(, where probate is not required by the laws of such the state or country);~~ or

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

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

§ 115. ORDER FOR FILING

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

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

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

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

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

§ 118. REFERRAL TO SUPERIOR COURT

The Probate Division of the Superior Court may, on its own motion or upon motion of an interested person, refer a matter directly to the Civil Division of

the Superior Court for the purpose of conserving judicial resources. The Probate Division shall consult with and obtain the consent of the Civil Division before making a transfer pursuant to this section. A decision of the Civil Division whether to consent to a transfer under this section shall be final and shall not be appealed.

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

CHAPTER 42. DESCENT AND SURVIVORS' RIGHTS

Subchapter 1. General Provisions

§ 301. INTESTATE ESTATE

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

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

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

§ 302. DOWER AND CURTESY ABOLISHED

The estates of dower and curtesy are abolished.

§ 303. AFTERBORN HEIRS

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

Subchapter 2. Survivors' Rights and Allowances

§ 311. SHARE OF SURVIVING SPOUSE

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

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

(2) In the event there shall survive the decedent one or more

descendants of the decedent who are not descendants of the surviving spouse and are not excluded by the decedent's will from inheriting from the decedent, the surviving spouse shall receive one-half of the intestate estate.

§ 312. SURVIVING SPOUSE TO RECEIVE HOUSEHOLD GOODS

Upon motion, the surviving spouse of a decedent may receive out of the decedent's estate all furnishings and furniture in the decedent's household ~~when the decedent leaves no descendants who object~~. If any objection is made ~~by any of the descendants~~, the ~~probate division of the superior court~~ Probate Division of the Superior Court shall decide what, if any, of such personalty shall pass under this section. Goods and effects so assigned shall be in addition to the distributive share of the estate to which the surviving spouse is entitled under other provisions of law. In making a determination pursuant to this section, the ~~probate division of the superior court~~ Probate Division of the Superior Court may consider the length of the decedent's marriage, or civil union, the sentimental and monetary value of the property, and the source of the decedent's interest in the property.

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

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

§ 314. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE

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

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

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

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

(3) one-half of the intestate estate to the decedent's paternal grandparents equally if they both survive or to the surviving paternal grandparent and one-half of the intestate estate to the decedent's maternal grandparents equally if they both survive or to the surviving maternal

grandparent and if decedent is survived by a grandparent, or grandparents on only one side, to that grandparent or those grandparents;

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

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

§ 315. PARENT AND CHILD RELATIONSHIP

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

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

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

§ 317. ALLOWANCE TO CHILDREN BEFORE PAYMENT OF DEBTS

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

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

Before any partition or division of an estate among the heirs or beneficiaries by will, an allowance may be made for the necessary expenses of the support

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

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

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

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

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

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

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

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

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

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

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

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

(B) the date of service of the inventory.

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

§ 320. EFFECT OF DIVORCE ORDER

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

§ 321. CONVEYANCE TO DEFEAT SPOUSE'S INTEREST

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

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

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

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

§ 322. UNLAWFUL KILLING AFFECTING INHERITANCE

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

§ 323. WRITTEN WAIVER OF SPOUSAL RIGHTS

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

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

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

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

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

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

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

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

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

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

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

Subchapter 3. Descent, Omitted Issue, and Lapsed Legacies

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

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

§ 332. SHARE OF AFTERBORN CHILD

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

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

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

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

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

§ 335. BENEFICIARY DYING BEFORE TESTATOR; DESCENDANTS
TO TAKE

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

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

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

§ 337. REQUIREMENT THAT INDIVIDUAL SURVIVE DECEDENT FOR
120 HOURS

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

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

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

- (A) property not disposed of by the will;
- (B) residuary devises and bequests;

(C) general devises and bequests;

(D) specific devises and bequests.

(2) For purpose of abatement, a general devise or bequest charged on any specific property or fund is a specific devise or bequest to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise or bequest to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

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

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

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

CHAPTER 49. ESCHEATS

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

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

§ 683. ESCHEAT, PROCEEDS FROM SALE

If sufficient cause is not shown to the contrary, at the time appointed for that purpose, the court shall order and decree that the estate of the deceased in the ~~state~~ State, after the payment of just debts and charges, shall escheat. ~~Such~~ The court shall assign the personal estate to the town where ~~such~~ the deceased was last an inhabitant in the ~~state~~ State and the real estate to the towns in which the same is situated. If he or she were never an inhabitant of the ~~state~~ State, the whole estate shall be assigned to the towns where the same is located. ~~Such~~ The estate shall be for the use of schools in the towns

respectively and shall be managed and disposed of like other property appropriated to the use of the town school districts. Any property decreed to a town by virtue of this chapter or subsequently conveyed to an incorporated school district within ~~such~~ the town for the use of its schools may be sold without restriction, provided the proceeds shall be expended for the use of the schools of the town.

§ 684. RIGHTS OF HEIR SUBSEQUENTLY APPEARING

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

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

CHAPTER 61. EXECUTORS AND ADMINISTRATORS

Subchapter 1. General Provisions

§ 902. WILL ALLOWED; LETTERS TO EXECUTOR

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

§ 903. ADMINISTRATION; TO WHOM GRANTED

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

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

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

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

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

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

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

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

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

~~Upon appeal from If any person appeals to the Civil Division of the Superior Court an order appointing an administrator, if executor or administrator and the appeal is sustained, the superior court Civil Division of the Superior Court shall fill the vacancy by the immediate appointment of a~~

~~suitable person, and the judgment and appointment shall be certified to the probate court. When the administrator files the bond required, the probate court shall grant letters of administration appoint another suitable person as executor or administrator, and certify the judgment and subsequent appointment to the Probate Division of the Superior Court. The Probate Division shall set bond and, after the required bond is filed by the executor or administrator, grant letters of administration.~~

§ 906. BOND; AMOUNT, CONDITIONS

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

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

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

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

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

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

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

(a) ~~Instead of the bond required in section 906 of this title, an executor who is residuary legatee may give a bond in a sum and with those sureties as the probate division of the superior court directs, with the conditions only to pay the debts and legacies of the testator, and to return to the probate division of the superior court within 30 days a true and perfect inventory under oath according to the executor's best knowledge, information and belief of the goods, chattels, rights, credits and estate of the deceased which shall come to the executor's possession or knowledge, or to the possession of any other person for the executor.~~

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

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

§ 908. ~~BONDS OF JOINT ADMINISTRATORS AND EXECUTORS~~

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

§ 909. ~~EXECUTOR REFUSING TRUST, OR NOT GIVING BOND~~

~~A person named as an an executor in a will who refuses to accept the trust appointment or neglects for 20 days to give a bond for 20 days after the probate of such will shall not intermeddle or act as executor. In case of such refusal to accept or neglect to give a bond, the probate division of the superior court If the person refuses to accept or neglects to give a bond, the Probate Division of the Superior Court may grant letters testamentary to the other executors of administration to any other named executor who are is capable~~

~~and willing to accept the trust the appointment and gives bond. If the other executors will not give a bond, administration, with the will annexed, shall be granted to the person who would have been entitled thereto had the testator died intestate named executors fail to accept the appointment or give a bond, the court shall grant letters of administration with the will annexed to one or more suitable persons who would have qualified to be appointed as administrator had the testator died intestate.~~

§ 910. WHEN EXECUTOR IS A MINOR

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

§ 911. EXECUTOR OF EXECUTOR NOT TO ADMINISTER FIRST ESTATE

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

§ 912. MARRIED WOMAN

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

§ 913. DEATH OR REMOVAL OF EXECUTOR OR ADMINISTRATOR

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

§ 914. POWER OF NEW ADMINISTRATOR

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

§ 915. APPOINTMENT OF ADMINISTRATOR TO ACT WITH SURVIVOR

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

§ 916. POWERS OF ADMINISTRATOR APPOINTED TO ACT WITH SURVIVOR

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

§ 917. POWER OF REGULATION

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

secure proper performance of duty. It may exercise the powers of contempt, tax costs including surcharge, order a party to pay to other parties the amount of reasonable expenses, including reasonable attorney's fees, or losses incurred because of an act or omission, and remove or suspend a fiduciary.

§ 917a. TERMINATION OF APPOINTMENT

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

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

(1) upon death; ~~or~~

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

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

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

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

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

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

When a person is absent and unheard from for five years or when a certificate of presumed death of a person has been issued under 18 V.S.A. § 5219, that person's estate shall be subject to administration by the ~~probate division of the superior court~~ Probate Division of the Superior Court. If a will exists, the will shall be presented to the court and may be allowed and the estate closed thereunder. If no will is found, the court having jurisdiction of

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

§ 920. LIABILITY OF EXECUTOR; RIGHTS ON RETURN

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

§ 921. PROPERTY OF PERSONS SERVING IN ARMED FORCE – ABSENT PERSONS, CONSERVATOR

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

the foregoing facts, showing the necessity of providing for the care of property, and may be brought by any person who would have an interest in the property if the absentee were deceased, or on the court's own motion. The court shall schedule a hearing and notice shall be given as provided by the ~~rules of probate procedure~~ Rules of Probate Procedure.

§ 922. POWERS OF CONSERVATOR; BOND

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

§ 923. TERMINATION OF CONSERVATORSHIP

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

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

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

§ 925. POWERS OF EXECUTOR OF DISCOVERED WILL

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

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

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

§ 927. EXECUTOR OR ADMINISTRATOR OF DECEASED PARTNER-ACCESS TO BOOKS

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

§ 928. PROBATE DIVISION OF THE SUPERIOR COURT MAY COMPEL COMPLIANCE

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

§ 929. BUILDINGS TO BE KEPT IN REPAIR

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

§ 930. ESTATE NOT WILLED

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

§ 931. LIMITATION ON CLAIMS OF CREDITORS

~~When a petition to open a decedent's estate is not filed in probate division of the superior court within 30 days of death, all~~ All claims against the decedent's estate which arose before the death of the decedent, including claims of the ~~state~~ State and any subdivision thereof, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the

legal representative of the estate, and the heirs and devisees of the decedent, unless presented within ~~three years~~ one year after the decedent's death. Nothing in this section affects or prevents any proceeding to enforce any mortgage, pledge, or other lien upon the property of the estate.

Subchapter 2. Special Administrators

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

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

§ 962. APPOINTMENT IN CASE OF DELAY

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

§ 963. POWERS

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

§ 964. LIABILITY FOR DEBTS

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

§ 965. BOND

Before entering upon the duties of his or her trust, ~~such a~~ special administrator shall give a bond as the court directs, conditioned that he or she will make and return a true inventory of the goods, chattels, rights, credits and effects of the deceased which come to his or her possession or knowledge, and that he or she will truly account for such as are received by him or her, when required by the ~~probate division of the superior court~~ Probate Division of the Superior Court, and will deliver the same to the person afterwards appointed executor or administrator or to a person authorized to receive the same.

§ 966. POWERS TO CEASE, WHEN

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

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

CHAPTER 63. INVENTORY, APPRAISAL, AND ACCOUNTS

§ 1051. INVENTORY

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

§ 1052. APPRAISERS

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

~~(b) If any property not included in the original inventory comes to the knowledge of an executor or administrator or if an executor or administrator learns that the value or description indicated in the original inventory for any item is erroneous or misleading, a supplementary inventory or appraisal shall be made showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisals or other data relied upon, if any, and file it with the court and serve copies of it as provided by the rules of probate procedure.~~

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

§ 1053. SUPPLEMENTAL INVENTORY

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

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

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

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

§ 1054. ARTICLES ASSETS NOT INVENTORIED

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

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

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

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

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

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

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

§ 1056. LIABILITY ON BOND FOR NEGLECT

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

§ 1057. FOR WHAT TO ACCOUNT

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

The accounting of the executor or administrator shall:

(1) be done on a cash basis;

(2) include the balance at the beginning of the period covered by the accounting, all receipts, all payments, and the balance at the end of the period covered by the accounting; and

(3) be prepared on forms provided by the court, or on any spreadsheet or generally accepted software format accepted by the court that provides the required information.

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

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

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

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

§ 1060. ACCOUNTABLE FOR PROCEEDS OF REALTY

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

§ 1061. WHEN NOT ACCOUNTABLE FOR DEBTS DUE

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

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

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

§ 1063. ACCOUNTABLE FOR LOSSES BY NEGLIGENCE

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

§ 1064. COSTS TO BE ALLOWED

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

§ 1065. FEES AND EXPENSES

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

§ 1066. VERIFICATION; RIGHT OF HEIR TO BE EXAMINED

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

§ 1067. NOTICE OF ACCOUNTING

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

§ 1068. SURETY MAY INTERVENE AND APPEAL

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

§ 1069. WAIVER OF FINAL ACCOUNTING

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

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

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

(3) a schedule of proposed distribution;

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

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

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

§ 1203. LIMITATIONS ON PRESENTATION OF CLAIMS

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

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

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

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

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

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

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

(c) Nothing in this section affects or prevents:

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

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

(3) the enforcement of any tax liability.

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

CHAPTER 71. ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS

Subchapter 1. General Provisions

§ 1401. EXECUTOR OR ADMINISTRATOR MAY SUE AND DEFEND

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

§ 1402. SUM RECOVERED PAID TO PERSON ENTITLED THERETO

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

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

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

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

§ 1411. DISPUTED CLAIM MAY BE REFERRED

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

§ 1412. CLAIM BETWEEN EXECUTOR AND ESTATE

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

§ 1413. DEBT AS PERSONALTY; REPRESENTATIVE MAY
FORECLOSE MORTGAGE

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

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

~~The executor or administrator shall hold the equity of redemption in mortgaged premises in trust for the creditors or other persons entitled to the same and on the redemption of such mortgaged premises and receipt of the money paid therefor, he shall release and discharge the same. [Repealed.]~~

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

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

§ 1416. ESTATE NOT SUED WHEN MASTERS APPOINTED;
EXCEPTIONS

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

§ 1417. PROSECUTION OF ACTION

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

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

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

Subchapter 2. Survival of Causes

§ 1451. WHAT ACTIONS SURVIVE

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

§ 1452. WHEN ACTIONS FOR PERSONAL INJURY SURVIVE

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

§ 1453. SURVIVAL OF CAUSES OF ACTION

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

§ 1454. TRESPASS; DAMAGES

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

§ 1455. HEIR MAY NOT SUE UNTIL SHARE ASSIGNED

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

Subchapter 3. Wrongful Death

§ 1491. RIGHT OF ACTION WHERE DEATH RESULTS FROM
WRONGFUL ACT

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

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

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

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

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

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

(2) In case the decedent leaves neither spouse nor children, but leaves a

mother and leaves a father who has abandoned the decedent or has left the maintenance and support of the decedent to the mother, the damages or recovery shall be for the sole benefit of ~~such~~ the mother;

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

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

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

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

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

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

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

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

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

~~If an executor or administrator, heir, legatee, creditor or other person interested in the estate of a deceased person files a motion in the probate division of the superior court alleging that a person is suspected of having concealed, embezzled or conveyed away any of the money, goods or chattels~~

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

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

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

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

~~On motion of an executor or administrator, the court may cite a person who is entrusted by an executor or administrator with any part of the estate of the deceased person to appear before it, and may require the person to render a full account, on oath, of the money, goods, chattels, bonds, accounts or other papers belonging to the estate which have come into the person's possession, in trust for the executor or administrator, and of any proceedings thereon. If the person so cited refuses to appear and render an account, the court may proceed as provided in section 1551 of this title. On motion of an executor or administrator, the court may order a person who is entrusted by an executor or administrator with any part of the estate of the deceased person to appear under oath and render a full accounting of the property. If the person so ordered refuses to appear and render an account, the person may be subject to proceedings for civil contempt under 12 V.S.A. § 122.~~

§ 1553. FORFEITURE BY PERSON EMBEZZLING BEFORE LETTERS
ISSUED

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

§ 1554. RECOVERY OF ESTATE FRAUDULENTLY CONVEYED BY
DECEASED

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

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

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

- (1) there are insufficient assets to pay the debts of the deceased;
- (2) the deceased conveyed property or a right or interest therein:
 - (A) with the intent to defraud creditors;
 - (B) to avoid a debt or duty; or

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

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

§ 1555. SALE, HOW CONDUCTED

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

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

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

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

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

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

§ 1558. CREDITOR MAY ACT

~~When there is a deficiency of assets in the hands of an executor or administrator, and when the deceased person made, in his or her lifetime, such fraudulent conveyance of his or her real estate or of a right or interest therein, by license of the probate division of the superior court, any creditor of the estate may commence and prosecute to final judgment an action, for the recovery of the same in the name of the executor or administrator. Such~~

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

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

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

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

§ 1559. CREDITOR'S LIEN

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

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

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

Subchapter 1. General Provisions

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

~~On the motion of the executor or administrator, the probate division of the superior court~~ The Probate Division of the Superior Court may order the ~~personal estate, sale of all or part of it, to be sold~~ the personal or real estate of the estate when it appears necessary or beneficial for the purpose of paying debts, legacies or expenses of administration or for the preservation of the property estate.

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

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

§ 1613. WHEN WHOLE OF REAL ESTATE MAY BE SOLD

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

§ 1614. PERSONS INTERESTED PERSONS MAY PREVENT SALE; BOND

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

§ 1615. CLAIMS MAY BE SOLD OR ASSIGNED

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

§ 1616. PURCHASER OF CLAIMS MAY SUE

~~Actions upon claims sold by an executor or administrator as provided in section 1615 of this title shall be brought in the name of the purchaser. The~~

~~fact of the sale and purchase by the plaintiff shall be set forth in the complaint, and the defendant may avail himself of any defense of which he could have availed himself in an action upon such claim by the deceased. [Repealed.]~~

Subchapter 2. Licenses To Sell—Procedure

§ 1651. LICENSE TO SELL ESTATE; PROCEDURE

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

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

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

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

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

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

(6) If the ~~proof produced~~ evidence satisfies the court, ~~and if the regulations in the first four subdivisions of this section are complied with,~~ the court, ~~by decree,~~ may authorize the executor or administrator to sell that part of the estate deemed necessary or beneficial, either at public or private sale, ~~as will be most beneficial to all parties concerned,~~ and furnish the executor or administrator a ~~certificate or~~ copy of the license to sell or order of sale;.

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

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

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

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

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

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

§ 1652. DEED OF EXECUTOR OR ADMINISTRATOR

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

§ 1653. LICENSE TO SELL; WHEN BENEFICIAL

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

~~writing of the surviving spouse of the deceased or the legal representative of the surviving spouse, the license may include authority to sell the interest of the surviving spouse, as the case may be, in such real estate.~~

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

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

§ 1654. DISPOSAL OF PROCEEDS OF BENEFICIAL SALE

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

§ 1655. ~~REALTY TAKEN ON EXECUTION MAY BE SOLD~~

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

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

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

When the sale of real or personal estate is not necessary to pay the debts against of the deceased person in this state State, and it appears to the ~~probate division of the superior court~~, Probate Division of the Superior Court by the records and proceedings of a probate court in another state that the estate of the deceased in such the other state is not sufficient to pay the debts and legacies in that state, the ~~probate division of the superior court~~ Probate Division of the Superior Court in this state State may license the executor or administrator to sell the real or personal estate for the payment of debts and legacies in the other state, in the same manner as provided for the payment of debts and legacies in this state State.

§ 1657. ~~REALTY REAL ESTATE SOLD TO PAY LEGACY~~

When the personal property of the estate is insufficient to satisfy a legacy is

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

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

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

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

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

(b) The Probate Division of the Superior Court shall not grant a license to convey the real estate of a deceased person under contract if it appears to the court after hearing that the assets in the hands of the executor or administrator will be reduced by the conveyance in an amount that prevents a creditor from receiving the whole debt and the value of the real estate to be sold is materially greater than the contract price.

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

~~A probate division of the superior court shall not grant such license to deed the lands of a deceased person until notice has been given if it appears to the court upon a hearing that the assets in the hands of the executor or~~

~~administrator will thereby be so reduced as to prevent a creditor from receiving his or her whole debt, or diminish his or her dividend. [Repealed.]~~

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

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

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

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

§ 1663. MANNER OF SALE OF ENCUMBERED PROPERTY; DEED

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

§ 1664. ENCUMBERED PROPERTY; DISPOSITION OF SURPLUS

~~After payment of the debts secured, the surplus of such sale shall be administered by the executor or administrator as such property would be if it were not held as security. A certificate of such sale, filed by the executor or~~

~~administrator in the office of the clerk where by law a deed of such property is required to be recorded, shall operate as a discharge of such mortgage or lien. [Repealed.]~~

§ 1665. EXCEPTION; APPLICATION OF LAW

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

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

CHAPTER 77. DECREES OF DISTRIBUTION OR PARTITION OF
ESTATES

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

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

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

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

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

(b) In its ~~order~~ orders of distribution, the court shall name the persons and proportions or parts to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator or any other person having ~~the same in his possession.~~ ~~The court may decline to~~

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

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

§ 1722. PARTIES INTERESTED MAY HAVE ORDER ON GIVING BOND

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

§ 1723. ADVANCEMENT; HOW ASSERTED; WHAT CONSTITUTES

An interested party may assert a claim that the decedent made a transfer during life that was an advancement. The party making the claim shall have the burden of proving it. Real or personal estate given by a decedent during

~~the intestate in his decedent's lifetime to his or her child or other lineal descendant shall be reckoned toward the share of such heir the decedent's estate otherwise allocable to the person to whom the lifetime gift was made as an advancement, and for that purpose shall be considered a part of the estate, if any of the intestate. Such estate shall be deemed to be given in advancement only when, following apply:~~

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

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

§ 1724. ADVANCEMENT RECKONED TOWARD HEIR'S SHARE

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

§ 1725. APPLICATION OF ADVANCEMENT

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

~~(b) If the an advancement is in personal estate, the same shall be set off, first, toward against the heir's or other beneficiary's share in the personal estate, and then toward his or her the excess value, if any, shall be offset against the heir's or other beneficiary's share in the real property of the estate.~~

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

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

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

§ 1727. VALUATION OF ADVANCEMENT

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

§ 1728. COURT TO DETERMINE QUESTIONS OF ADVANCEMENT

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

§ 1729. PARTITION

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

§ 1730. PARTITION OF REAL ESTATE IN DIFFERENT COUNTIES

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

§ 1731. PARTITION UNNECESSARY WHEN PARTIES AGREE

When the ~~probate division of the superior court~~ Probate Division of the

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

§ 1734. PARTITION WHEN OWNERSHIP HAS CHANGED

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

§ 1735. SHARES, HOW SET OUT IN PARTITION

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

§ 1736. SEVERANCE FROM ESTATE OF THIRD PERSONS

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

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

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

§ 1739. FINAL DECREE OF DISTRIBUTION OR PARTITION; BOND

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

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

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

§ 1741. PARTIES TO PAY COST OF PARTITION, WHEN

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

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

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

§ 1743. PARTIAL DISTRIBUTIONS

~~Probate divisions of the superior courts are hereby authorized to issue orders directing payment of devises, legacies, bequests and partial payment of distributions or shares upon motion of the executor or an administrator for this purpose. An order shall issue when the court is satisfied that sufficient assets have been reserved by the executor or administrator in order to satisfy the several expenses mentioned in section 1721 of this title along with the anticipated administrative expenses and taxes that may be charged to the estate. In the event that the assets remaining in the hands of the executor or administrator thereafter are insufficient to satisfy the ultimate expenses and charges against the estate, those persons having received these distributions shall be liable to repay the executor or administrator on a pro rata basis. However, if the executor or administrator cannot collect against a person, the amount not recoverable shall be equitably apportioned by the court among the other persons subject to apportionment. [Repealed.]~~

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

CHAPTER 79. CONVEYANCE WHEN RECORD HOLDER DECEASED

§ 1801. TITLE IN DECEASED PERSONS; PETITION TO PROBATE
DIVISION OF THE SUPERIOR COURT

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

§ 1802. DETERMINATION BY COURT OF PERSONS ENTITLED TO
ESTATE

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

§ 1803. PETITION

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

§ 1804. APPEARANCE; APPEAL

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

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

CHAPTER 80. WAIVER OF ADMINISTRATION

§ 1851. APPLICABILITY

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

§ 1852. MOTION FOR WAIVER OF ADMINISTRATION; ORDER

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

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

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

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

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

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

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

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

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

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

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

§ 1853. ADMINISTRATION

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

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

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

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

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

§ 1854. DISCHARGE OF EXECUTOR OR ADMINISTRATOR

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

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

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

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

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

§ 2102. FOREIGN COMPANY; CERTIFICATE OF AUTHORITY; FEE

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

certificate so issued shall be paid to the Commissioner of Financial Regulation for the benefit of the State by the company requesting its issuance.

§ 2103. RECORD; EVIDENCE

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

§ 2104. MOTION, WHEN BOND IS INSUFFICIENT

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

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

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

§ 2106. NEW BOND

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

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

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

§ 2108. HOW PROSECUTED

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

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

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

(3) The applicant shall cause his or her name to be indorsed as prosecutor upon the writ and shall file the copy of the bond and the certificate furnished by the ~~probate division of the superior court~~ Probate Division of the Superior Court, with the writ, in the ~~superior court~~ Superior Court to which and when it is returnable; and ~~such~~ the applicant shall be deemed to be the prosecutor of ~~such~~ the bond;

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

(5) The ~~superior court~~ Superior Court to which the writ is returned shall

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

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

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

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

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

§ 2109. PERSON INJURED; ACTION ON BOND OR JUDGMENT

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

§ 2110. CLAIMS FOR BREACH MAY BE PROSECUTED BY REPRESENTATIVES

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

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

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

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

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

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

§ 2202. ~~MOTION; DECREE~~

~~The motion shall set forth a description of the property to be mortgaged, pledged or assigned, the amount of money necessary to be raised, the nature and amount of the obligation to be secured and the purpose for which the money or security is required. The decree of the probate division of the superior court shall fix the amount for which the mortgage, pledge or assignment may be given, the terms thereof and the rate of interest which may be paid thereon, and the court may order the whole or any part of the money secured by the mortgage to be paid from time to time out of the income of the property mortgaged. [Repealed.]~~

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

~~Upon (a) On motion of and with the written consent of the interested parties, or after hearing, the Probate Division of the Superior Court may~~

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

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

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

CHAPTER 105. TRUSTS AND TRUSTEES

§ 2303. FILED; HOW SUED

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

§ 2305. TRUSTEES OF ABSENT PERSONS—DEFINITION

~~For the purposes of sections 2306-2310 of this title, an absent person is defined as one having a domicile, property, or evidences of property in this State who suddenly or mysteriously disappears under such circumstances as to satisfy the Probate Division of the Superior Court of the proper district that there is reasonable ground to believe that he or she is lost, dead, or lacks capacity due to a mental condition or psychiatric disability, or is one who, having a domicile, property, or evidences of property in this State, remains beyond the sea or absents himself or herself in this State or elsewhere and is unheard of for three years. [Repealed.]~~

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

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

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

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

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

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

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

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

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

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

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

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

~~§ 2309. CLAIMS AGAINST ESTATE OF ABSENT PERSON; PROCEDURE~~

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

§ 2310. ~~APPEARANCE OF ABSENT PERSON; SURRENDER OF PROPERTY~~

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

§ 2318. ~~OTHER TRUSTEES, WHEN~~

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

§ 2327. ~~FURTHER POWERS OF COURT; EQUITY POWERS~~

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

§ 2329. ~~TESTAMENTARY ADDITIONS TO TRUSTS; POUR OVER TRUSTS~~

~~A devise or bequest, the validity of which is determinable by the law of this state State, may be made by a will to the trustee or trustees of a trust established or to be established by the testator or by the testator and some other person or persons or by some other person or persons (, including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts), if the trust is identified in the testator's will and its terms are set forth in a written instrument (, other than a will), executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (, regardless of the existence, size, or character of the corpus of the trust). The devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised or bequeathed: (a) shall not be deemed to be held under a testamentary trust of the testator, but shall become a part of the trust to which it is given; and (b) shall be administered and disposed of in accordance with the provisions of the instrument or a will of a person other than the testator setting forth the terms of the trust, including any amendments~~

thereto made before the death of the testator ~~(, regardless of whether made before or after the execution of the testator's will),~~ and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator shall cause the devise or bequest to lapse. However, when the testator's will specifically sets forth the terms of the trust, whether or not ~~such~~ the trust is subsequently amended, revoked, or terminated, the property devised or bequeathed under the will shall be deemed to be held under a testamentary trust of the testator and shall be administered and disposed of in accordance with the provision of the testator's will.

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

CHAPTER 107. CONVEYANCES AND DEVISES TO
UNCERTAIN BENEFICIARIES

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

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

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

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

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

§ 2403. TRUSTEES, WHEN APPOINTED

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

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

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

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

CHAPTER 109. PHILANTHROPIC TRUSTS

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

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

~~§ 2502. PENALTY~~

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

~~§ 2503. EXEMPTION~~

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

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

§ 2659. FINANCIAL GUARDIANSHIP; MINORS

* * *

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

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

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

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

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

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

(A) special needs trusts;

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

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

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

Sec. 19. EFFECTIVE DATE

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

House Proposal of Amendment

S. 101

An act relating to the conduct of forestry operations.

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

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

CHAPTER 196. VERMONT RIGHT TO CONDUCT FORESTRY
OPERATIONS

§ 5755. FINDINGS

The General Assembly finds that:

(1) Private and public forestlands:

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

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

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

(D) mitigate the effects of climate change; and

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5756. DEFINITIONS

As used in this chapter:

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

(2) “Conventional forestry practices” means:

(A) forestry operations;

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

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

(D) enrollment in governmental forestry or conservation programs;

(E) adoption of new forestry technology;

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

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

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

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

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

(4) “Forestry operation” means activities related to the management of forests, including timber harvests; removal, storage, or stockpiling of

vegetation or timber; pruning; planting; lumber processing with portable sawmills; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. “Forestry operation” includes one or both of the following:

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

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

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

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

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

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

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

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

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

§ 5757. FORESTRY OPERATIONS; PROTECTION FROM NUISANCE LAWSUITS

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

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

(2) other applicable law.

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

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

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

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

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

NOTICE CALENDAR

Second Reading

Favorable with Proposal of Amendment

H. 624.

An act relating to the protection of information in the statewide voter checklist.

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

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

Sec. 1. 17 V.S.A. § 2154 is amended to read:

§ 2154. STATEWIDE VOTER CHECKLIST

(a) The Secretary of State shall ~~establish~~ maintain a uniform and nondiscriminatory, statewide voter ~~registration~~ checklist. This checklist shall serve as the official voter registration list for all elections in the State. In ~~establishing~~ maintaining the statewide voter checklist, the Secretary shall:

(1) limit ~~the~~ a town clerk to adding, modifying, or deleting applicant and voter information on the portion of the checklist for that clerk's municipality;

(2) limit access to the statewide voter checklist for a local elections official to ~~verifying~~ if whether the applicant is registered in another municipality in the State by a search for the individual voter;

(3) notify a local elections official when a voter registered in that official's district registers in another voting district so that the voter may be removed from that ~~district's~~ official's district checklist;

(4) provide adequate security to prevent unauthorized access to the checklist; and

(5) ensure the compatibility and comparability of information on the

checklist with information contained in the Department of Motor Vehicles' computer systems.

(b)(1) A registered voter's month and day of birth, driver's license or nondriver identification number, telephone number, e-mail address, and the last four digits of his or her Social Security number shall be kept confidential and are exempt from public ~~copying and~~ inspection and copying under the Public Records Act.

(2) A public agency as defined in 1 V.S.A. § 317 and any officer, employee, agent, or independent contractor of a public agency shall not knowingly disclose any information pertaining to a registered voter that is maintained in the statewide voter checklist or in a municipality's portion of the statewide voter checklist to any foreign government or to a federal agency or commission or to a person acting on behalf of a foreign government or of such a federal entity for the purpose of:

(A) registration of a voter based on his or her information maintained in the checklist;

(B) publicly disclosing a voter's information maintained in the checklist; or

(C) comparing a voter's information maintained in the checklist to personally identifying information contained in other federal or state databases.

(c)(1) Any person wishing to obtain a copy of all of the statewide voter checklist must swear or affirm, under penalty of perjury pursuant to 13 V.S.A. chapter 65, that the person will not:

(A) use the checklist for commercial purposes; or

(B) knowingly disclose any voter information maintained in the checklist to any foreign government or to a federal agency or commission or to a person acting on behalf of a foreign government or of such a federal entity in circumvention of the prohibition set forth in subdivision (b)(2) of this section.

(2) The affirmation shall be filed with the Secretary of State.

(d) An elections official shall not access the portion of the statewide voter checklist that is exempt from public inspection pursuant to 1 V.S.A. § 317(c)(31), except for elections purposes.

Sec. 2. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

* * *

(c) The following public records are exempt from public inspection and copying:

* * *

(31) Records of a registered voter's month and day of birth, driver's license or nondriver identification number, telephone number, e-mail address, and the last four digits of his or her Social Security number contained in ~~an~~ a voter registration application to the statewide voter checklist or the statewide voter checklist established under 17 V.S.A. § 2154 or the failure to register to vote under 17 V.S.A. § 2145a.

* * *

Sec. 3. 17 V.S.A. § 2491 is amended to read:

§ 2491. POLITICAL SUBDIVISION; VOTE TABULATORS

(a) Except as provided in subsection (b) of this section, a board of civil authority may, at a meeting held not less than 60 days prior to an election and warned pursuant to 24 V.S.A. § 801, vote to require the political subdivision for which it is elected to use vote tabulators for the registering and counting of votes in subsequent local, primary, or general elections, or any combination of those.

(b) A town with 1,000 or more registered voters as of December 31 in an even-numbered year shall use vote tabulators for the registering and counting of votes in subsequent general elections.

(c)(1) The Office of the Secretary of State shall pay the following costs associated with this section by using federal Help America Vote Act funds, as available:

(A) full purchase and warranty cost of vote tabulators, ballot boxes, and two memory cards for each tabulator;

(B) annual maintenance costs of vote tabulators for each town; and

(C) the first \$500.00 of the first pair of a vote tabulator's memory cards' configuration costs for each primary and general election.

(2) A town shall pay the remainder of any cost not covered by subdivision (1) of this subsection.

(d)(1) Notwithstanding a town's use of vote tabulators under this section or any other provision of law, the Secretary of State may suspend the use of vote

tabulators and require the hand count of votes in an election if the Secretary determines there are reasonable grounds to believe that the vote tabulators to be used in that election may have been rendered inoperable.

(2) Upon such a determination, the Secretary shall alert the clerks of the affected municipalities of his or her decision as soon as practicable.

Sec. 4. 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 the protection of information in the statewide voter checklist and to the use of vote tabulators”

(Committee vote: 4-1-0)

(For House amendments, see House Journal for February 15, 2018, page 363)

H. 663.

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

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

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

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.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 8, 2018, page 334)

H. 684.

An act relating to professions and occupations regulated by the Office of Professional Regulation.

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

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

* * * Office of Professional Regulation * * *

Sec. 1. 3 V.S.A. § 123 is amended to read:

§ 123. DUTIES OF OFFICE

(a) The Office shall provide administrative, secretarial, financial, investigatory, inspection, and legal services to the boards. The services provided by the Office shall include:

* * *

(9) Standardizing, to the extent feasible and with the advice of the boards, all applications, licenses, and other related forms and procedures, and adopting uniform procedural rules governing the investigatory and disciplinary process for all boards set forth in section 122 of this chapter.

* * *

(11) Assisting the boards in adopting, amending, and repealing developing rules consistent with the principles set forth in 26 V.S.A. chapter 57. Notwithstanding any provision of law to the contrary, the Secretary of State shall serve as the adopting authority for those rules.

* * *

(g) The Office of Professional Regulation shall create a process establish uniform procedures applicable to all of the professions and boards set forth in section 122 of this chapter, providing for:

(1) accepting appropriate recognition of education, training, or service completed by a member of the U.S. Armed Forces toward the requirements of professional licensure or certification; and

(2) creating a process for educational institutions under the supervision of a licensing board to award educational credits to a member of the U.S. Armed Forces for courses taken as part of the member's military training or service that meet the standards of the American Council on Education; and

~~(3) expediting the~~ expedited issuance of a professional license to a person who is licensed in good standing in another regulatory jurisdiction and:

(A) ~~who is certified or licensed in another state;~~

~~(B)~~ whose spouse is a member of the U.S. Armed Forces and who has been subject to a military transfer to Vermont; and

~~(C)~~(B) who left employment to accompany his or her spouse to Vermont.

* * *

Sec. 2. 3 V.S.A. § 125 is amended to read:

§ 125. FEES

* * *

(b) Unless otherwise provided by law, the following fees shall apply to all professions regulated by the Director in consultation with advisor appointees under Title 26:

(1) Application for registration, \$75.00.

(2) Application for licensure or certification, \$100.00, except application for:

(A) Barbering or cosmetology schools and shops, \$300.00.

(B) Funeral directors, embalmers, crematory personnel, removal personnel, funeral establishments, crematory establishments, and limited services establishments, \$70.00.

(3) Optician trainee registration, \$50.00.

(4) Biennial renewal, \$200.00, except biennial renewal for:

(A) ~~Biennial renewal for~~ Independent clinical social workers and master's social workers, \$150.00.

(B) ~~Biennial renewal for occupational~~ Occupational therapists and assistants, \$150.00.

(C) ~~Biennial renewal for physical~~ Physical therapists and assistants, \$100.00.

(D) ~~Biennial renewal for optician~~ Optician trainees, \$100.00.

(E) Barbers, cosmetologists, nail technicians, and estheticians, \$130.00.

(F) Schools of barbering or cosmetology, \$300.00.

(G) Funeral directors and embalmers, \$280.00.

(H) Crematory personnel and removal personnel, \$100.00.

(I) Funeral establishments, crematory establishments, and limited services establishments, \$640.00.

(5) Limited temporary license or work permit, \$50.00.

* * *

Sec. 3. 3 V.S.A. § 127 is amended to read:

§ 127. UNAUTHORIZED PRACTICE

(a) When the Office receives a complaint of unauthorized practice, the Director shall refer the complaint to ~~the appropriate board for investigation~~ Office investigators and prosecutors.

(b)(1) A person practicing a regulated profession without authority or an employer permitting such practice may, upon the complaint of the Attorney General or a State's Attorney or an attorney assigned by the Office of Professional Regulation, be enjoined ~~there from~~ therefrom by the Superior Court where the violation occurred or the Washington County Superior Court and may be assessed a civil penalty of not more than \$1,000.00.

(2)(A) The Attorney General or an attorney assigned by the Office of Professional Regulation may elect to bring an action seeking only a civil penalty of not more than \$1,000.00 for practicing or permitting the practice of a regulated profession without authority before the board having regulatory authority over the profession or before an administrative law officer.

(B) Hearings shall be conducted in the same manner as disciplinary hearings.

(3)(A) A civil penalty imposed by a board or administrative law officer under this subsection (b) shall be deposited in the Professional Regulatory Fee Fund established in section 124 of this ~~title~~ chapter for the purpose of providing education and training for board members and advisor appointees.

(B) The Director shall detail in the annual report receipts and expenses from these civil penalties.

* * *

(d)(1) A person whose license has expired for not more than one biennial period may reinstate the license by meeting renewal requirements for the profession, paying the profession's renewal fee, and paying the following nondisciplinary reinstatement penalty:

(A) if reinstatement occurs within 30 days after the expiration date, \$100.00; or

(B) if reinstatement occurs more than 30 days after the expiration date, an amount equal to the renewal fee increased by \$40.00 for every additional month or fraction of a month, provided the total penalty shall not exceed \$1,500.00.

(2) Fees assessed under this subsection shall be deposited into the Regulatory Fee Fund and credited to the appropriate fund for the profession of the reinstating licensee.

(3) A licensee seeking reinstatement may submit a petition for relief from the reinstatement penalty, which a board may grant only upon a finding of exceptional circumstances or extreme hardship to the licensee; provided, however, that fees under this subsection shall not be assessed for any period during which a licensee was a member of the U.S. Armed Forces on active duty.

* * *

Sec. 4. 3 V.S.A. § 128 is amended to read:

§ 128. DISCIPLINARY ACTION TO BE REPORTED TO THE OFFICE

* * *

(c) Information provided to the Office under this section shall be confidential unless the ~~board~~ Office decides to treat the report as a complaint, in which case the provisions of section 131 of this title shall apply.

* * *

Sec. 5. 3 V.S.A. § 129 is amended to read:

§ 129. POWERS OF BOARDS; DISCIPLINE PROCESS

(a) In addition to any other provisions of law, a board may exercise the following powers:

(1) ~~Adopt procedural~~ Consistent with other law and State policy, develop administrative rules governing the investigatory and disciplinary process establishing evidence-based standards of practice appropriate to secure and promote the public health, safety, and welfare; open and fair competition within the marketplace for professional services; interstate mobility of professionals; and public confidence in the integrity of professional services.

* * *

Sec. 6. 3 V.S.A. § 129a is amended to read:

§ 129a. UNPROFESSIONAL CONDUCT

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items, or any combination of items, whether ~~or not~~ the conduct at issue was committed within or outside the State, shall constitute unprofessional conduct:

* * *

(25) For providers of clinical care to patients, failing to have in place a plan for responsible disposition of patient health records in the event the licensee should become incapacitated or unexpectedly discontinue practice.

* * *

Sec. 7. 3 V.S.A. § 134 is added to read:

§ 134. LICENSE RENEWAL

(a) A license expires if not renewed biennially on a schedule assigned by the Office, or in the case of a provisional or temporary license, on the date assigned by the Office.

(b) Practice with an expired license is unlawful and exposes a practitioner to the penalties set forth in section 127 of this chapter.

Sec. 8. 3 V.S.A. § 135 is added to read:

§ 135. UNIFORM STANDARD FOR RENEWAL FOLLOWING
EXTENDED ABSENCE

(a) Notwithstanding any provision of law to the contrary, when an applicant seeks to renew an expired or lapsed license after fewer than five years of absence from practice, readiness to practice shall be inferred from completion of any continuing education that would have been required if the applicant had maintained continuous licensure or by any less burdensome showing set forth in administrative rules specific to the profession.

(b) When an applicant seeks to renew an expired or lapsed license after five or more years of absence from practice, the Director may, notwithstanding any provision of law to the contrary and as appropriate to ensure the continued competence of the applicant, determine that the applicant has either:

(1) demonstrated retention of required professional competencies and may obtain an unencumbered license; or

(2) not demonstrated retention of all required professional competencies and should be reexamined or required to reapply in like manner to a new applicant.

(c) The Director may consult with a relevant board or advisor appointees for guidance in assessing continued competence under this section.

Sec. 9. 3 V.S.A. § 136 is added to read:

§ 136. UNIFORM CONTINUING EDUCATION EVALUATION

If continuing education is required by law or rule, the Office shall apply uniform standards and processes that apply to all professions regulated by the Office for the assessment and approval or rejection of continuing education offerings, informed by profession-specific policies developed in consultation with relevant boards and advisor appointees.

Sec. 10. LICENSING FOR IMMIGRANTS SETTLING IN VERMONT;
REPORT

The Director of the Office of Professional Regulation, in consultation with the State Refugee Coordinator, shall examine means of reducing unnecessary barriers to professional licensure for qualified immigrants to Vermont from foreign countries. On or before January 15, 2019, the Director shall submit to the House and Senate Committees on Government Operations a report of his or her findings and any recommendations for legislative action.

* * * Pollution Abatement Facility Operators * * *

Sec. 11. 10 V.S.A. § 1263 is amended to read:

§ 1263. DISCHARGE PERMITS

* * *

(d) A discharge permit shall:

* * *

(2) Require proper operation and maintenance of any pollution abatement facility necessary in the treatment or processing of the waste by qualified personnel in accordance with standards established by the Secretary and the Director of the Office of Professional Regulation. The Secretary may require that a pollution abatement facility be operated by persons licensed under 26 V.S.A. chapter ~~97~~ 99 and may prescribe the class of license required. The Secretary may require a laboratory quality assurance sample program to ensure qualifications of laboratory analysts.

* * *

* * * Barbers and Cosmetologists * * *

Sec. 12. 26 V.S.A. chapter 6 is amended to read:

CHAPTER 6. BARBERS AND COSMETOLOGISTS

Subchapter 1. General Provisions

§ 271. DEFINITIONS

For the purposes of As used in this chapter:

(1) “Barbering” means engaging in the continuing performance, for compensation, of any of the following activities: cutting, shampooing, or styling hair; shaving the face, shaving around the vicinity of the ears and neckline, or trimming facial hair; facials, skin care, or scalp massages, and bleaching, coloring, straightening, ~~permanent waving or permanent-waving~~ hair, or similar work by any means, with hands or mechanical or electrical apparatus or appliances. Barbering also includes esthetics.

(2) ~~“Board” means the board of barbers and cosmetologists.~~

(3) “Cosmetology” means engaging in the continuing performance, for compensation, of any of the following activities:

(A) Work on the hair of any person, including dressing, curling, waving, cleansing, cutting, bleaching, coloring, or similar work by any means, with hands or mechanical or electrical apparatus or appliances.

(B) Esthetics.

(C) Manicuring.

(3) “Director” means the Director of the Office of Professional Regulation.

(4) ~~“Disciplinary action” or “disciplinary cases” includes any action taken by the board against a licensee, registrant, or applicant premised upon a finding of wrongdoing or unprofessional conduct by the licensee or applicant. It includes all sanctions of any kind, excluding obtaining injunctions, but including issuing warnings, other similar sanctions and ordering restitution.~~

(5) “Esthetics” means massaging, cleansing, stimulating, manipulating, beautifying, or otherwise working on the scalp, face, or neck, by using cosmetic preparations, antiseptics, tonics, lotions, or creams. “Esthetics” does not include the sale or application of cosmetics to customers in retail stores or customers’ homes.

(6) ~~“Financial interest” means being:~~

~~(A) a licensed barber;~~

~~(B) a licensed cosmetologist; or~~

~~(C) a person who has invested anything of value in a business that provides barbering or cosmetology services.~~

~~(7)~~(5) “Manicuring” or “nail technician practice” means the nonmedical treatment of a person’s fingernails or toenails or the skin in the vicinity of the nails, and includes the use of cosmetic preparations or appliances.

~~(8)~~(6) “School of barbering or cosmetology” means a facility or facilities regularly used to train or instruct persons in the practice of barbering or cosmetology.

~~(9)~~(7) “Shop” means a facility or facilities regularly used to offer or provide barbering or cosmetology.

§ 272. PROHIBITIONS; OFFENSES

(a) ~~No~~ A person shall not practice or attempt to practice barbering or cosmetology or use in connection with the person’s name any letters, words, title, or insignia indicating or implying that the person is a barber or cosmetologist unless the person is licensed in accordance with this chapter.

(b) ~~No~~ A person who owns or controls a shop or school of barbering or cosmetology shall not permit the practice of barbering or cosmetology unless the shop or school is registered in accordance with this chapter.

(c) A person who violates a provision of this section shall be subject to the penalties provided in 3 V.S.A. § 127.

§ 273. EXEMPTIONS

The provisions of this chapter regulating barbers and cosmetologists shall not:

(1) affect or prevent the practice of barbering or cosmetology by a student at a school recognized by the ~~board~~ Director;

* * *

(3) prohibit a licensee from providing barbering or cosmetology services outside a licensed shop so long as those services are limited to only:

(A) patients or residents within a hospital, nursing home, community care home, or any similar facility;

(B) persons who are homebound, disabled, or in a hospice or similar program, or to deceased persons in a funeral home;

(C) persons as part of a special ~~occasion~~ event ~~so long as those services are limited to hair styling and makeup and,~~ provided the sanitation standards expected of licensees in licensed shops are followed;

* * *

(5) affect or prevent the practice of barbering or cosmetology outside a registered shop or school by licensees in accordance with rules adopted by the ~~board~~ Director;

(6) affect or prevent the practice of barbering or cosmetology within the confines of a State correctional facility by a person incarcerated therein, who has completed training acceptable to the Commissioner of Corrections; or

(7) affect or prevent the practice of natural hair braiding or styling, provided such practice does not involve cutting; the application of chemicals, dyes, or heat; or other changes to the structure of hair.

§ 274. ~~PENALTY~~

~~A person who violates any provision of section 272 of this title shall be subject to the penalties provided in 3 V.S.A. § 127(e). [Repealed.]~~

Subchapter 2. Administration

§ 275. ~~CREATION OF BOARD~~

~~(a) A board of barbers and cosmetologists is created, consisting of five members. Members shall be appointed by the governor pursuant to 3 V.S.A. §§ 129b and 2004. Members shall be residents of this state.~~

~~(b) One member of the board shall be a member of the public who has no financial interest in barbering or cosmetology other than as a consumer or possible consumer of its services. He or she shall have no financial interest personally or through a spouse, parent, child, brother or sister.~~

~~(c) Two members of the board shall be licensed cosmetologists.~~

~~(d) One member of the board shall be a licensed barber.~~

~~(e) The remaining member shall be a person licensed under this chapter or a public member.~~

~~(f) A majority of the members of the board shall constitute a quorum for transacting business, and all action shall be taken upon a majority vote of the members present and voting. [Repealed.]~~

§ 276. ~~GENERAL POWERS AND DUTIES OF THE BOARD~~ DIRECTOR

(a) The ~~board~~ Director shall:

(1) ~~Adopt~~ adopt rules that:

(A) ~~Prescribe~~ prescribe sanitary and safety standards for shops, schools, and other facilities used for the practice of barbering and cosmetology;

(B) ~~Prescribe~~ prescribe safe and sanitary practices for the performance of activities related to the practice of barbering and cosmetology;

(C) ~~Establish~~ establish standards for apprenticeships, courses, and examinations to be completed by an applicant for licensure under this chapter;

(D) establish qualifications for licensure under this chapter as:

(i) a barber, provided mandated formal training shall be 750 hours;

(ii) a cosmetologist, provided mandated formal training shall be 1,000 hours;

(iii) an esthetician, provided mandated formal training shall be 500 hours; and

(iv) a nail technician, provided mandated formal training shall be 200 hours; and

(E)(i) establish criteria for apprenticeships that would enable a person seeking licensure under this chapter to train under an appropriately qualified Vermont licensee in order to attain licensure without mandated formal training; and

(ii) limit the duration of a required apprenticeship to not more than 150 percent of the duration of the corresponding formal training.

(b)(1) The ~~board~~ Director may inspect shops and schools and other places used for the practice of barbering and cosmetology.

(2) ~~No~~ A fee shall not be charged for initial inspections under this subsection; however, if the ~~board~~ Director determines that it is necessary to inspect the same premises in the same ownership more than once in any two-year period, the ~~board~~ Director shall charge a reinspection fee.

(3) The ~~board~~ Director may waive all or a part of the reinspection fee in accordance with criteria established by rule.

§ 276a. ADVISOR APPOINTEES

(a)(1) The Secretary of State shall appoint one barber, one cosmetologist, one esthetician, and one nail technician for five-year staggered terms to serve at the Secretary's pleasure as advisors in matters relating to barbering and cosmetology. At least one of the initial appointments shall be for less than a five-year term.

(2) An appointee shall have not less than three years' experience as a barber or cosmetologist immediately preceding appointment; shall be licensed as a barber or cosmetologist in Vermont; and shall be actively engaged in the practice of barbering or cosmetology in this State during incumbency.

(b) The Director shall seek the advice of the advisor appointees in carrying out the provisions of this chapter.

Subchapter 3. Licenses

§ 277. QUALIFICATIONS; BARBER

~~(a) A person shall be eligible for licensure as a barber if the person is at least 18 years of age, has a high school or general educational development diploma, and has satisfactorily completed an accredited barber school program; or has satisfactorily completed an apprenticeship of not less than 12 months and not more than 36 months consisting of a minimum of 2,000 hours and a maximum of 3,000 hours in a manner prescribed by the board in addition to areas of study, prescribed by the board, by rule, has a high school or general educational development diploma, and has passed the examination described in section 283 of this title.~~

~~(b) The board shall issue a limited barbering license, with an endorsement for cutting, shampooing, and styling hair and for mustache and beard trimming, to any person incarcerated in a state correctional facility who completes, while under the direct personal supervision of a barber licensed by the board, a course of training of not less than 10 hours in cutting, shampooing, and styling hair and trimming of mustache and beard. Such limited license shall be valid only within a state correctional facility. No fees shall be charged for a limited license issued under this subsection. [Repealed.]~~

§ 278. QUALIFICATIONS; COSMETOLOGIST

~~A person shall be eligible for licensure as a cosmetologist if the person is at least 18 years of age, has a high school or general educational development diploma, and has satisfactorily completed the following:~~

~~(1) a course of study of at least 1,500 hours at a school of cosmetology approved by an accrediting body recognized by the United States Department of Education or approved by the board under standards that the board has adopted by rule and passage of the examination described in section 283 of this title; or~~

~~(2) an apprenticeship of not less than 12 months and not more than 36 months consisting of not less than 2,000 hours and a maximum of 3,000 hours in a manner prescribed by the board in addition to courses, as prescribed by the board by rule, and passage of the examination described in section 283 of this title. [Repealed.]~~

§ 279. QUALIFICATIONS; ESTHETICIAN

~~A person shall be eligible for licensure as an esthetician if the person is at least 18 years of age, has a high school or general educational development diploma, and has satisfactorily completed the following:~~

~~(1) a course of study in esthetics of at least 600 hours at a school of~~

cosmetology approved by an accrediting body recognized by the United States Department of Education or approved by the board under standards that the board has adopted by rule; or

~~(2) an apprenticeship of not less than 12 months and not more than 18 months, consisting of a minimum of 800 hours and a maximum of 1,200 hours, as prescribed by the board by rule; and has passed the examination described in section 283 of this title. [Repealed.]~~

§ 280. QUALIFICATIONS; NAIL TECHNICIAN

A person shall be eligible for licensure as a nail technician if the person is at least 18 years of age, has a high school or general educational development diploma, and has satisfactorily completed:

~~(1) a course of study in manicuring of at least 400 hours at a school of cosmetology approved by an accrediting body recognized by the United States Department of Education or approved by the board under standards that the board has adopted by rule; or~~

~~(2) an apprenticeship of not less than six months and not more than 12 months consisting of a minimum of 600 hours and a maximum of 900 hours, as prescribed by the board by rule, and has passed the examination described in section 283 of this title. [Repealed.]~~

§ 280a. ELIGIBILITY FOR LICENSURE

An applicant for licensure as a barber, cosmetologist, esthetician, or nail technician shall meet the qualifications for licensure established by the Director under the provisions of subchapter 2 of this chapter.

§ 281. POSTSECONDARY SCHOOL OF BARBERING AND COSMETOLOGY; CERTIFICATE OF APPROVAL

(a) ~~No~~ A school of barbering or cosmetology shall not be granted a certificate of approval unless the school:

* * *

(4) Requires a school term of training:

~~(A) in the case of a school of barbering, of not less than 1,000 hours for a complete course that includes all or the majority of the practices of barbering and includes practical demonstrations and theoretical studies in sanitation, sterilization, the use of antiseptics, and electrical appliances, consistent with the practical and theoretical requirements applicable to barbering or any practice of barbering; and~~

~~(B) in the case of a school of cosmetology, requires a school term of training of not less than 1,500 hours for a complete course that includes all or~~

~~the majority of the practices of cosmetology, and includes practical demonstrations and theoretical studies in sanitation, sterilization, the use of antiseptics, cosmetics, and electrical appliances, consistent with the practical and theoretical requirements applicable to cosmetology or any practice of cosmetology consistent with formal training requirements established by rule, which shall include practical demonstrations and theoretical studies in sanitation, sterilization, the use of antiseptics, and the use of appliances, devices, treatments, and preparations relevant to the field of licensure.~~

(b) Regional vocational centers may offer courses of instruction in barbering or cosmetology without a certificate of approval from the ~~Board~~ Director, and State correctional facilities may offer courses of instruction in barbering without a certificate of approval from the ~~Board~~ Director; however, ~~credits~~ hours for licensing ~~will~~ shall only be given for courses that meet the ~~Board's~~ Director's standards for courses offered in postsecondary schools of barbering or cosmetology certified by the ~~Board~~ Director.

* * *

§ 282. SHOP; LICENSE

(a) ~~No~~ A shop shall not be granted a license unless the shop complies with the rules of the ~~board~~ Director and has a designated licensee responsible for overall cleanliness, sanitation, and safety of the shop.

(b) The practices of barbering and cosmetology shall be permitted only in shops licensed by the ~~board~~ Director, except as provided in sections 273 and 281 of this title chapter and the rules of the ~~board~~ Director.

§ 283. EXAMINATION

(a) An applicant who is otherwise eligible for licensure and has paid the required fees shall be examined.

(b)(1) The examination for a license shall include both practical demonstrations and written or oral tests in the area of practices for which a license is applied and other related studies or subjects as the ~~board~~ Director may determine necessary.

(2) The examination shall not be confined to any specific system or method and shall be consistent with a prescribed curriculum as provided by this chapter.

(c) The ~~board~~ Director may limit, by rule, the number of times a person may take an examination.

§ 284. ISSUANCE OF LICENSE

(a) The ~~board~~ Director shall issue a license to an applicant who has passed the examination as determined by the ~~board~~ Director, has paid the required fee, and has completed all the requirements for the particular license.

(b) The ~~board~~ Director shall issue a license to the person who owns or controls a shop or school of barbering or cosmetology who has paid the required fee and is in compliance with the rules of the ~~board~~ Director and the provisions of this chapter.

(c) The license shall be conspicuously displayed for the customer in the licensee's principal office, place of business, or place of employment.

§ 285. LICENSES FROM OTHER JURISDICTIONS

Without requiring an examination, the ~~board~~ Director shall issue an appropriate license to a person who is licensed or certified in good standing under the laws of another jurisdiction with requirements ~~that the board considers to be:~~

(1) substantially equal to those of this state ~~State; or~~

(2) materially less rigorous than those of this State, if the person has had 1,500 documented hours of practice in not less than one year.

§ 286. ~~RENEWAL AND REINSTATEMENT~~

~~The holder of a license issued by the board pursuant to this chapter may biennially renew the license upon payment of the renewal fee. A license that has not been renewed by the renewal date shall expire. Within three years of the date of expiration, the holder of the expired license may apply for reinstatement upon the payment of the renewal fee and a renewal penalty. If a license is not reinstated within three years of expiration, the applicant shall meet the requirements of section 284 or 285 of this title before the license may be reinstated. [Repealed.]~~

§ 287. ~~FEES~~

~~Applicants and persons regulated under this chapter shall pay the following fees:~~

~~(1) Application:~~

(A) Barber	\$110.00
(B) Cosmetologist	\$110.00
(C) Nail technician	\$110.00
(D) Shop	\$330.00

(F) School	\$330.00
(2) Biennial renewal:	
(A) Barber	\$130.00
(B) Cosmetologist	\$130.00
(C) Nail technician	\$130.00
(D) Esthetician	\$130.00
(E) Shop	\$225.00
(F) School	\$330.00
(3) Reinspection	\$100.00
[Repealed.]	

~~§ 288. UNPROFESSIONAL CONDUCT~~

~~The conduct listed in this section and in 3 V.S.A. § 129a constitutes unprofessional conduct when committed by a licensee. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action:~~

- ~~(1) Practicing or offering to practice beyond the scope permitted by law.~~
- ~~(2) Willfully materially misrepresenting the qualifications or experience of an applicant in the practice of the occupation, whether by commission or omission.~~
- ~~(3) Failing to adequately supervise employees who are engaged in any of the practices of barbering or cosmetology and nail technician practice.~~
- ~~(4) Harassing, intimidating, or abusing a client or customer.~~
- ~~(5) Performing treatments or providing services which a licensee is not qualified to perform or which are beyond the licensee's education, training, capabilities, experience, or scope of practice. [Repealed.]~~

~~§ 289. LICENSURE BY ENDORSEMENT~~

~~The board may issue a license to an individual who is currently licensed or certified in another jurisdiction in good standing, provided the individual has been in active practice for at least three years immediately preceding application or has 2,000 documented hours of practice in not less than one year. [Repealed.]~~

~~Sec. 13. DIRECTOR OF PROFESSIONAL REGULATION; BARBERS AND COSMETOLOGISTS; RULEMAKING~~

Prior to the effective date of Sec. 12 of this act, the Director of the Office of

Professional Regulation shall adopt rules in accordance with the amendments to 26 V.S.A. chapter 6 (barbers and cosmetologists) contained in that section.

* * * Dentistry * * *

Sec. 14. 26 V.S.A. chapter 12 is amended to read:

CHAPTER 12. DENTISTS, DENTAL THERAPISTS, DENTAL
HYGIENISTS, AND DENTAL ASSISTANTS

* * *

Subchapter 3. Dentists

§ 601. LICENSE BY EXAMINATION

To be eligible for licensure as a dentist, an applicant shall:

- (1) have attained the age of majority;
- (2) be a graduate of:

(A) a dental college accredited by the Commission on Dental Accreditation of the American Dental Association; or

(B) a program of foreign dental training and a postgraduate program accredited by the Commission on Dental Accreditation of the American Dental Association that is acceptable to the Board; and

(3) meet the certificate, examination, and training requirements established by the ~~board~~ Board by rule.

* * *

Subchapter 6. Renewals, Continuing Education, and Fees

* * *

§ 663. ~~LAPSED LICENSES OR REGISTRATIONS~~

~~(a) Failure to renew a license by the renewal date shall result in a lapsed license subject to late renewal penalties pursuant to 3 V.S.A. § 125(a)(1).~~

~~(b) A person whose license or registration has lapsed may not practice and may be subject to disciplinary action.~~

~~(c) Notwithstanding the provisions of subsection (a) of this section, a person shall not be required to pay renewal fees or late renewal penalties for years spent on active duty in the armed forces of the United States. A person who returns from active duty shall be required to pay only the most current biennial renewal fee. [Repealed.]~~

* * * Funeral Services * * *

Sec. 15. 26 V.S.A. chapter 21 is amended to read:

CHAPTER 21. FUNERAL ~~DIRECTORS~~ SERVICES

Subchapter 1. General Provisions

§ 1211. DEFINITIONS

(a) ~~The following words as As used in this chapter, unless a contrary meaning is required by the context, shall have the following meanings:~~

(1) “Crematory establishment” means a business registered with the ~~Board~~ Office conducted at a specific street address or location devoted to the disposition of dead human bodies by means of cremation, alkaline hydrolysis, or any other type of human reduction acceptable to the ~~Board of Funeral Service Director~~ as established by ~~Board~~ the Director by rule.

(2) “Director” means the Director of the Office of Professional Regulation.

(3) “Funeral director” means a licensed person who is the owner, co-owner, employee, or manager of a licensed funeral establishment and who, for compensation, engages in the practice of funeral service.

~~(3)~~(4) “Funeral establishment” means a business registered with the ~~Board~~ Office conducted at a specific street address or location devoted to the practice of funeral service, and includes a limited services establishment.

(5) “Office” means the Office of Professional Regulation.

~~(4)~~(6) “Practice of funeral service” means arranging, directing, or providing for the care, preparation, or disposition of dead human bodies for a fee or other compensation. This includes:

* * *

~~(5)~~(7) “Removal” means the removal of dead human bodies from places of death, hospitals, institutions, or other locations, for a fee or other compensation.

* * *

§ 1212. ~~BOARD OF FUNERAL SERVICE; RULES ADVISOR APPOINTEES; DIRECTOR DUTIES; RULES~~

(a)(1) ~~The board of funeral service shall consist of five members appointed by the governor, three of whom shall be licensed funeral directors under this chapter with five years of experience as a funeral director, and two members shall represent the public. At least two of the funeral directors shall also be licensed embalmers. The public members shall not have a direct or indirect~~

~~financial interest in the funeral business. Each member shall be sworn before performing his or her duties~~ Secretary of State shall appoint four persons for five-year staggered terms to serve at the Secretary's pleasure as advisors in matters relating to funeral service. Three of the initial appointments shall be for four-, three-, and two-year terms. Appointees shall include three licensed funeral directors, one of whom is a licensed embalmer and one of whom has training or experience in the operation of crematoria. One appointee shall be a public member.

(2) The Director shall seek the advice of the advisor appointees in carrying out the provisions of this chapter.

(b) ~~The board~~ Director shall:

(1) adopt rules establishing requirements for facilities used for embalming and preparation of dead human bodies, including the use of universal precautions. Rules adopted under this subdivision shall be submitted to the ~~commissioner of health~~ Commissioner of Health before the proposed rule is filed with the ~~secretary of state~~ Secretary of State under 3 V.S.A. chapter 25;

(2) adopt rules governing professional standards, standards for disclosure of prices, and a description of the goods and services that will be provided for those prices not inconsistent with Federal Trade Commission regulations regarding funeral industry practices and unfair or deceptive business practices;

(3) provide general information to applicants for licensure;

(4) explain appeal procedures to licensees and applicants and complaint procedures to the public;

(5) issue licenses to qualified applicants under this chapter; and

(6) adopt rules regarding:

(A) minimum standards for crematory establishments, including standards for permits and documentation, body handling, containers, infectious diseases, pacemakers, body storage, sanitation, equipment, and maintenance, dealing with the public and other measures necessary to protect the public; and

(B) the transaction of ~~its~~ business as the ~~board~~ Director deems necessary;

~~(7) conduct at least one examination each year if there are candidates for examination;~~

~~(8) hold meetings as frequently as the efficient discharge of its duties requires. A majority of the members present shall constitute a quorum for the transaction of business.~~

* * *

§ 1213. INSPECTION OF PREMISES

(a) ~~The board of funeral service~~ Director or its his or her designee may, at any reasonable time, inspect funeral and crematory establishments.

(b) Each funeral and crematory establishment shall be inspected at least once every two years. Copies of the inspector's report of inspections of establishments shall be provided to the ~~board~~ Director.

* * *

§ 1215. PENALTIES; JURISDICTION OF OFFENSES

(a) A person who engages in the practice of funeral services without a license shall be subject to the penalties provided in 3 V.S.A. § 127(e).

(b) ~~No~~ A person shall not embalm or introduce any fluid into a dead human body unless the person is a licensed embalmer or is an apprentice and performs under the direction of an embalmer in his or her presence. A person who is not duly licensed as provided in this chapter ~~may~~ shall not practice or hold himself or herself out to the public as a practicing embalmer ~~and; a person who does so~~ shall be subject to the penalties provided in 3 V.S.A. § 127(e).

* * *

Subchapter 2. Licenses

§ 1251. LICENSE REQUIREMENTS

(a) ~~No~~ A person, partnership, corporation, association, or other organization ~~may~~ shall not open or maintain a funeral establishment unless the establishment is licensed by the ~~board of funeral service~~ Office to conduct the business and unless the owner, a co-owner, or manager is a licensed funeral director.

(b) ~~No~~ A person, partnership, corporation, association, or other organization ~~may~~ shall not open or maintain a crematory establishment unless the establishment is licensed by the ~~board of funeral service~~ Office.

(c) ~~No~~ A person ~~may~~ shall not hold himself or herself out as performing the duties of a funeral director unless licensed by the ~~board of funeral service~~ Office.

(d) Except as otherwise permitted by law, ~~no~~ a person employed by a funeral or crematory establishment ~~may~~ shall not perform a removal unless registered with the ~~board~~ Office.

§ 1252. APPLICATION; QUALIFICATIONS

(a) Funeral director.

(1) Any person holding a high school certificate or its equivalent shall be entitled to take an examination as a funeral director provided that he or she has:

(A) graduated from a school of funeral service accredited or approved by the American Board of Funeral Service Education in a course of instruction of not less than two academic years, or graduated from a school of funeral service accredited or approved by the American Board of Funeral Service Education in a course of instruction of not less than one academic year or its equivalent as determined by the Board Director, with 30 additional credit hours in subjects approved by the Board Director and obtained in a college or university approved by the Board Director;

(B) completed a traineeship of 12 months of full-time employment or its equivalent under the direct supervision of a person duly licensed for the practice of funeral service within a licensed funeral establishment not connected with a school. The duration of the traineeship and the work performed shall be verified by affidavit as required by the Board Director; and

(C) submitted a written application and the required application fee.

(2) The Board Director may waive the educational and traineeship requirements for examination as a funeral director, provided the applicant possesses a valid license from another state with licensure requirements substantially similar to those required by this chapter.

(3) Notwithstanding the provisions of subdivision (1)(A) of this subsection (a), the Board Director may by rule prescribe an alternative pathway to licensure for individuals who have not attended a school of funeral service but who have demonstrated through an approved program of apprenticeship and study the skills deemed necessary by the Board Director to ensure competence as a funeral director.

(b) Embalmer.

(1) Any person holding a high school certificate or its equivalent shall be entitled to take an examination in embalming provided that he or she has:

(A) graduated from a school of funeral service accredited or approved by the American Board of Funeral Service Education in a course of instruction of not less than two academic years, or graduated from a school of funeral service accredited or approved by the American Board of Funeral Service Education in a course of instruction of not less than one academic year or its equivalent as determined by the Board Director, with 30 additional credit

hours in subjects approved by the ~~Board~~ Director and obtained in a college or university approved by the ~~Board~~ Director;

(B) served a traineeship of 12 months of full-time employment or its equivalent under the direct supervision of a person duly licensed for the practice of funeral service, within a licensed funeral establishment not connected with a school. The duration of the traineeship and the work performed shall be verified by affidavit as required by the ~~Board~~ Director; and

(C) submitted a written application and the required application fee.

(2) The ~~Board~~ Director may waive the educational and traineeship requirements for examination as an embalmer, provided the applicant possesses a valid license from another state with licensure requirements substantially similar to those required by this chapter.

(c) Funeral establishment.

(1) A person, partnership, association, or other organization desiring to operate a funeral establishment, shall apply, in writing, to the ~~Board of Funeral Service~~ Director for a license. The applicant, if a corporation, partnership, association, or other organization, must have a manager or co-owner who is a licensed funeral director.

(2) The application for a license shall be sworn to by the individual, a partner, or a duly authorized officer of a corporation, and shall be on the form prescribed and furnished by the ~~Board of Funeral Service~~ Director, and the applicant shall furnish such information as required by the Director by rule or regulation of the Board. The application shall be accompanied by a licensing fee.

(d) Crematory establishment.

(1) A person, partnership, corporation, association, or other organization desiring to operate a crematory establishment shall apply, in writing, to the ~~Board of Funeral Service~~ Director for a license. The applicant, if a partnership, corporation, association, or other organization, must have a designated manager or co-owner who is responsible for the operation of the establishment and who is registered with the ~~Board~~ Office under subsection (e) of this section.

(2) The application for a license shall be sworn to by the individual, or a partner or a duly authorized officer of a corporation, shall be on the form prescribed and furnished by the ~~Board~~ Director, and the applicant shall furnish information, as required by rule. The application shall be accompanied by a licensing fee. However, the applicant shall not be required to pay the fee under this subsection if the applicant pays the fee under subsection (b) of this section.

(e) Crematory personnel.

(1) Any person who desires to engage in direct handling, processing, identification, or cremation of dead human remains within a licensed crematory establishment shall register with the ~~Board of Funeral Service Office~~ and pay the fee established in subsection 1256(d) of this chapter. The applicant shall have attained the age of majority and be directly employed by a licensed crematory establishment.

(2) The ~~Board~~ Director may prescribe, by rule, the forms for applicants, which may include proof of completion of up to three hours of education and training in programs approved by the ~~Board~~ Director.

(f) Removal personnel.

(1) Any person who desires to engage in removals shall register with the ~~Board of Funeral Service Office~~ and pay the fee established in subsection 1256(d) of this chapter. The applicant shall have attained the age of majority and be directly employed by a licensed funeral or crematory establishment, or the University of Vermont for removals related to the University's anatomical gift program.

(2) The ~~Board~~ Director may prescribe, by rule, the forms for applicants, which may include proof of completion of up to three hours of education and training in infectious diseases in programs approved by the ~~Board~~ Director.

(3) Registrants under this ~~section~~ subsection are authorized to perform removals only, as defined by this chapter. Unregistered personnel may accompany registered personnel to assist in removals so long as they have been instructed in handling and precautionary procedures prior to the call.

(g) Limited services establishment.

(1) The ~~Board of Funeral Service~~ Director may adopt rules for the issuance of limited service establishment licenses in accordance with this chapter. Limited service establishment licensees are authorized to perform only disposition services without arranging, directing, or performing embalming, public viewings, gatherings, memorials, funerals, or related ceremonies. Disposition services under this subsection include direct cremation, direct alkaline hydrolysis, immediate burial, or direct green burial.

(2) Limited services shall be overseen by a funeral director licensed under this chapter who is employed by the limited service establishment.

(3) Each limited service arrangement shall include a mandatory written disclosure providing notice to the purchaser that limited services do not include embalming, public viewings, gatherings, memorials, funerals, or related ceremonies.

(4) A funeral director associated with a funeral establishment licensed under subsection (c) of this section may provide limited services so long as the mandatory disclosure described under subdivision (3) of this subsection is provided to the purchaser.

§ 1253. EXAMINATIONS

An applicant for a funeral director's or embalmer's license shall be examined by ~~as the board~~ Director may require by rule. ~~The examinations shall be in writing and upon forms approved by the board containing questions on subjects as the board by rule may require to determine the qualifications of the applicant.~~

§ 1254. ISSUANCE OR DENIAL OF LICENSE

If, upon review, it is found that the applicant possesses sufficient skill and knowledge of the business and has met the application and qualification requirements set forth in this chapter, the ~~board~~ Director shall issue to him or her a license to engage in the business of funeral director, embalmer, funeral establishment, crematory establishment, or removal personnel. ~~All applications shall be granted or denied within 90 days from the making thereof.~~

~~§ 1255. RECORD OF LICENSES AND APPLICATIONS~~

~~The board shall keep a record of licenses granted and applications made for license, which shall be open to public inspection at all reasonable times. [Repealed.]~~

§ 1256. RENEWAL OF REGISTRATION OR LICENSE

~~(a)(1) One month before renewal is required, the Board or the Office of Professional Regulation shall notify, by mail, every licensee of the date on which his or her or its license will expire.~~

~~(2) Biennially, every licensee shall renew his or her or its registration or license by paying the required fee.~~

~~(b) Upon request of the Board of Health or a person authorized to issue burial or removal permits, a licensee shall show proof of current licensure.~~

~~(c) If a licensee fails to pay the renewal fee by the required date, the license shall lapse. Thereafter, the license may be reinstated only upon application to the Board or the Office of Professional Regulation and upon payment of the renewal fee and a reinstatement fee. [Repealed.]~~

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

(1) Application for license	\$ 70.00
(2) Biennial renewal of license	
(A) Funeral director	\$ 350.00
(B) Embalmer	\$ 350.00
(C) Funeral establishment	\$ 800.00
(D) Crematory establishment	\$ 800.00
(E) Removal personnel	\$ 125.00
(F) Removal personnel	\$125.00
(G) Limited services establishment license	\$800.00

(e)(1) In addition to the provisions of subsection (a) of this section, an applicant for renewal as a funeral director or embalmer shall have satisfactorily completed continuing education as required by the ~~Board~~ Director.

(2) For purposes of this subsection, the ~~Board~~ Director shall require, by rule, not less than six nor more than ten hours of approved continuing education as a condition of renewal and may require up to three hours of continuing education for removal personnel in the subject area of universal precautions and infectious diseases.

§ 1257. UNPROFESSIONAL CONDUCT

(a) A licensee shall not engage in unprofessional conduct.

(b) Unprofessional conduct means the following conduct and conduct set forth in 3 V.S.A. § 129a:

(1) Using dishonest or misleading advertising.

(2) Failure to make available, upon request of a person who had received services, copies of documents in the possession or under the control of the practitioner.

(3) Failure to comply with rules adopted by the ~~board~~ Director, the ~~office of professional regulation~~ Office, or by the Federal Trade Commission relating to funeral goods and services.

(4) For funeral directors, failure to make available at the licensee's place of business, by color picture or display, the three least expensive caskets, as available. For the purposes of this section and related administrative rules, the three least expensive caskets shall include one cloth, one metal, and one wood casket.

~~(c) After hearing and upon a finding of unprofessional conduct, the board~~

may take disciplinary action against a licensee.

~~(d) For purposes of this section, “disciplinary action” includes any action taken by the board against a licensee premised on a finding of unprofessional conduct. Disciplinary action includes all appropriate remedies, including denial of renewal of a license, suspension, revocation, limiting, or conditioning of the license, issuing reprimands or warnings, and adopting consent orders.~~

~~(e) Disciplinary proceedings against a licensed crematory establishment or its personnel, when that crematory is independent from a licensed funeral establishment, may, upon petition of the licensee, be heard by an administrative law officer appointed by the director of the office of professional regulation.~~

* * *

Subchapter 3. Prepaid Funeral Arrangements

§ 1271. PREPAID ARRANGEMENTS

A funeral establishment that sells services or merchandise that is not to be delivered or provided within 30 days of sale has entered into a prepaid funeral arrangement and shall comply with the requirements of this subchapter.

§ 1272. RULES; PREPAID FUNERAL FUNDS

~~The board, with the assistance of the office of professional regulation,~~ Director shall adopt rules to carry out the provisions of this subchapter to ~~insure~~ ensure the proper handling of all funds paid pursuant to a prepaid funeral agreement and to protect consumers in the event of default. The rules shall include provisions relating to the following:

* * *

(5) Information to be provided the escrow agent by the funeral director and information regarding the escrow account or the prepaid funeral that shall be made available to the buyer on request and annually in a format as determined by the ~~board~~ Director.

* * *

(8) Other factors determined by the ~~board~~ Director to be reasonably necessary to ~~insure~~ ensure the security of the funds paid into an escrow account as part of a prepaid funeral arrangement.

(9) Establishment of a funeral services trust account.

(A) For purposes of funding the funeral services trust account, the ~~board or the office of professional regulation~~ Office shall assess each funeral or crematory establishment a per funeral, burial, or disposition fee of \$6.00.

(B) The account shall be administered by the ~~secretary of state~~ Secretary of State and shall be used for the sole purpose of protecting prepaid funeral contract holders in the event a funeral establishment defaults on its obligations under the contract.

(C) The account shall consist of all fees collected under this subdivision (9) and any assessments authorized by the ~~general assembly~~ General Assembly. The principal and interest remaining in the account at the close of any fiscal year shall not revert but shall remain in the account for use in succeeding fiscal years.

(D) Notwithstanding the ~~foregoing~~ provisions of this subdivision (9) to the contrary, if the fund balance at the beginning of a fiscal year is at least \$200,000.00, no fees shall be imposed during that fiscal year.

(E) Payments on consumer claims from the fund shall be made on warrants by the ~~commissioner of finance and management~~ Commissioner of Finance and Management, at the direction of the ~~board of funeral services~~ Director.

(F) When an investigation reveals financial discrepancies within a licensed establishment, the ~~director~~ Director may order an audit to determine the existence of possible claims on the funeral services trust account. In cases where both a funeral and crematory establishment are involved in a disposition, the party receiving the burial permit shall be responsible for the disposition fee.

* * *

§ 1273. WRITTEN AGREEMENTS

(a) Each prepaid funeral arrangement shall be expressed in a written contract. The ~~board~~ Director shall adopt rules for standard provisions to be included in all pre-need trust forms and may adopt a standard form ~~which that~~ every funeral director accepting prepaid funeral arrangements shall use. Those provisions shall include:

(1) Disclosure of whether the contract is revocable or irrevocable.

(2) A declaration of the person who will most likely be responsible for the funeral and who is to be notified of the prepaid funeral.

(3) Any other provision determined by the ~~board~~ Director to be reasonably necessary to ~~insure~~ ensure full disclosure to the buyer of all prepaid funeral arrangements as required under this chapter.

* * *

Sec. 16. REPEAL

26 V.S.A. § 1256(d) (funeral services; application and renewal fees) shall be repealed on June 1, 2023.

Sec. 17. TRANSITIONAL PROVISION; FUNERAL SERVICE RULES

On the effective date of Sec. 15 of this act (amending 26 V.S.A. chapter 21 (funeral services)), the rules of the Board of Funeral Service shall constitute the rules of the Director of the Office of Professional Regulation for the funeral service professions and establishments.

* * * Nursing * * *

Sec. 18. 26 V.S.A. chapter 28 is amended to read:

CHAPTER 28. NURSING

Subchapter 1. General Provisions

* * *

§ 1573. VERMONT STATE BOARD OF NURSING

(a) There is hereby created a the Vermont State Board of Nursing consisting of six registered nurses, including at least two licensed as advanced practice registered nurses;₂ two practical nurses;₂ one nursing assistant;₂ and two public members. Board members shall be appointed by the Governor pursuant to 3 V.S.A. §§ 129b and 2004.

* * *

~~(d) Six members of the Board shall constitute a quorum.~~

~~§ 1579. ISSUANCE AND DURATION OF LICENSES~~

~~Licenses and endorsements shall be renewed every two years on a schedule determined by the Office of Professional Regulation. [Repealed.]~~

* * *

§ 1584. PROHIBITIONS; OFFENSES

(a) It shall be a violation of this chapter for any person, including any corporation, association, or individual, to:

* * *

~~(8) [Deleted.]~~

(b) Any person violating this section shall be subject to the penalties provided in 3 V.S.A. § 127(e).

~~(c) [Deleted.]~~

* * *

Subchapter 2. Advanced Practice Registered Nurses

* * *

§ 1612. PRACTICE GUIDELINES

~~(a) APRN licensees who intend to or are engaged in clinical practice as an APRN shall submit for review individual practice guidelines and receive Board approval of the practice guidelines. Practice guidelines shall reflect current standards of advanced nursing practice specific to the APRN's role, population focus, and specialty.~~

~~(b) Licensees shall submit for review individual practice guidelines and receive Board approval of the practice guidelines:~~

~~(1) prior to initial employment;~~

~~(2) if employed or practicing as an APRN, upon application for renewal of an APRN's registered nurse license; and~~

~~(3) prior to a change in the APRN's employment or clinical role, population focus, or specialty. [Repealed.]~~

* * *

§ 1614. APRN RENEWAL

An APRN license renewal application shall include:

(1) documentation of completion of the APRN practice requirement;

(2) possession of a current certification by a national APRN specialty certifying organization; and

(3) ~~current practice guidelines; and~~

(4) a current collaborative provider agreement if required for transition to practice.

§ 1615. ADVANCED PRACTICE REGISTERED NURSES; REGULATORY AUTHORITY; UNPROFESSIONAL CONDUCT

(a) In addition to the provisions of 3 V.S.A. § 129a and section 1582 of this chapter, the Board may deny an application for licensure, renewal, or reinstatement, or may revoke, suspend, or otherwise discipline an advanced practice registered nurse upon due notice and opportunity for hearing if the person engages in the following conduct:

* * *

(4) Practice beyond those acts and situations that are within the ~~practice guidelines approved by the Board for an APRN and within the~~ limits of the knowledge and experience of the APRN, and, for an APRN who is practicing under a collaborative agreement, practice beyond those acts and situations that are within both the usual scope of the collaborating provider's practice and the terms of the collaborative agreement.

(5) For an APRN who acts as the collaborating provider for an APRN who is practicing under a collaboration agreement, allowing the mentored APRN to perform a medical act that is outside the usual scope of the mentor's own practice or that the mentored APRN is not qualified to perform by training or experience or that is not consistent with the requirements of this chapter and the rules of the Board.

* * *

Subchapter 3. Registered Nurses and Practical Nurses

* * *

§ 1622. REGISTERED NURSE LICENSURE BY ENDORSEMENT

To be eligible for licensure as a registered nurse by endorsement, an applicant shall:

- (1) hold a current license to practice registered nursing in another U.S. jurisdiction based on education in a U.S. nursing program acceptable to the Board; and
- (2) meet practice requirements set by the Board by rule.

* * *

§ 1626. PRACTICAL NURSE LICENSURE BY ENDORSEMENT

To be eligible for licensure as a practical nurse by endorsement, an applicant shall:

- (1) hold a current license to practice practical nursing in another U.S. jurisdiction based on education in a U.S. nursing program acceptable to the Board; and
- (2) meet practice requirements set by the Board by rule.

* * *

Subchapter 4. Nursing Assistants

* * *

§ 1645. RENEWAL

(a) To renew a license, a nursing assistant shall meet active practice requirements set by the Board by rule.

(b) The Board shall credit as active practice those activities, regardless of title or obligation to hold a license, that reasonably tend to reinforce the training and skills of a licensee.

* * *

Sec. 19. NURSING COMPACT ASSESSMENT

(a) The Board of Nursing and the Office of Professional Regulation shall assess the costs and benefits of participation in licensure compacts for nurses at various levels of licensure.

(b) On or before March 15, 2019, the Office shall report its assessment to the House and Senate Committees on Government Operations. The report may be in verbal form.

* * * Pharmacy * * *

Sec. 20. 26 V.S.A. chapter 36 is amended to read:

CHAPTER 36. PHARMACY

Subchapter 1. General Provisions

* * *

§ 2022. DEFINITIONS

As used in this chapter:

* * *

(4) “Disciplinary action” or “disciplinary cases” includes any action taken by the Board against a licensee or others premised upon a finding of ~~wrongdoing or~~ unprofessional conduct by the licensee. It includes all sanctions of any kind, including obtaining injunctions, issuing warnings, and other similar sanctions.

* * *

(7) “Drug outlet” means all pharmacies, ~~nursing homes, convalescent homes, extended care facilities, drug abuse treatment centers, family planning clinics, retail stores, hospitals,~~ wholesalers, manufacturers, ~~any authorized treatment centers, and mail order vendors~~ other entities that are engaged in the dispensing, delivery, or distribution of prescription drugs.

* * *

(10) ~~“Manufacturer” means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug a person, regardless of form, engaged in the manufacturing of drugs or devices.~~

(11)(A) “Manufacturing” means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(B) “Manufacturing” includes the packaging or repackaging of a drug or device or the labeling or relabeling of the container of a drug or device for resale by a pharmacy, practitioner, or other person.

(12) “Nonprescription drugs” means nonnarcotic medicines or drugs that may be sold without a prescription and that are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this State and the federal government.

~~(12)~~(13) “Pharmacist” means an individual licensed under this chapter.

~~(13)~~(14) “Pharmacy technician” means an individual who performs tasks relative to dispensing only while assisting, and under the supervision and control of, a licensed pharmacist.

~~(14)~~(15)(A) “Practice of pharmacy” means:

(i) ~~the interpretation~~ interpreting and ~~evaluation of~~ evaluating prescription orders;

(ii) ~~the compounding, dispensing, and labeling of drugs and legend devices (except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and legend devices);~~

(iii) ~~the participation~~ participating in drug selection and drug utilization reviews;

(iv) ~~the proper and safe storage of~~ properly and safely storing drugs and legend devices, and ~~the maintenance of~~ maintaining proper records therefor;

(v) ~~the responsibility for~~ advising, where necessary or where regulated, of therapeutic values, content, hazards, and use of drugs and legend devices;

(vi) ~~the providing of~~ patient care services within the pharmacist’s authorized scope of practice;

(vii) ~~the optimizing of~~ drug therapy through the practice of clinical pharmacy; and

(viii) ~~the offering or performing of~~ or offering to perform those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

(B) “Practice of clinical pharmacy” or “clinical pharmacy” means:

* * *

(ii) ~~the provision of~~ providing patient care services within the pharmacist’s authorized scope of practice, including medication therapy management, comprehensive medication review, and postdiagnostic disease state management services; or

(iii) ~~the practice of pharmacy by a pharmacist practicing~~ pharmacy pursuant to a collaborative practice agreement.

(C) ~~A rule shall not be adopted by the The Board under this chapter that shall require not adopt any rule requiring that pharmacists or pharmacies be involved in the sale and distribution of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist or otherwise interfere with the sale and distribution of such medicines; provided, however, that nothing in this subdivision (C) shall limit the authority of the Board to adopt rules applicable to the elective sale or distribution of nonprescription drugs by pharmacists or pharmacies.~~

(15)(16) “Practitioner” means an individual authorized by the laws of the United States or its jurisdictions or Canada to prescribe and administer prescription drugs in the course of his or her professional practice and permitted by that authorization to dispense, conduct research with respect to, or administer drugs in the course of his or her professional practice or research in his or her respective state or province.

(16)(17) “Prescription drug” means any human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(b) of the Federal Food, Drug and Cosmetic Act.

(17)(18) “Wholesale distribution” means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

* * *

(18)(19) “Wholesale drug distributor” means any person who is engaged in wholesale distribution of prescription drugs, but does not include any ~~for hire~~ for-hire carrier or person hired solely to transport prescription drugs.

(19)(20) “Collaborative practice agreement” means a written agreement between a pharmacist and a health care facility or prescribing practitioner that permits the pharmacist to engage in the practice of clinical pharmacy for the benefit of the facility’s or practitioner’s patients.

* * *

Subchapter 2. Board of Pharmacy

§ 2031. CREATION; APPOINTMENT; TERMS; ORGANIZATION

(a)(1) There is hereby created the ~~board of pharmacy~~ Board of Pharmacy to enforce the provisions of this chapter.

(2) The ~~board~~ Board shall consist of seven members, five of whom shall be pharmacists licensed under this chapter with five years of experience in the practice of pharmacy in this state State. Two members shall be members of the public having no financial interest in the practice of pharmacy.

(b) Members of the ~~board~~ Board shall be appointed by the ~~governor~~ Governor pursuant to 3 V.S.A. §§ 129b and 2004. ~~A majority of members shall constitute a quorum, and all action shall be taken upon a majority vote of the members present and voting.~~

* * *

Subchapter 3. Licensing

§ 2041. UNLAWFUL PRACTICE

(a) It shall be unlawful for any person to engage in the practice of pharmacy unless licensed to so practice under the provisions of this chapter; provided, however, physicians, dentists, veterinarians, osteopaths, or other practitioners of the healing arts who are licensed under the laws of this State may dispense and administer prescription drugs to their patients in the practice of their respective professions where specifically authorized to do so by statute of this State.

(b)(1) ~~Any person who shall be found by the Board after hearing to have unlawfully engaged in the practice of pharmacy shall be subject to disciplinary action.~~

(2) ~~For the purpose of enforcing this section, the Attorney General or a State's Attorney or an attorney assigned by the Office of Professional Regulation may commence a criminal action against any person unlawfully engaging in the practice of pharmacy, and upon conviction, the person, including a business entity, violating this section shall be subject to the penalties provided in 3 V.S.A. § 127.~~

* * *

§ 2042b. PHARMACY TECHNICIANS; NONDISCRETIONARY TASKS;
SUPERVISION

* * *

(f)(1) A pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician.

(2) A pharmacist responsible for a pharmacy technician shall be on the premises at all times, or in the case of a remote pharmacy approved by the Board, immediately available by a functioning videoconference link.

(3) A pharmacist shall verify a prescription before medication is provided to the patient.

* * *

§ 2044. ~~RENEWAL OF LICENSES~~

~~Each person or entity licensed or regulated under the provisions of this chapter shall apply for renewal biennially by a date established by the director of the office of professional regulation. [Repealed.]~~

§ 2045. ~~REINSTATEMENT~~

~~(a) The board may renew a license which has lapsed upon payment of the required fee and the late renewal penalty, provided all the requirements for renewal set by the board by rule, have been satisfied. The board shall not require payment of renewal fees for years during which the license was lapsed.~~

~~(b) As a condition of renewal, the board may by rule set reinstatement requirements for those whose licenses have lapsed for more than five years. [Repealed.]~~

* * *

Subchapter 4. Discipline

§ 2051. ~~UNPROFESSIONAL CONDUCT~~

~~The board of pharmacy may refuse to issue or renew, or may suspend, revoke, or restrict the licenses of any person, pursuant to the procedures set forth in section 2052 of this title, upon one or more of the following grounds and upon the grounds set forth in 3 V.S.A. § 129a:~~

~~(1) Unprofessional conduct as that term is defined by the rules and regulations of the board;~~

~~(2) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public;~~

~~(3) Fraud or intentional misrepresentation by a licensee in securing the issuance or renewal of a license;~~

~~(4) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license or to falsely use the title of pharmacist;~~

~~(5) Being found by the board to be in violation of any of the provisions of this chapter or rules and regulations adopted pursuant to this chapter.~~

~~§ 2052. PENALTIES AND REINSTATEMENT~~

~~(a)(1) Upon the finding, after notice and opportunity for hearing, of the existence of grounds for discipline of any person or any drug outlet holding a license, under the provisions of this chapter, the board of pharmacy may impose one or more of the following penalties:~~

~~(A) Suspension of the offender's license for a term to be determined by the board;~~

~~(B) Revocation of the offender's license;~~

~~(C) Restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board;~~

~~(D) Placement of the offender under the supervision of the board for a period to be determined and under conditions set by the board;~~

~~(E) A requirement to perform up to 100 hours of public service, in a manner and at a time and place to be determined by the board;~~

~~(F) A requirement of a course of education or training;~~

~~(G) An administrative penalty as provided in 3 V.S.A. § 129a(d).~~

~~(2) [Deleted.]~~

~~(b) Any person or drug outlet whose license to practice pharmacy in this state has been suspended, revoked, or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the board. Upon hearing, the board may in its discretion grant or deny such petition or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.~~

~~(c) Nothing herein shall be construed as barring criminal prosecutions for violations of this chapter where such violations are deemed as criminal offenses in other statutes of this state or of the United States.~~

~~(d) All final decisions by the board shall be subject to review pursuant to~~

~~3 V.S.A. § 130a. [Repealed.]~~

Subchapter 5. Registration of Facilities

§ 2061. REGISTRATION AND LICENSURE

(a) All drug outlets shall biennially register with the Board of Pharmacy.

(b) Each drug outlet shall apply for a license in one or more of the following classifications:

- (1) ~~Retail drug outlet.~~
- (2) ~~Institutional drug outlet.~~
- (3) ~~Manufacturing drug outlet~~ Manufacturer.
- (4) ~~Wholesale drug outlet or wholesale drug~~ distributor.
- (5) Investigative and research projects.
- (6) Compounding.
- (7) Outsourcing.
- (8) Home infusion.
- (9) Nuclear.

§ 2064. VIOLATIONS AND PENALTIES

(a) ~~No~~ A drug outlet designated in section 2061 of this title ~~subchapter~~ shall not be operated until a license has been issued to ~~said that~~ that outlet by the board Board. ~~Upon the finding of a violation of this section, the board may impose one or more of the penalties enumerated in section 2052 of this title.~~

(b) ~~Reinstatement of a license that has been suspended, revoked, or restricted by the board may be granted in accordance with the procedures specified by subsection 2052(b) of this title~~ Unauthorized operation of a drug outlet may be penalized as provided in 3 V.S.A. § 127 and shall constitute unprofessional conduct by the licensees involved.

Subchapter 6. Wholesale ~~Drug~~ Distributors

§ 2067. WHOLESALE ~~DRUG~~ DISTRIBUTOR; LICENSURE REQUIRED

(a) A person who is not licensed under this subchapter shall not engage in wholesale ~~drug~~ distribution in this State.

(b) [Repealed.]

* * *

(d) An agent or employee of any licensed wholesale ~~drug~~ distributor shall not be required to obtain a license under this subchapter and may lawfully

possess pharmaceutical drugs when that agent or employee is acting in the usual course of business or employment.

* * *

§ 2071. APPLICATION OF FEDERAL GUIDELINES

(a) The requirements set forth in sections 2068 and 2069 of this ~~title chapter~~ shall conform to wholesale ~~drug~~ distributor licensing guidelines formally adopted by the ~~United States~~ U.S. Food and Drug Administration (FDA).

(b) In case of conflict between any wholesale ~~drug~~ distributor licensing requirement imposed by the ~~board~~ Board under this chapter and any FDA wholesale ~~drug~~ distributor licensing guideline, the latter shall control.

§ 2072. LICENSE RENEWAL

~~Licenses and registrations shall be renewed biennially on a schedule as determined by the office of professional regulation. [Repealed.]~~

§ 2073. RULES

(a) The ~~board~~ Board may adopt rules necessary to carry out the purposes of the provisions of this subchapter.

(b) All rules adopted under this subchapter shall conform to wholesale ~~drug~~ distributor licensing guidelines formally adopted by the ~~Federal Drug Administration~~ FDA at 21 C.F.R. Part 205.

§ 2074. COMPLAINTS

~~Complaints arising under this subchapter shall be handled according to the policies and procedures for handling complaints adopted by the director of the office of professional regulation. [Repealed.]~~

§ 2075. PENALTIES

~~After notice and opportunity for hearing, the board may suspend, revoke, limit, or condition a license granted under this subchapter if the board finds that the licensee:~~

~~(1) violated a provision of this subchapter or a rule adopted by the board under this subchapter; or~~

~~(2) has been convicted of a violation of a federal or state drug law. [Repealed.]~~

§ 2076. INSPECTION POWERS; ACCESS TO WHOLESALE DRUG DISTRIBUTOR RECORDS

(a) A person authorized by the ~~board~~ Board may enter, during normal

business hours, all open premises purporting or appearing to be used by a wholesale ~~drug~~ distributor for purposes of inspection.

(b)(1) Wholesale ~~drug~~ distributors may keep records regarding purchase and sales transactions at a central location apart from the principal office of the wholesale ~~drug~~ distributor or the location at which the drugs were stored and from which they were shipped, provided that such records shall be made available for inspection within two working days of a request by the ~~board~~ Board.

(2) Records may be kept in any form permissible under federal law applicable to prescription drugs ~~record-keeping~~ record keeping.

* * *

Sec. 21. CREATION OF POSITION WITHIN THE OFFICE OF PROFESSIONAL REGULATION; PHARMACY

(a) There is created within the Secretary of State's Office of Professional Regulation one new position: Executive Officer of Pharmacy.

(b) Any funding necessary to support the position created in subsection (a) of this section shall be derived from the Office's Professional Regulatory Fee Fund, with no General Fund dollars.

* * * Real Estate Brokers and Salespersons * * *

Sec. 22. 26 V.S.A. § 2211 is amended to read:

§ 2211. DEFINITIONS

(a) ~~When~~ As used in this chapter, the following definitions shall have the following meanings except where the context clearly indicates that another meaning is intended:

* * *

(4) "Real estate broker" or "broker" means any person who, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly, by a continuing course of conduct, any of the following acts:

* * *

(5) "Real estate salesperson" or "salesperson" means any person who for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise thereof, is employed by or associated with a licensed real estate broker to do any act or deal in any transaction as provided in subdivision (4) of this subsection ~~(a)~~ for or on behalf of ~~such~~ a licensed real estate broker.

(b) The terms “real estate broker,” “real estate salesperson,” or “broker” shall not be held to include:

(1) Any person, partnership, association, or corporation who as a bona fide owner performs any of the ~~aforesaid~~ acts set forth in subdivision (a)(4) of this section with reference to property owned by them, nor shall it apply to regular employees thereof, ~~where~~ when such acts are performed in the regular course of or as an incident to the management of such property and the investment therein. This subdivision (1) shall not apply to licensees.

* * *

* * * Radiologic Technicians * * *

Sec. 23. 26 V.S.A. § 2803 is amended to read:

§ 2803. EXEMPTIONS

The prohibitions in section 2802 of this chapter shall not apply to dentists licensed under chapter 12 of this title and actions within their scope of practice nor to:

* * *

(5) Any of the following when operating dental radiographic equipment to conduct intraoral radiographic examinations under the general supervision of a licensed practitioner; and, any of the following when operating dental radiographic equipment to conduct specialized radiographic examinations, including tomographic, cephalometric, or temporomandibular joint examinations, if the person has completed a course in radiography approved by the Board of Dental Examiners and practices under the general supervision of a licensed practitioner:

(A) a licensed dental therapist;

(B) a licensed dental hygienist;

~~(B)~~(C) a registered dental assistant who has completed a course in radiography approved by the Board of Dental Examiners; or

~~(C)~~(D) a student of dental therapy, dental hygiene, or dental assisting as part of the training program when directly supervised by a licensed dentist, certified licensed dental therapist, licensed dental hygienist, or a registered dental assistant.

* * *

* * * Private Investigators and Security Guards * * *

Sec. 24. 26 V.S.A. chapter 59 is amended to read:

CHAPTER 59. PRIVATE INVESTIGATIVE AND SECURITY SERVICES

Subchapter 1. General Provisions

§ 3151. DEFINITIONS

As used in this chapter:

* * *

~~(5) “Qualifying agent” means a licensed private investigator who is responsible for a private investigative services agency or combination agency, or a licensed security guard who is responsible for a private security services agency or combination agency. A sole proprietor shall be the qualifying agent of his or her agency and shall meet all qualifying agent licensure requirements.~~

~~(6) “Combination agency” means an agency that provides both private investigative and private security services to the public.~~

§ 3151a. EXEMPTIONS

(a) The term “private investigator” shall not include:

* * *

(3) Persons regularly employed as investigators, exclusively by one employer in connection with the affairs of that employer only, provided that the employer is not a private investigative agency and the employee is engaged directly as part of the ordinary payroll for tax, accounting, and insurance purposes.

* * *

(b) The term “security guard” shall not include:

* * *

(3) Persons regularly employed as security guards exclusively by one employer in connection with the affairs of that employer only, provided that the employer is not a security agency and the employee is engaged directly as part of the ordinary payroll for tax, accounting, and insurance purposes.

Subchapter 2. State Board of Private Investigative and Security Services

* * *

§ 3162. ~~POWERS AND DUTIES~~ BOARD RULEMAKING AUTHORITY

The Board may:

~~(1) Adopt adopt rules necessary for the performance of its duties, including rules prescribing minimum standards and qualifications for:~~

~~(1) security guards who may:~~

~~(A) practice independently or head agencies; or~~

~~(B) practice within the hierarchy of an agency;~~

~~(2) private investigators who may:~~

~~(A) practice independently or head agencies; or~~

~~(B) practice within the hierarchy of an agency;~~

~~(3) agencies; and~~

~~(4) recognized trainers and training programs.~~

~~(2) Conduct any necessary hearings in connection with the issuance, renewal, denial, suspension, or revocation of a license or registration or otherwise related to the disciplining of a licensee, registrant, or applicant.~~

~~(3) Receive and investigate complaints and charges of unprofessional conduct against any holder of a license or registration, or any applicant. The Board shall investigate all complaints in which there are reasonable grounds to believe that unprofessional conduct has occurred.~~

~~(4) Conduct examinations and pass upon the qualifications of applicants for a license or registration.~~

~~(5) Issue subpoenas and administer oaths in connection with any authorized investigation, hearing, or disciplinary proceeding.~~

~~(6) Take or cause depositions to be taken as needed in any investigation, hearing, or proceeding.~~

~~(7)(A) Adopt rules establishing a security guard or private investigator training program, consisting of not fewer than 40 hours of training, as a prerequisite to registration.~~

~~(B) Full-time employees shall complete the training program prior to being issued a permanent registration.~~

~~(C)(i) Part-time employees shall complete not fewer than eight hours of training prior to being issued a part-time employee temporary registration, which shall be valid for not more than 180 days from the date of issuance. The remaining training hours for part-time employees shall be completed within the temporary registration period of 180 days or before the employee has worked 500 hours, whichever occurs first. The part-time employee temporary registration may be issued only once and shall expire after 180 days or 500 hours.~~

~~(ii) As used in this subdivision (C), “part-time employee” means an employee who works no more than 80 hours per month.~~

~~(iii) The Board may prioritize training subjects to require that certain subject areas are covered in the initial eight hours of training required for part-time employees.~~

~~(8) Adopt rules establishing continuing education requirements and establish or approve continuing education programs to assist a licensee or registrant in meeting these requirements.~~

§ 3163. FUNCTIONING OF LICENSING BOARD

~~(a) Annually, the board shall elect a chairperson, a vice chairperson, and a secretary.~~

~~(b) Meetings may be called by the chairperson and shall be called upon the request of two other members.~~

~~(c) Meetings shall be warned and conducted in accordance with 1 V.S.A. chapter 5.~~

~~(d) A majority of the members of a board shall constitute a quorum, and all action shall be taken upon a majority vote of the members present and voting.~~

~~(e), (f) [Deleted.] [Repealed.]~~

* * *

Subchapter 3. Licensing

* * *

§ 3173. PRIVATE INVESTIGATOR LICENSES

~~(a) A person shall not engage in the business of private investigation or provide private investigator services in this State without first obtaining a license. The Board shall issue a license to a private investigator after obtaining and approving all of the following:~~

* * *

~~(4) evidence that the applicant has successfully passed the any examination required by section 3175 of this title rule.~~

* * *

~~(c) The Board shall require that the a person licensed to practice independently has had appropriate experience in investigative work, for a period of not less than two years, as determined by the Board. Such experience may include having been regularly employed as a private detective licensed in another state or as an investigator for a private detective licensed in~~

this or another state, or has having been a sworn member of a federal, state, or municipal law enforcement agency.

(d) An application for a license may be denied upon failure of the applicant to provide information required_; upon a finding that the applicant does not meet a high standard as to character, integrity, and reputation_; or for unprofessional conduct defined in section 3181 of this ~~title~~ chapter.

* * *

§ 3174. SECURITY GUARD LICENSES

(a) ~~No~~ A person shall not engage in the business of a security guard or provide guard services in this State without first obtaining a license. The Board shall issue a license after obtaining and approving all of the following:

* * *

(4) Evidence that the applicant has successfully passed ~~the~~ any examination required by section ~~3175~~ of this ~~title~~ rule.

* * *

(c) The Board shall require that ~~the~~ a person licensed to practice independently has had experience satisfactory to the Board in security work, for a period of not less than two years. Such experience may include having been licensed as a security guard in another state or regularly employed as a security guard for a security agency licensed in this or another state, or having been a sworn member of a federal, state, or municipal law enforcement agency.

(d) An application for a license may be denied upon failure of the applicant to provide information required_; upon a finding that the applicant does not meet a high standard as to character, integrity, and reputation_; or for unprofessional conduct defined in section 3181 of this ~~title~~ chapter.

* * *

§ 3176b. ~~TEMPORARY REGISTRATION FOR EMPLOYEES OF AGENCIES~~

~~(a) A 60-day temporary registration may be issued to a person who applies for registration as an employee of a licensed private investigator or a licensed security guard under section 3176 of this title. A temporary registration shall authorize a person to work as an unarmed private investigator or unarmed security guard while employed by a private investigator agency or security guard agency licensed by the board.~~

~~(b) Temporary registrations shall expire at the end of the 60-day period or by final action on the application, whichever occurs first. For good cause~~

~~shown, the board may extend a temporary registration one time for an additional period of 60 days. [Repealed.]~~

~~§ 3176c. TEMPORARY EMERGENCY REGISTRATION~~

~~(a) If the board determines that the public health, safety, or welfare so requires, it may grant to an applicant a temporary registration to practice as a security guard. To qualify under this section, an applicant shall have a license in good standing to practice as a security guard in another jurisdiction within the United States that regulates the practice. The person seeking the temporary registration shall document to the board's satisfaction that the applicant will otherwise meet all state and federal requirements necessary to perform the specific security duties arising out of the emergency circumstances warranting temporary licensure.~~

~~(b) The board may restrict or condition a temporary registration issued under this section, as it deems appropriate in light of the specific emergency, to a particular facility, industry, geographic area, or scope of duty.~~

~~(c) Duration of practice under a temporary registration shall be determined by the board but shall not exceed 60 days unless the person granted a temporary registration has submitted an application for full registration under this chapter, prior to the expiration of the term of the temporary registration, and the board finds the emergency to be ongoing. [Repealed.]~~

~~* * *~~

~~§ 3178. RENEWALS AND REINSTATEMENT~~

~~A license or registration issued under this chapter shall be renewed biennially upon payment of the required fee. [Repealed.]~~

~~* * *~~

~~§ 3179. PENALTIES~~

~~(a) A person who engages in the practice or business of a private investigator or security guard without being licensed under to this chapter shall be subject to the penalties provided in 3 V.S.A § 127(e).~~

~~* * *~~

Subchapter 4. Unprofessional Conduct and Discipline

§ 3181. UNPROFESSIONAL CONDUCT

* * *

~~(e) After conducting a hearing and upon a finding that a licensee, registrant, or applicant engaged in unprofessional conduct, the board may take disciplinary action. Discipline for unprofessional conduct may include denial~~

~~of an application, revocation or suspension of a license or registration, supervision, reprimand, warning, or the required completion of a course of action.~~

* * * Clinical Mental Health Counselors * * *

Sec. 25. 26 V.S.A. chapter 65 is amended to read:

CHAPTER 65. CLINICAL MENTAL HEALTH COUNSELORS

* * *

§ 3262a. BOARD OF ALLIED MENTAL HEALTH PRACTITIONERS

(a) ~~A~~ The Board of Allied Mental Health Practitioners is established.

* * *

~~(c) A majority of the members of the Board shall constitute a quorum for transacting business, and all action shall be taken upon a majority vote of the members present and voting.~~

* * *

§ 3265. ELIGIBILITY

To be eligible for licensure as a clinical mental health counselor an applicant shall satisfy all of the following have:

(1) ~~Shall have completed a minimum of 60 graduate hours and received~~ Received a master's degree or higher degree in counseling or a related field, from an accredited educational institution, after having successfully completed a course of study as defined by the board, by rule, which included requiring a minimum number of graduate credit hours established by the Board by rule and a supervised practicum, internship, or field experience, as defined by the board, ~~Board~~ by rule, in a mental health counseling setting.

(2) ~~Shall have documented~~ Documented a minimum of 3,000 hours of supervised work in clinical mental health counseling ~~over~~ during a minimum of two years of post-master's experience. ~~Persons engaged in supervised work shall be entered on the roster of nonlicensed, noncertified psychotherapists and shall comply with the laws of that profession, and shall have documented a minimum of, including at least 100 hours of face-to-face supervision over~~ during a minimum of two years of post-master's experience. ~~Clinical work shall be performed under the supervision of a licensed physician certified in psychiatry by the American Board of Medical Specialties, a licensed psychiatric nurse practitioner, a licensed psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed clinical mental health counselor, or a person certified or licensed in another jurisdiction in one of these professions or in a profession which is the substantial equivalent, or a~~

~~supervisor trained by a regional or national organization which has been approved by the board~~ Persons engaged in supervised work shall be registered on the roster of nonlicensed, noncertified psychotherapists and shall comply with the laws applicable to registrants.

(3) ~~Shall pass~~ Passed the examinations required by board Board rules as provided in section 3267 of this title.

§ 3266. APPLICATION

~~To apply for licensure as a clinical mental health counselor, a person shall apply to the board on a form furnished by the board. The application shall be accompanied by payment of the specified fee and evidence of eligibility as requested by the board. [Repealed.]~~

§ 3267. EXAMINATION

(a) ~~The board or its designee shall conduct written examinations under this chapter at least twice a year, except that examinations need not be conducted when no one has applied to be examined.~~

(b) ~~Examinations administered by the board and the procedures of administration shall be fair and reasonable and shall be designed and implemented to ensure that all applicants are granted licensure if they demonstrate that they possess the minimal occupational qualifications which are consistent with the public health, safety, and welfare. They shall not be designed or implemented for the purpose of limiting the number of license holders. The board with the advice of the clinical mental health counselors who are members of the special panel, shall establish, by rule, fixed criteria for passing the examination that shall apply to all persons taking the examination.~~

(c) ~~The board may contract with independent testing services, licensed clinical mental health counselors, or others to assist in the administration of written examinations. [Repealed.]~~

* * *

§ 3269. RENEWALS

(a) ~~Licenses shall be renewed every two years upon payment of the required fee, provided the person applying for renewal completes at least 40 hours fees and proof of such continuing education, approved by the board, during the preceding two-year period. The board shall establish, as the Board may require by rule, guidelines and criteria for continuing education credit.~~

(b) ~~Biennially, the director shall forward a renewal form to each license holder. Upon receipt of the completed form and the renewal fee, the director shall issue a new license.~~

~~(c) Any application for renewal of a license which has expired shall be accompanied by the renewal fee and a reinstatement fee. A person shall not be required to pay renewal fees for years during which the license was lapsed.~~

~~(d) [Deleted.]~~

* * *

* * * Effective Dates * * *

Sec. 26. EFFECTIVE DATES

This act shall take effect on July 1, 2018, except:

(1) this section and Secs. 2, amending 3 V.S.A. § 125 (fees) and 13 (Director of Professional Regulation; barbers and cosmetologists; rulemaking) shall take effect on passage, except that in Sec. 2, 3 V.S.A. § 125:

(A) subdivisions (b)(2)(A) (application for barbering and cosmetology schools and shops) and (b)(4)(E) and (F) (renewal for barbering and cosmetology professionals and schools) shall take effect on January 1, 2019; and

(B) subdivisions (b)(2)(B) and (b)(4)(G)-(I) (application and renewal for funeral service professionals and establishments) shall take effect on June 1, 2023;

(2) Sec. 6, amending 3 V.S.A. § 129a (unprofessional conduct), shall take effect on July 1, 2019; and

(3) Sec 12, amending 26 V.S.A. chapter 6 (barbers and cosmetologists), shall take effect on January 1, 2019.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 2, 2018, pages 522-561 and page 583)

H. 777.

An act relating to the Clean Water State Revolving Loan Fund.

Reported favorably with recommendation of proposal of amendment by Senator Rodgers for the Committee on Institutions.

The Committee recommends that the Senate propose 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.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 20, 2018, pages 722-733)

H. 780.

An act relating to portable rides at agricultural fairs, field days, and other similar events.

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

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

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Fairs are essential to the character, community life, and economy of Vermont, and amusement rides help to increase fair attendance.

(2) Attendance at Vermont fairs exceeds 375,000 people a year, and the total budget for all Vermont fairs exceeds \$7 million a year. Vermont fairs generate over \$85,000.00 of sales tax revenue per year.

(3) An inspection regime for amusement rides based upon standards that are nationally recognized and used in other states will increase the safety of fair rides and help ensure the continued popularity of Vermont fairs.

Sec. 2. 31 V.S.A. § 721 is amended to read:

§ 721. DEFINITIONS

As used in this chapter:

(1) “Amusement ride” means a mechanical device that carries or conveys passengers along, around, or over a fixed or restricted route or course

for the purpose of giving the passengers amusement, pleasure, thrills, or excitement. ~~In addition, for~~ For the purposes of this chapter, amusement ride shall also not include bungee jumping, zip lines, or waterslides or obstacle, challenge, or adventure courses.

(2) “Operator” or “owner” means a person who owns or controls or has the duty to control the operation of amusement rides.

~~(3) “Certificate” or “certificate of operation” means a document issued by the Secretary of State authorizing the operation of one or more amusement rides, indicating thereon the following information for each amusement ride: the proper ride model, serial number, passenger capacity of the ride, the recommended maximum speed of the ride, and recommended direction of travel of the ride. The Secretary of State may amend a certificate to add other amusement rides to be operated in the State during a calendar year.~~

Sec. 3. 31 V.S.A. § 722 is amended to read:

§ 722. CERTIFICATE OF OPERATION

(a) An amusement ride may not be operated in this State unless the Secretary of State has issued a certificate of operation to the owner or operator within the preceding 12 months.

(b) An application for a certificate of operation shall be submitted to the Secretary of State not fewer than 30 business days before an amusement ride is operated in this State.

(c) The Secretary of State shall issue a “certificate of operation” no later not fewer than 15 business days before the amusement ride is first operated in the State, if the owner or operator submits all the following:

(1) Certificate of insurance in the amount of not less than \$1,000,000.00 that insures both the owner and the operator against liability for injury to persons and property arising out of the use or operation of the amusement ride.

(2) Payment of a fee in the amount of \$100.00.

(3) Proof or a statement of compliance with the requirements of 21 V.S.A. chapter 9.

~~(e)~~(d) The certificate of operation shall be valid for one year from the date of issue and shall be in a manner and format to be prescribed by the Secretary of State. A certificate of operation shall identify the ride’s:

(1) name and model;

(2) serial number;

(3) passenger capacity; and

(4) recommended maximum speed.

(d)(e) A copy of the certificate of operation shall be posted on or near each amusement ride covered by the certificate and shall be in full public view at all times during the operation of the ride kept at the office of the amusement ride operator.

(f) The Secretary of State shall:

(1) determine the manner and format of the certificate of operation, any forms to be used to apply for the certificate of operation, the adhesive sticker that shall be affixed to the ride pursuant to subdivision 723a(b)(2) of this title, and the certification to be filed pursuant to subdivision 723a(b)(3) of this title;

(2) make any forms and certifications available on the Secretary of State's website and shall provide adhesive stickers to inspectors;

(3) allow an owner or operator to apply for certificates of operation for multiple rides at one time, using one form;

(4) charge one fee for the filing of each application form, regardless of the number of rides listed on the application.

Sec. 4. 31 V.S.A. § 723a is added to read:

§ 723a. SAFETY INSPECTIONS

(a) A amusement ride shall not be operated in this State unless:

(1) The ride has been inspected in the State within the preceding 12 months by a person who is:

(A) certified:

(i) by the National Association of Amusement Ride Safety Officials as a Level II Inspector; or

(ii) by the Amusement Industry Manufacturers and Suppliers International at a level that is equivalent to the certification pursuant to subdivision (i) of this subdivision (1)(A); and

(B) not the owner or operator of the ride or an employee or agent of the owner or operator.

(2) The inspection complied with the American Society for Testing and Materials (ASTM) current standard F770 concerning the practices for ownership, operation, maintenance, and inspection of amusement rides and devices.

(3) A valid certificate of operation has been issued for the ride pursuant to section 722 of this title.

(b) After a ride has been inspected pursuant to subsection (a) of this section:

(1) The owner or operator shall submit the certificate or other record of inspection to the Secretary of State within 15 business days following the date of inspection.

(2) An adhesive sticker, in a format to be determined by the Secretary of State, shall be affixed to the ride that indicates:

(A) the date and location the inspection was completed; and

(B) the name of the inspector.

(3) The owner or operator shall submit a certification, in a format to be determined by the Secretary of State, to the organization hosting a fair, field day, or other event or location, at which the owner or operator intends to operate a ride, stating that the ride has been inspected pursuant to subsection (a) of this section and stickers have been affixed pursuant to this subdivision (b) prior to the ride being used to carry or convey passengers.

(c) A ride shall be inspected by the owner or operator:

(1) after the ride has been set up but before being used to carry or convey passengers; and

(2) every day thereafter that the ride is used to carry or convey passengers.

(d) The owner or operator of an amusement ride shall:

(1) keep records of all safety inspections;

(2) make those records available to the Secretary of State or the Office of the Attorney General promptly upon request;

(3) keep a paper or electronic copy of all required forms or certifications, and of all safety inspections conducted by the owner or operator during the preceding 12 months for each ride:

(A) on or near that ride; or

(B) at the office of the amusement ride operator;

(4) operate, maintain, and inspect all rides in compliance with ASTM current standards for ownership, operation, maintenance, and inspection of amusement rides and devices.

Sec. 5. 31 V.S.A. § 723 is amended to read:

§ 723. OPERATIONS OPERATOR AND PATRON RESPONSIBILITIES

(a) An operator of an amusement ride shall:

- (1) be at least 18 years of age;
- (2) operate only one amusement ride at a time; ~~and~~
- (3) be in attendance at all times that the ride is operating; and
- (4) operate the ride in accordance with the ride manufacturer's requirements.

(b) An operator of an amusement ride may deny any person entrance to an amusement ride if the operator believes that entrance by that person may jeopardize the safety of the person or other persons.

(c) A patron shall:

- (1) understand that there are risks in riding an amusement ride;
- (2) exercise good judgment and act in a responsible and safe manner while riding an amusement ride; and
- (3) obey all written and verbal warnings and directions from ride operators or owners.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

And that after passage the title of the bill be amended to read:

An act relating to rides at agricultural fairs, field days, and other similar events.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 20, 2018, pages 733-741)

H. 828.

An act relating to disclosures in campaign finance law.

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

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

Sec. 1. 17 V.S.A. chapter 61 is amended to read:

CHAPTER 61. CAMPAIGN FINANCE

Subchapter 1. General Provisions

§ 2901. DEFINITIONS

As used in this chapter:

* * *

(6) “Electioneering communication” means any communication that refers to a clearly identified candidate for office and that promotes or supports a candidate for that office or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate, including communications published in any newspaper or periodical or broadcast on radio or television or over the Internet or any public address system; placed on any billboards, outdoor facilities, buttons, or printed material attached to motor vehicles, window displays, posters, cards, pamphlets, leaflets, flyers, or other circulars; or contained in any direct mailing, robotic phone calls, or mass ~~e-mails~~ electronic or digital communications.

* * *

(11) “Mass media activity” means a television commercial, radio commercial, Internet advertisement, mass mailing, mass electronic or digital communication, literature drop, newspaper or periodical advertisement, robotic phone call, or telephone bank, that includes the name or likeness of a clearly identified candidate for office.

* * *

Subchapter 4. Reporting Requirements; Disclosures

* * *

§ 2968. CAMPAIGN REPORTS; LOCAL CANDIDATES

(a) Each candidate for local office who has rolled over any amount of surplus into his or her new campaign or who has made expenditures or accepted contributions of \$500.00 or more since the last local election for that office shall file with the Secretary of State campaign finance reports 30 days before, 10 days before, four days before, and two weeks after the local election.

* * *

§ 2972. IDENTIFICATION IN ELECTIONEERING COMMUNICATIONS

(a) An electioneering communication shall contain the name and mailing address of the person, candidate, political committee, or political party that paid for the communication. The name and address shall appear prominently and in a manner such that a reasonable person would clearly understand by whom the expenditure has been made, except that:

(1) An audio electioneering communication ~~transmitted through radio~~

and paid for by a candidate does not need to contain the candidate's address.

(2) An electioneering communication paid for by a person acting as an agent or consultant on behalf of another person, candidate, political committee, or political party shall clearly designate the name and mailing address of the person, candidate, political committee, or political party on whose behalf the communication is published or broadcast.

(b) If an electioneering communication is a related campaign expenditure made on a candidate's behalf as provided in section 2944 of this chapter, then in addition to other requirements of this section, the communication shall also clearly designate the candidate on whose behalf it was made by including language such as "on behalf of" such candidate.

(c)(1) In addition to the identification requirements in subsections (a) and (b) of this section, an electioneering communication paid for by or on behalf of a political committee or political party shall contain the name of any contributor who contributed more than 25 percent of all contributions and more than \$2,000.00 to that committee or party since the beginning of the two-year general election cycle in which the electioneering communication was made to the date on which the expenditure for the electioneering communication was made.

(2) For the purposes of this subsection, a political committee or political party shall be treated as having made an expenditure if the committee or party or person acting on behalf of the committee or party has executed a contract to make the expenditure.

(d) If it is not practicable to meet the identification requirements of this section within an electioneering communication that is broadcast over the Internet, such an electioneering communication shall contain a link that shall be clear and conspicuous and that, if clicked, takes the reader to a web page or social media page that provides all of the identification information as required by this section.

(e) The identification requirements of this section shall not apply to lapel stickers or buttons, nor shall they apply to electioneering communications made by a single individual acting alone who spends, in a single two-year general election cycle, a cumulative amount of ~~no~~ not more than \$150.00 on those electioneering communications, adjusted for inflation pursuant to the Consumer Price Index as provided in section 2905 of this chapter.

§ 2973. SPECIFIC IDENTIFICATION REQUIREMENTS FOR RADIO, TELEVISION, OR INTERNET COMMUNICATIONS

(a) In addition to the identification requirements set forth in section 2972 of this subchapter, a person, candidate, political committee, or political party

that makes an expenditure for an electioneering communication shall include in any communication that is transmitted through radio, television, or online video, in a clearly spoken manner, an audio statement of the name and title of the person who paid for the communication and that the person paid for the communication.

(b) If the person who paid for the communication is not ~~a natural person~~ an individual, the audio statement required by this section shall include the name of that ~~non-natural~~ person and the name and title of the treasurer, in the case of a ~~candidate's committee~~, political committee, or political party, or the principal officer, in the case of any other ~~non-natural~~ person that is not an individual.

* * *

Sec. 2. EFFECTIVE DATES

This act shall take effect on passage, except that in Sec. 1, 17 V.S.A. § 2968 (campaign reports; local candidates) shall take effect on December 14, 2018.

(Committee vote: 4-1-0)

(For House amendments, see House Journal for February 22, 2018, pages 444 - 445)

H. 897.

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

Reported favorably with recommendation of proposal of amendment by Senator Baruth for the Committee on Education.

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

* * * 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~~ EDUCATIONAL SUPPORT 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.

(Committee vote: 5-1-0)

(For House amendments, see House Journal for March 21, 2018, pages 774-779 and March 22, 2018, page 812)

H. 903.

An act relating to regenerative farming.

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

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

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Farmers in Vermont face significant economic pressures as the costs of production often exceed prices paid for milk or other products.

(2) Many farmers have adopted regenerative farming practices to benefit from reduced input costs, improved yields, and better resilience to climatic extremes.

(3) Simultaneously with market conditions, farmers are facing regulatory pressures to improve management of agricultural waste and satisfy standards for the sale of food products.

(4) Some Vermont farmers may benefit economically from adopting regenerative farming practices.

(5) Regenerative agriculture describes farming and grazing practices that, among other benefits, reverse climate change by rebuilding organic matter in soil and restoring degraded soil biodiversity, resulting in carbon drawdown, improved retention of water in the soil, and improved water quality.

(6) Regenerative agriculture regenerates soil and revitalizes soil health, which may be essential to preserve farming in Vermont as the U.S. Department of Agriculture's Natural Resource Conservation Service (NRCS) calculated that Vermont farmland loses on average 1.5 to 1.8 tons of soil per acre per year due to erosion by water.

(7) Through the Required Agricultural Practices, adopted under 6 V.S.A. § 4810, all farms in Vermont must adopt practices that improve soil health and water quality, including required cover cropping on floodplain fields and reducing erosion rates through the adoption of soil conservation management techniques.

(8) The Vermont Agricultural Water Quality Partnership (VAWQP) is dedicated to collaborating with and supporting agricultural producers in their efforts to improve water quality and improve soil health. The VAWQP is composed of the agencies and organizations that signed the Lake Champlain Memorandum of Understanding (MOU) in January 2012. The MOU partners currently include the U.S. Department of Agriculture's Natural Resources Conservation Service, the U.S. Department of Agriculture's Farm Service Agency, the Vermont Association of Conservation Districts, the U.S. Fish and Wildlife Service, the University of Vermont Extension, the Agency of Natural Resources, the Agency of Agriculture, Food and Markets, the Vermont Housing and Conservation Board, and the Lake Champlain Basin Program.

(9) The State of Vermont should establish a voluntary program to assist farmers to adopt regenerative farming practices and certify those farmers who have achieved a level of implementation that: contributes to generating or building soils and soil fertility and health; increases water percolation; increases water retention; increases the amount of clean water running off farms; increases biodiversity and ecosystem health and resiliency; and sequesters carbon in soils.

Sec. 2. 6 V.S.A. chapter 215, subchapter 7A is added to read:

Subchapter 7A. Regenerative Farming

§ 4961. PURPOSE

The purposes of this subchapter are to:

- (1) enhance the economic viability of farms in Vermont;

- (2) improve the health and productivity of the soils of Vermont;
- (3) encourage farmers to implement regenerative farming practices;
- (4) reduce the amount of agricultural waste entering the waters of Vermont;
- (5) enhance crop resilience to rainfall fluctuations and mitigate water damage to crops, land, and surrounding infrastructure;
- (6) promote cost-effective farming practices;
- (7) reinvigorate the rural economy; and
- (8) help the next generation of Vermont farmers learn regenerative farming practices so that farming remains integral to the economy, landscape, and culture of Vermont.

§ 4962. DEFINITIONS

As used in this subchapter:

(1) “Certified Vermont Environmental Steward” means an owner or operator of a farm who has achieved the thresholds for the Vermont Environmental Stewardship Program to be certified as a farm that improves soil health and contributes to improving water quality.

(2) “Regenerative farming” means a series of cropland management practices that:

(A) contributes to generating or building soils and soil fertility and health;

(B) increases water percolation, increases water retention, and increases the amount of clean water running off farms;

(C) increases biodiversity and ecosystem health and resiliency; and

(D) sequesters carbon in agricultural soils.

§ 4963. REGENERATIVE FARMING; VERMONT ENVIRONMENTAL STEWARDSHIP PROGRAM

(a) Establishment of program. There is created within the Agency of Agriculture, Food and Markets the Vermont Environmental Stewardship Program (VESP) to provide technical and financial assistance to Vermont farmers seeking to implement regenerative farming practices to achieve certification as a Certified Vermont Environmental Steward.

(b) Program standards; application. The Secretary of Agriculture, Food and Markets shall establish by procedure standards for certification as a Certified Environmental Steward. Application for certification shall be made in the manner required by the Secretary of Agriculture, Food and Markets.

(c) Program services. The VESP shall provide the following services to farmers voluntarily seeking to transition to achieve certification as a Certified Vermont Environmental Steward:

(1) information and education regarding the requirements for certification, including the method, timeline, and process of certification;

(2) technical assistance in completing any required application for certification;

(3) technical assistance in developing plans and implementing practices to achieve certification from the VESP; and

(4) technical assistance in complying with the requirements of the VESP after a farm is certified.

(d) Financial assistance; eligibility. An owner or operator of a farm participating in the VESP shall be eligible for financial assistance from existing Agency of Agriculture, Food and Markets financial assistance programs for costs incurred in implementing any of the practices required for certification as a Certified Environmental Steward.

(e) Revocation of certification. The Secretary may, after due notice and hearing, revoke a certification issued under this section when the owner or operator of a certified farm fails to comply with the standards for certification established under subsection (b) of this section.

(f) Administrative penalty; falsely advertising. The Secretary may assess an administrative penalty of up to \$1,000.00 against the owner or operator of a farm who knowingly advertises as a Certified Environmental Steward when not certified by the Secretary.

Sec. 3. FUNDING VERMONT ENVIRONMENTAL STEWARDSHIP PROGRAM

The Agency of Agriculture, Food and Markets shall use funds available to the Agency and eligible for use for water quality programs or projects to provide financial assistance to Vermont farmers participating in the Vermont Environmental Stewardship Program to implement regenerative farming practices to achieve certification as a Certified Vermont Environmental Steward.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(Committee vote: 5-0-0)

(No House amendments)

Reported favorably with recommendation of proposal of amendment by Senator Starr for the Committee on Appropriations.

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Agriculture with the following amendment thereto:

In Sec. 2, in 6 V.S.A. § 4963, in subsection (d), after “Financial assistance; eligibility.” and before “owner or operator” by striking out “An” and inserting in lieu thereof Subject to the availability of funding, an

(Committee vote: 5-0-2)

H. 909.

An act relating to technical and clarifying changes in transportation-related laws.

Reported favorably with recommendation of proposal of amendment by Senator Flory for the Committee on Transportation.

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

First: In Sec. 1, in subsection (a), by striking out “International Association of Sheet Metal, Air, Rail and Transportation Workers or its successor” and inserting in lieu thereof the following: union representing the affected employee, if any

Second: By striking out Secs. 2–3 in their entirety and inserting in lieu thereof the following:

Sec. 2. 5 V.S.A. § 202 is amended to read:

§ 202. DEFINITIONS

As used in this part of this title, unless the context otherwise requires, the following definitions shall apply:

* * *

(8)(A) “Airman” means an individual:

(i) in command, or as pilot, mechanic, or member of the crew, who engages in air navigation of navigates aircraft when underway and excepting an individual employed outside the United States or by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with aircraft, aircraft engines, propellers, or appliances, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by him or her, an individual;

(ii) who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances; ~~and or~~

(iii) ~~an individual~~ who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(B) "Airman" does not include an individual:

(i) employed outside the United States;

(ii) employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with aircraft, aircraft engines, propellers, or appliances; or

(iii) performing inspection or mechanical duties in connection with aircraft owned or operated by him or her.

* * *

Sec. 3. [Deleted.]

Third: In Sec. 8, in subsection (a), by striking out "the its registration certificate ~~thereof is~~" and inserting in lieu thereof: ~~the~~ all required registration certificate ~~thereof is~~ certificates are

Fourth: In Sec. 8, in subsection (b), by striking out "the certificate" and inserting in lieu thereof: a certificate

(Committee vote: 5-0-0)

(No House amendments)

H. 917.

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

Reported favorably with recommendation of proposal of amendment by Senator Mazza for the Committee on Transportation.

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

* * * Transportation Program Adopted as Amended; Definitions * * *

Sec. 1. TRANSPORTATION PROGRAM ADOPTED; DEFINITIONS

(a) The Agency of Transportation's proposed fiscal year 2019 Transportation Program appended to the Agency of Transportation's proposed fiscal year 2019 budget, as amended by this act, is adopted to the extent federal, State, and local funds are available.

(b) As used in this act, unless otherwise indicated:

(1) “Agency” means the Agency of Transportation.

(2) “Secretary” means the Secretary of Transportation.

(3) The table heading “As Proposed” means the Transportation Program referenced in subsection (a) of this section; the table heading “As Amended” means the amendments as made by this act; the table heading “Change” means the difference obtained by subtracting the “As Proposed” figure from the “As Amended” figure; and the terms “change” or “changes” in the text refer to the project- and program-specific amendments, the aggregate sum of which equals the net “Change” in the applicable table heading.

(4) “TIB funds” means monies deposited in the Transportation Infrastructure Bond Fund in accordance with 19 V.S.A. § 11f.

* * * Federal Infrastructure Funding * * *

Sec. 2. FEDERAL INFRASTRUCTURE FUNDING

(a) Subsection (b) of this section shall expire on February 1, 2019.

(b)(1) If a federal infrastructure bill or other federal legislation that provides for infrastructure funding is enacted that provides Vermont with additional federal funding for transportation-related projects, to the extent that federal monies allocated to the State of Vermont are subject to a requirement that the monies be obligated or under contract by the State within a specified time period, the Secretary is authorized to exceed spending authority in the fiscal year 2018 and 2019 Transportation Programs and to obligate and expend the federal monies:

(A) on eligible projects in the fiscal year 2018 or 2019 Transportation Program; and

(B) on additional town highway projects or activities that meet federal eligibility and readiness criteria.

(2) Nothing in this subsection shall be construed to authorize the Secretary to obligate or expend State Transportation or TIB funds above amounts authorized in the fiscal year 2018 or 2019 Transportation Program.

(c) The Agency shall promptly report the obligation or expenditure of monies under the authority of this section to the House and Senate Committees on Transportation and to the Joint Fiscal Office while the General Assembly is in session, and to the Joint Fiscal Office, the Joint Fiscal Committee, and the Joint Transportation Oversight Committee when the General Assembly is not in session.

* * * Infrastructure for Rebuilding America Grant * * *

Sec. 3. INFRASTRUCTURE FOR REBUILDING AMERICA GRANT

(a)(1) According to the Agency, in 2018, the U.S. Department of Transportation (USDOT) may solicit applications for grants under the Infrastructure for Rebuilding America (INFRA) Program.

(2) If USDOT does solicit INFRA grant applications in 2018, the Agency may submit an application for an INFRA grant for bridge and culvert projects on Interstate 89 with a total cost of up to \$105,000,000.00, which amount includes a State match of up to \$21,000,000.00. If it submits a grant application, the Agency shall identify Transportation Infrastructure Bonds as a possible source of State matching dollars and, promptly upon its submission to the USDOT, the Agency shall send an electronic copy of the grant application to the Joint Fiscal Office, which shall then transmit it to the Joint Fiscal Committee and to the chairs of the House and Senate Committees on Transportation.

(b) If the Agency is awarded an INFRA grant as described in subsection (a) of this section and the grant requires that work under the grant begin during fiscal year 2019, the Agency shall include in its fiscal year 2019 budget adjustment proposal any adjustments to fiscal year 2019 appropriations and to the approved fiscal year 2019 Transportation Program that may be required to comply with the terms of the grant.

* * * Program Development; Traffic & Safety Operations * * *

Sec. 4. PROGRAM DEVELOPMENT—TRAFFIC & SAFETY OPERATIONS

The following project is added to the candidate list of the Program Development—Traffic & Safety Program within the fiscal year 2019 Transportation Program: South Burlington STP SGNL () I-89 Exit 14 signal upgrades.

* * * Program Development; Bike & Pedestrian Facilities * * *

Sec. 5. PROGRAM DEVELOPMENT—BIKE & PEDESTRIAN FACILITIES

Spending authority on the Statewide—New Awards activity within the fiscal year 2019 Program Development—Bike & Pedestrian Facilities Program is amended as follows:

<u>FY19</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE	0	0	0
ROW	0	0	0
Const	600,000	900,000	300,000
Total	600,000	900,000	300,000
<u>Sources of funds</u>			
State	300,000	450,000	150,000
Local	300,000	450,000	150,000
Federal	0	0	0
Total	600,000	900,000	300,000

* * * Aviation Program * * *

Sec. 6. AVIATION PROGRAM

For fiscal year 2019:

(1) The sources of funds for the AV-FY18-001 (local match of FAA projects; Burlington Airport) project within the Aviation Program are amended to read:

<u>FY19</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
<u>Sources of funds</u>			
State	750,000	600,000	-150,000
Local	500,000	650,000	150,000
Federal	11,250,000	11,250,000	0
Total	12,500,000	12,500,000	0

(2) Spending authority of transportation funds in the Aviation Program is reduced by \$150,000.00.

* * * Town Highway Bridge Program * * *

Sec. 7. TOWN HIGHWAY BRIDGE PROGRAM

The following project is added to the candidate list of the Town Highway Bridge Program within the fiscal year 2019 Transportation Program: Salisbury – Cornwall BO 1445(), scoping for replacement of BR8 over the Otter Creek.

* * * Maintenance Program and District Leveling * * *

Sec. 8. MAINTENANCE PROGRAM AND DISTRICT LEVELING;
SPENDING AUTHORITY

(a) As used in this section, “TDI” refers to Champlain VT, LLC d/b/a TDI New England and “TDI Agreement” refers to the lease option agreement entered into between TDI and the State on July 17, 2015.

(b) Authorized spending in fiscal year 2019 for the Statewide District Leveling activity in the Program Development—Paving Program is reduced by \$2,400,000.00 in transportation funds and increased by \$2,400,00.00 in federal funds.

(c) Authorized spending in fiscal year 2019 for operating expenses in the Maintenance Program is reduced by \$1,600,000.00 in transportation funds.

(d) If TDI makes a payment to the State in fiscal year 2018 or 2019 pursuant to the TDI Agreement or pursuant to a renegotiation of the TDI Agreement, the Secretary shall allocate the amount of the payment received to the Statewide District Leveling activity or to the Maintenance Program, or to both, and authorized spending of transportation funds in fiscal year 2019 for the Statewide District Leveling activity and for the Maintenance Program is increased in accordance with the allocation made.

(e) If TDI makes no payment to the State in fiscal year 2018 or 2019 pursuant to the TDI Agreement or a renegotiation thereof or if a payment made by TDI is insufficient to restore the reduction in spending authority made in subsections (b) and (c) of this section, the Secretary shall allocate any unreserved surplus in the Transportation Fund as of the end of fiscal year 2018 to the Statewide District Leveling activity or to the Maintenance Program, or to both, and authorized spending of transportation funds in fiscal year 2019 for the Statewide District Leveling activity and for the Maintenance Program is increased in accordance with the allocation made.

(f)(1) Subject to subdivision (2) of this subsection, and notwithstanding 32 V.S.A. § 706, if the contingent allocations directed in subsections (d) and (e) of this section do not occur or are insufficient to restore the reduction in spending authority made in subsections (b) and (c) of this section, the Secretary of Administration, after consulting with the Secretary of Transportation, is authorized to transfer balances of fiscal year 2019 Transportation Fund appropriations within the Agency to the extent required to restore the reduction in spending authority made in subsections (b) and (c) of this section, and authorized spending of transportation funds in fiscal year 2019 for the Statewide District Leveling activity and for the Maintenance Program is increased in accordance with the balances transferred.

(2) An appropriation may be transferred pursuant to subdivision (1) of this subsection only if the monies are not needed for a project:

(A) because the project has been delayed due to permitting, right-of-way, or other unforeseen issues; or

(B) because of cost savings generated by the project.

(3) In making any appropriation transfer authorized under this section,

the Secretary of Administration shall avoid, to the extent possible, any reductions in appropriations to the town programs described in 19 V.S.A. § 306. Any reductions to these town programs shall not affect the timing of reimbursements to towns for projects or delay any projects or grants and shall be replaced in the affected appropriations in fiscal year 2020.

* * * Contingent Addition to State Highway System * * *

Sec. 9. CONTINGENT ADDITION OF VERMONT ROUTE 119 IN THE TOWN OF BRATTLEBORO TO THE STATE HIGHWAY SYSTEM

(a) If the condition specified in subsection (b) of this section is satisfied, pursuant to 19 V.S.A. § 15(a), upon substantial completion of construction of the Brattleboro-Hinsdale, NH bridge replacement project (BF A004(152)), the following highway segment in the Town of Brattleboro shall be added to the State highway system: the entirety of the new Vermont Route 119 in the Town of Brattleboro, extending from its intersection with Vernon Street (TH#4) to the westerly low watermark of the Connecticut River.

(b) The addition to the State highway system specified in subsection (a) of this section shall occur only if the Town of Brattleboro enters into a maintenance agreement with the Agency.

* * * Abandoned Aircraft * * *

Sec. 10. 5 V.S.A. chapter 9 is amended to read:

CHAPTER 9. GENERAL PROVISIONS; ABANDONED AIRCRAFT

Subchapter 1. Aeronautics; Authority and Duties; Penalties

* * *

Subchapter 2. Abandoned Aircraft

§ 221. DEFINITIONS

As used in this subchapter:

(1) “Airport manager” means the owner of an airport in this State or an agent authorized to act on behalf of an airport owner.

(2) “Storage operator” means a person who stores an aircraft or aircraft component at the request of an airport manager.

§ 222. ABANDONED AIRCRAFT; AUTHORITY TO TAKE CUSTODY, REMOVE, AND STORE; NOTICE OF INTENT; LIMITATION ON LIABILITY

(a) Subject to subsection (b) of this section, an airport manager who discovers an aircraft or aircraft component apparently abandoned, or an aircraft without a currently effective federal registration certificate, on the property of the airport has authority to:

(1) take custody of the aircraft or component;

(2) arrange for the aircraft or component to be secured and stored at its current location or to be removed and stored elsewhere.

(b)(1) As used in this subsection, a “notice of intent” shall include:

(A) a statement of the airport manager’s intent to exercise authority under subsection (a) of this section and of the owner’s responsibility for reasonable charges under this subchapter;

(B) the make and the factory or identification number of the aircraft or aircraft component;

(C) the current location of the aircraft or aircraft component and the planned location for its storage; and

(D) the aircraft registration number, if any.

(2) At least 60 days prior to exercising the authority granted in subsection (a) of this section, the airport manager shall:

(A) Attempt to provide a notice of intent to the owner and to the lienholder, if any, of the aircraft or aircraft component. If the address of the last place of residence of the owner or lienholder of the aircraft or aircraft component is ascertainable through the exercise of reasonable diligence, including inquiry of the Federal Aviation Administration’s aircraft registry, the airport manager shall send the notice of intent by certified mail to the address or addresses; otherwise, the airport manager shall be deemed to have fulfilled the requirement of this subdivision (b)(2)(A) if the manager posts the notice of intent on the aircraft or aircraft component.

(B) Send a written notice of intent to the Secretary.

(c) The Secretary shall place on file notices of intent received under subdivision (b)(2)(B) of this section and, upon request, make the notices available for public inspection and copying.

(d) Except in the case of intentionally inflicted damages, an airport manager who takes custody of an aircraft or aircraft component or an airport manager or storage operator who arranges for the removal or storage of an aircraft or aircraft component under this subchapter shall not be liable to the owner or lienholder for any damages to the aircraft or aircraft component incurred while it was in the manager’s custody or during its removal or storage.

§ 223. LIEN; RIGHT TO CONTEST COSTS

(a) If the notice requirements of subsection 222(b) of this title are fulfilled, all reasonable storage, removal, and other costs necessarily incurred thereafter

by an airport manager or a storage operator in carrying out the provisions of this subchapter shall be a lien on the aircraft or aircraft component held by the person who incurred the costs.

(b) In exercising rights under section 224 or 226 of this title, the owner or lienholder may contest the reasonableness and necessity of the costs by bringing an action before the Transportation Board.

§ 224. RIGHT OF OWNER TO RECLAIM

The owner or lienholder of an aircraft or aircraft component stored under this subchapter may reclaim the aircraft or aircraft component prior to any sale by paying the outstanding costs described in section 223 of this title.

§ 225. SALE AUTHORIZED; NOTICE OF PROPOSED SALE

(a) If the owner or lienholder has not reclaimed the aircraft or aircraft component after the aircraft manager fulfills the notice requirements of subsection 222(b) of this title, and if the airport manager fulfills the notice requirements of subsection (b) of this section, the airport manager may sell the aircraft or aircraft component in a commercially reasonable manner as described in 9A V.S.A. § 9-610 (disposition of collateral after default).

(b)(1) The notice of proposed sale required in this subsection shall include:

(A) the make and the factory or identification number of the aircraft or aircraft component;

(B) the aircraft registration number, if any;

(C) contact information for the person from whom the owner or lienholder may reclaim the aircraft or aircraft component pursuant to section 224 of this title; and

(D) the date and location of the proposed sale.

(2) At least 14 days before a sale under this section, the airport manager shall:

(A) if the value of the aircraft or aircraft component exceeds \$1,000.00, publish the notice of proposed sale in a media outlet of general circulation in the municipality; and

(B) if the address of the last place of residence of the owner or the lienholder, if any, of the aircraft or aircraft component is ascertainable through the exercise of reasonable diligence, including inquiry of the Federal Aviation Administration's aircraft registry, send the notice of proposed sale by certified mail to the address or addresses; otherwise, the airport manager shall be deemed to have fulfilled the requirement of this subdivision (b)(2)(B) if the manager posts the notice on the aircraft or aircraft component.

§ 226. APPLICATION OF PROCEEDS

The airport manager shall pay the balance of the proceeds of the sale, if any, after payment of liens and the reasonable expenses incident to the sale, to the owner or lienholder of the aircraft or aircraft component, if claimed at any time within one year from the date of the sale. If the owner or lienholder does not claim the balance within one year, the airport manager shall retain the proceeds.

* * * Abandoned Vessels * * *

Sec. 11. 10 V.S.A. chapter 48A is added to read:

CHAPTER 48A. ABANDONED VESSELS

§ 1420. VESSELS; ABANDONMENT PROHIBITED; REMOVAL AND DISPOSITION OF ABANDONED VESSELS

(a) Definitions. In this chapter, unless the context clearly requires otherwise:

(1) “Abandon” means, with respect to a vessel, any of the following:

(A) to leave unattended on public waters or on immediately adjacent land for more than 30 days without the express consent of the Secretary or, if on immediately adjacent land, of the person in control of the land;

(B) to leave partially or fully submerged in public waters for more than 30 days without the express consent of the Secretary;

(C) to leave partially or fully submerged in public waters a petroleum-powered vessel for more than 48 hours without the express consent of the Secretary; or

(D) to leave unattended on public waters or on immediately adjacent land for any period if the vessel poses an imminent threat to navigation or to public health or safety.

(2) “Commissioner” means the Commissioner of Motor Vehicles or designee.

(3) “Law enforcement officer” means an individual described in 23 V.S.A. § 3302 who is certified by the Vermont Criminal Justice Training Council as a level II or level III law enforcement officer under 20 V.S.A. § 2358.

(4)(A) “Public waters” means:

(i) the portions of Lake Champlain, Lake Memphremagog, and the Connecticut River that are within the territorial limits of Vermont;

(ii) boatable tributaries of Lake Champlain and Lake

Memphremagog upstream to the first barrier to navigation, and impoundments and boatable tributaries of those impoundments of the Connecticut River upstream to the first barrier to navigation, within the territorial limits of Vermont; and

(iii) all natural inland lakes, ponds, and rivers within Vermont, and other waters within the territorial limits of Vermont including the Vermont portion of boundary waters, that are boatable under the laws of this State.

(B) "Public waters" does not include waters in private ponds and private preserves as set forth in chapter 119 of this title.

(5) "Secretary" means the Secretary of Natural Resources or designee.

(6) "Storage operator" means:

(A) the Secretary, if storing an abandoned vessel after causing its removal pursuant to this section; or

(B) a person who stores a vessel removed pursuant to this section at the request of the Secretary, or a subsequent transferee thereof.

(7) "Vessel" means:

(A) a motorboat; or

(B) a sailboat, or other boat, that is 16 or more feet in length.

(b) Relationship with other laws. The authority conferred to the Secretary and the penalties established in this section are in addition to authority granted or penalties established elsewhere in law, and nothing in this section shall be construed to modify any authority or the application of penalties under any other provision of law, including under chapter 47, 159, 201, or 211 of this title.

(c) Abandonment of vessels prohibited.

(1) Civil violation. A person shall not abandon a vessel on public waters or immediately adjacent land. A person who violates this subdivision shall be subject to civil enforcement under chapters 201 and 211 of this title and, in any such enforcement action, the Secretary may obtain an order to recover costs specified in subdivision (d)(1) of this section incurred by the Agency of Natural Resources.

(2) Criminal violation. A person shall not knowingly abandon a petroleum-powered vessel or knowingly abandon a vessel that poses an imminent threat to navigation or to public health or safety. A person who violates this subdivision shall be subject to a fine of up to \$10,000.00.

(d)(1) Removal of abandoned vessel. Upon request from a law

enforcement officer or at his or her own initiative, the Secretary shall promptly cause the removal and safe storage of a vessel that is abandoned as described in subdivision (a)(1) of this section, unless the vessel is to be removed by a federal agency. If removal is requested by a law enforcement officer, the Secretary shall make reasonable efforts to determine if the vessel qualifies as abandoned. In addition, the Secretary shall have the authority to take actions as may be necessary to eliminate risks to public health or safety caused by the condition of the vessel.

(2) Responsibility for costs; lien.

(A) The owner of a vessel removed under the authority of this section shall be responsible for reasonable:

(i) removal costs;

(ii) cleanup and disposal costs;

(iii) storage costs incurred after the storage operator sends the Department of Motor Vehicles a notice of removal consistent with subdivision (e)(1) of this section; and

(iv) costs of enforcing this section borne by the Secretary.

(B) Costs for which an owner is responsible under subdivision (d)(2)(A) of this section shall be a lien on the vessel held by the person who incurred the costs. Nothing in this subdivision (d)(2)(B) shall be construed to modify any rights or authority to recover such costs that may exist under any other provision of law.

(3) Limitation on liability. Except in the case of intentionally inflicted damages, the Secretary shall not be liable to the owner or lienholder of an abandoned vessel for any damages to the vessel incurred during its removal or storage, or as a result of actions taken to eliminate risks to public health or safety caused by the condition of the vessel, in accordance with this section.

(e)(1) Notice of removal and place of storage. Within three business days of the date of removal of an abandoned vessel, the storage operator shall send notice to the Commissioner of:

(A) the federal, state, or foreign registration number, and the hull identification number, of the vessel, if any;

(B) a description of the vessel, including its color, size, and, if available, its manufacturer's trade name and manufacturer's series name;

(C) the date of removal and the location from where the vessel was removed;

(D) the name and contact information of an individual at the Agency

of Natural Resources who can provide information about the vessel's removal and how to reclaim it; and

(E) the periodic storage charges that will apply, if any.

(2) Listing of removed vessel. The Commissioner shall post and maintain on the website of the Department of Motor Vehicles a listing of vessels removed under the authority of this section with the information received under subdivision (1) of this subsection.

(f) Disposition following removal.

(1) As used in this subdivision:

(A) A "notice of intent" shall include the information described in subdivision (e)(1) of this section and an indication of the storage operator's intent to take ownership or otherwise dispose of an abandoned vessel.

(B) The term "address" shall mean the plural "addresses" if more than one address is ascertained.

(2) Within 30 days after the date of removal of the abandoned vessel, a storage operator shall:

(A) Cause a notice of intent to be published in the environmental notice bulletin under 3 V.S.A. § 2826.

(B) Make reasonable efforts to ascertain the address of the owner and any lienholder and, if the address is ascertained, send the notice of intent to the address by certified mail, return receipt requested. Reasonable efforts shall include inquiring of the person in control of the waters or land from which the abandoned vessel was removed, the clerk of the municipality in which the waters or land is located, the State Police, the Office of the Secretary of State, and the Department of Motor Vehicles as to the identity and address of the owner and any lienholder.

(3) Ownership of the vessel shall pass to the storage operator free of all claims of any prior owner or lienholder if the owner or lienholder has not reclaimed the vessel and paid all costs authorized under subdivision (d)(2) of this section within 60 days after the later of:

(A) publication in the environmental notice bulletin under 3 V.S.A. § 2826; or

(B) if the address of the owner or lienholder is ascertained, the date the notice of intent is mailed.

(4) If ownership passes to the storage operator under this subsection, the storage operator may sell, transfer, or otherwise dispose of the vessel. However, if the vessel is subject to titling under 23 V.S.A. chapter 36, the

storage operator shall apply to the Commissioner for a title or salvage title as may be appropriate, and the Commissioner shall issue an appropriate title or salvage title, at no charge, if the storage operator offers sufficient proof that ownership of the vessel lawfully passed to the storage operator under this section.

(g) Owner and lienholder rights. An owner or lienholder of an abandoned vessel removed from public waters or immediately adjacent land under this section may contest the removal, transfer of title, or other disposition of a vessel under this section, and the necessity or reasonableness of any costs described in subdivision (d)(2) of this section, by petitioning the Secretary. The contested case provisions of 3 V.S.A. chapter 25 shall govern any matter brought under this subsection. A person aggrieved by a final decision of the Secretary may appeal the decision to the Civil Division of the Superior Court. Nothing in this subsection shall be construed to interfere with the right of an owner or lienholder to contest these issues in any enforcement action brought by the Secretary.

Sec. 12. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

* * *

(27) 10 V.S.A. chapter 123, relating to threatened and endangered species; and

(28) 30 V.S.A. § 255, relating to regional coordination to reduce greenhouse gases; and

(29) 10 V.S.A. § 1420, relating to abandoned vessels.

* * *

* * * Railroads; Vegetation Control * * *

Sec. 13. 5 V.S.A. § 3672 is amended to read:

§ 3672. ~~SELECTBOARD MEMBERS' DUTIES; RECOVERY~~

~~In case of failure so to do in a town through which such road passes, the selectboard members shall send notice thereof by mail to the principal office of such person or corporation. In case such failure continues for ten days after notice, the selectboard members shall forthwith cause the thistles and weeds to be destroyed at the expense of the town. Such town shall thereupon be entitled~~

~~to recover from such person or corporation its actual cost for destroying the thistles and weeds. In the event such person or corporation fails to pay to the town such cost for 60 days from the time the selectboard members sent notice thereof by mail to the principal office of such person or corporation, such town shall be entitled to recover such cost including a reasonable fee paid to an attorney for the recovery in an action on this statute. [Repealed.]~~

Sec. 14. 5 V.S.A. § 3673 is amended to read as follows:

§ 3673. ~~CUTTING OF TREES~~ VEGETATION CONTROL

~~A person or corporation operating a railroad in this State shall cause all trees, shrubs, and bushes to be destroyed at reasonable times within the surveyed boundaries of their lands, for a distance of 80 rods in each direction from all public grade crossings. A railroad shall take reasonable measures to control vegetation that is both on railroad property and on or immediately adjacent to the roadbed, so that the vegetation does not obstruct a highway user's view of traffic control devices at a grade crossing or of a train approaching the crossing.~~

Sec. 15. 5 V.S.A. § 3674 is amended to read:

§ 3674. ~~SELECTBOARD MEMBERS' DUTIES; LIABILITY FOR DAMAGES~~ ENFORCEMENT

~~When such person or corporation neglects or refuses to destroy the trees, shrubs, and bushes, as required by section 3673 of this title, after 60 days' notice in writing, given by the selectboard members of the town in which such trees, shrubs, and bushes are located, the selectboard members shall immediately cause them to be destroyed at the expense of the town. The town shall thereafter be entitled to recover from such person or corporation its actual cost for the destruction. In the event such person or corporation fails to pay to the town such cost for 60 days from the time the selectboard members sent notice thereof by mail to the principal office of such person or corporation, such town shall be entitled to recover such cost including a reasonable fee. If a railroad fails to control vegetation as required by section 3671 or 3673 of this title within 30 days after written notice is given by the selectboard of the town in which the vegetation is located or by the Agency in the case of violations involving a State highway grade crossing, the Transportation Board, upon application by the town or the Agency and after notice and hearing, may order the railroad to perform the work. Any such order shall specify a date by which the work must be completed. If the railroad fails to comply with the Board's order, the Board may impose a civil penalty of \$100.00 against the railroad for each day that the railroad fails to comply with the Board's order.~~

* * * Penalties for Furnishing Alcoholic Beverages to Minors * * *

Sec. 16. 7 V.S.A. § 658 is amended to read:

§ 658. SALE OR FURNISHING TO MINORS; ENABLING
CONSUMPTION BY MINORS; MINORS CAUSING DEATH OR
SERIOUS BODILY INJURY

* * *

(d)(1) A person who violates subsection (a) of this section, where the person under 21 years of age, while operating a motor vehicle, snowmobile, vessel, or all-terrain vehicle on a public highway, public land, or public waters, or in a place where a Vermont Association of Snow Travelers (VAST) trail maintenance assessment or a Vermont ATV Sportsman's Association (VASA) Trail Access Decal is required, causes death or serious bodily injury to himself or herself or to another person as a result of the violation, shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(2) As used in this subsection:

(A) “All-terrain vehicle” shall have the same meaning as set forth in 23 V.S.A. § 3501.

(B) “Public land” means all land in Vermont that is either owned or controlled by a local, State, or federal governmental body.

(C) “Public waters” shall have the same meaning as in 10 V.S.A. § 1422.

(D) “Snowmobile” shall have the same meaning as set forth in 23 V.S.A. § 3201.

(E) “Vessel” shall have the same meaning as set forth in 23 V.S.A. § 3302.

* * * President Calvin Coolidge State Historic Site;

Supplemental Guide Signs * * *

Sec. 17. 10 V.S.A. § 494 is amended to read:

§ 494. EXEMPT SIGNS

The following signs are exempt from the requirements of this chapter except as indicated in section 495 of this title:

* * *

(6)(A) Official traffic control signs, including signs on limited access highways, consistent with the ~~manual on uniform traffic control devices,~~ Manual on Uniform Traffic Control Devices (MUTCD) adopted under

23 V.S.A. § 1025, directing people to:

- (i) other towns;
- (ii) international airports;
- (iii) postsecondary educational institutions;
- (iv) cultural and recreational destination areas;
- (v) nonprofit ~~diploma-granting~~ diploma-granting educational institutions for people with disabilities; and
- (vi) ~~official traffic control signs, including signs on limited access highways, consistent with the manual on uniform traffic control devices, adopted under 23 V.S.A. § 1025, directing people to~~ official State visitor information centers.

(B) After having considered the six priority categories in this subdivision (A) of this subdivision (6), the Travel Information Council may approve installation of a sign for any of the following provided the location is open a minimum of 120 days each year and is located within 15 miles of an interstate highway exit:

- (A)(i) ~~Nonprofit~~ nonprofit museums;
- (B)(ii) ~~Cultural~~ cultural and recreational attractions owned by the State or federal government;
- (C)(iii) ~~Officially~~ officially designated scenic byways;
- (D)(iv) ~~Park~~ park and ride or multimodal centers; and
- (E)(v) ~~Fairgrounds~~ fairgrounds or exposition sites;

~~provided the designations in subdivisions (A) through (E) of this subdivision (6) are open a minimum of 120 days each year and are located within 15 miles of an interstate highway exit.~~

(C) Notwithstanding the limitations of this subdivision (6), supplemental guide signs consistent with the MUTCD for the President Calvin Coolidge State Historic Site may be installed at the following highway interchanges:

- (i) Interstate 91, Exit 9 (Windsor); and
- (ii) Interstate 89, Exit 1 (Quechee).

(D) Signs erected under this subdivision (6) ~~of this section~~ shall not exceed a maximum allowable size of 80 square feet.

* * *

* * * Central Garage * * *

Sec. 18. 19 V.S.A. § 13 is amended to read:

§ 13. CENTRAL GARAGE FUND

(a) There is created ~~a central garage fund~~ the Central Garage Fund which shall be used:

(1) to furnish equipment on a rental basis to the districts and other sections of the ~~agency~~ Agency for use ~~in~~ construction, maintenance, and operation of highways or other transportation activities; and

(2) to provide a general equipment repair and major overhaul service as well as to furnish necessary supplies for the operation of the equipment.

(b) To maintain a safe, reliable equipment fleet, new or replacement highway maintenance equipment shall be acquired using ~~central garage funds~~ Central Garage Fund monies. The ~~agency~~ Agency is authorized to acquire replacement pieces for existing highway equipment; or new, additional equipment equivalent to equipment already owned; however, the ~~agency~~ Agency shall not increase the total number of permanently assigned or authorized motorized or self-propelled vehicles without legislative approval by the General Assembly.

~~(c)(1) There shall be established and maintained within the central garage fund a separate transportation equipment replacement account for the purposes stated in subsection (b) of this section. In fiscal year 2008, \$1,120,000.00, and thereafter an amount equal to two-thirds of one percent of the prior year transportation fund appropriation, but not less than \$1,120,000.00, shall be transferred prior to August 1 from the transportation fund to the central garage fund and allocated to the transportation equipment replacement account, and beginning in fiscal year 2001, and thereafter, an amount not less than the sum of equipment depreciation expense and net equipment sales from the prior fiscal year, shall be allocated prior to August 1 from within the central garage fund to the transportation equipment replacement account. All expenditures from this account shall be appropriated by the general assembly and used exclusively for the purchase of equipment as authorized in subsection (b) of this section. For the purpose specified in subsection (b) of this section, the following amount shall be transferred from the Transportation Fund to the Central Garage Fund:~~

~~(A) in fiscal year 2019, \$1,318,442.00; and~~

~~(B) in subsequent fiscal years, at a minimum, the amount specified in subdivision (A) of this subdivision (1) as adjusted annually by increasing the previous fiscal year's amount by the percentage increase in the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) during the previous State fiscal year.~~

(2) Each fiscal year, the sum of the following shall be appropriated from the Central Garage Fund exclusively for the purpose specified in subsection (b) of this section:

(A) the amount transferred pursuant to subdivision (1) of this subsection;

(B) the amount of the equipment depreciation expense from the prior fiscal year; and

(C) the amount of the net equipment sales from the prior fiscal year.

(d) In each fiscal year, net income of the ~~fund~~ Fund earned during that fiscal year shall be retained in the ~~fund~~ Fund.

(e) ~~The fiscal year of the central garage for~~ For the purposes of computing net worth and net income, the fiscal year shall be the year ending June 30.

(f) ~~For purposes of~~ As used in this section, “equipment” means registered motor vehicles and highway maintenance equipment assigned to the central garage Central Garage.

(g) [Repealed.]

* * * Town Highway Aid * * *

Sec. 19. 19 V.S.A. § 306 is amended to read:

§ 306. APPROPRIATION; STATE AID FOR TOWN HIGHWAYS

(a) General State aid to town highways.

(1) An annual appropriation to class 1, 2, and 3 town highways shall be made. This appropriation shall increase or decrease over the previous fiscal year’s appropriation by the same percentage as any increase or decrease in the following, whichever is less:

(A) the ~~Transportation~~ year-over-year increase in the Agency’s total appropriations in the previous fiscal year funded by Transportation Fund revenues, excluding the ~~town highway appropriations~~ appropriation for town highways under this subsection for that year; or

(B) the year-over-year increase in the State’s total appropriations in the previous fiscal year of General Fund, Education Fund, and State Health Care Resources Fund monies.

(2) If the year-over-year change in appropriations specified in either subdivision (1)(A) or (B) of this subsection is negative, then the appropriation to town highways under this subsection shall be equal to the previous fiscal year’s appropriation.

(3) The funds appropriated shall be distributed to towns as follows:

~~(1)~~(A) Six percent of the State's annual town highway appropriation shall be apportioned to class 1 town highways. The apportionment for each town shall be that town's percentage of class 1 town highways of the total class 1 town highway mileage in the State.

~~(2)~~(B) Forty-four percent of the State's annual town highway appropriation shall be apportioned to class 2 town highways. The apportionment for each town shall be that town's percentage of class 2 town highways of the total class 2 town highway mileage in the State.

~~(3)~~(C) Fifty percent of the State's annual town highway appropriation shall be apportioned to class 3 town highways. The apportionment for each town shall be that town's percentage of class 3 town highways of the total class 3 town highway mileage in the State.

~~(4)~~(D) Monies apportioned under subdivisions (1), (2), and (3) of this subsection shall be distributed to each town in quarterly payments beginning July 15 in each year.

~~(5)~~(E) Each town shall use the monies apportioned to it solely for town highway construction, improvement, and maintenance purposes or as the nonfederal share for public transit assistance. These funds may also be used for the establishment and maintenance of bicycle routes. The members of the selectboard shall be personally liable to the State, in a civil action brought by the Attorney General, for making any unauthorized expenditures from money apportioned to the town under this section.

* * *

* * * Transportation Public-Private Partnerships * * *

Sec. 20. 19 V.S.A. chapter 26 is amended to read:

CHAPTER 26. DESIGN-BUILD CONTRACTS AND PUBLIC-PRIVATE PARTNERSHIPS

Subchapter 1. Design-build Contracts

* * *

Subchapter 2. Public-Private Partnership Pilot

§ 2611. PILOT ESTABLISHED; INTENT

(a)(1) The General Assembly hereby establishes a pilot program to authorize the Agency, for a time-limited period, to receive solicited and unsolicited proposals and to enter into P3 agreements if certain conditions are met.

(2) Nothing in this subchapter is intended to modify any obligations or rights under any other law.

(b) Before the authority conferred under this subchapter terminates, the General Assembly intends to:

(1) review whether and how the Agency has exercised the authority and whether the P3 agreements it has entered into have served the public interest; and

(2) determine whether the authority should terminate, be extended, or be amended.

(c) If the Agency's authority under this subchapter terminates, the General Assembly intends that:

(1) the Agency not have authority to pursue any proposal that has not resulted in a P3 agreement prior to termination of the Agency's authority; and

(2) any P3 agreement lawfully entered into prior to termination of the Agency's authority shall continue in effect after termination of the authority.

§ 2612. DEFINITIONS

As used in this subchapter:

(1) "Facility" means transportation infrastructure that is, or if developed, would be, within the jurisdiction of the Agency or eligible for federal-aid funding managed through the Agency.

(2) "Project" means the capital development of a facility.

(3) "Proposal" means a conditional offer of a private entity that, after review, negotiation, and documentation, and after legislative approval if required under this subchapter, may lead to a P3 agreement as provided in this subchapter.

(4) "Public-private partnership" or "P3" means an alternative project delivery mechanism that may be used by the Agency to permit private sector participation in a project, including in its financing, development, operation, management, ownership, leasing, or maintenance.

(5) "P3 agreement" means a contract or other agreement between the Agency and a private entity to undertake a project as a public-private partnership and that sets forth rights and obligations of the Agency and the private entity in that partnership.

§ 2613. AUTHORITY

(a) The Agency is authorized to receive unsolicited proposals or to solicit proposals to undertake a project as a public-private partnership. The Agency

shall develop, and have authority to amend, criteria to review and evaluate such proposals to determine if they are in the public interest and shall review and evaluate all proposals received in accordance with these criteria. In addition to other criteria that the Agency may develop, at minimum, the criteria shall require consideration of:

(1) the benefits of the proposal to the State transportation system and the potential impact to other projects currently prioritized in the most recently adopted Transportation Program;

(2) the extent to which a proposal would reduce the investment of State funds required to advance the project that the proposal addresses; and

(3) the extent to which a proposal would enable the State to receive additional federal funding that would not otherwise be available.

(b) If the Agency determines that a proposal is in the public interest:

(1) The Agency is authorized to enter into a P3 agreement with respect to the proposal without legislative approval if:

(A) the project has been approved in the most recently adopted Transportation Program; and

(B) total estimated State funding over the lifetime of the project will be less than \$2,000,000.00.

(2) For the following projects, the Agency is authorized to enter into a P3 agreement with respect to the proposal only if the Agency receives specific legislative approval to enter into the P3 agreement:

(A) a project that has not been approved in the most recently adopted Transportation Program; or

(B) a project for which total estimated State funding over the lifetime of the project will be \$2,000,000.00 or more.

§ 2614. LEGISLATIVE APPROVAL

If the Secretary determines that a proposal that requires legislative approval under section 2613 of this title is in the public interest and should be pursued, the Secretary shall submit to the General Assembly:

(1) a description of the proposal, including:

(A) a summary of the project scope and timeline;

(B) the rights and obligations of the State and private entity partner or partners, including the level of involvement of all partners in any ongoing operations, maintenance, and ownership of a facility;

(C) the nature and amount of State funding of the project and of any ongoing State financial responsibility for ongoing maintenance or operation costs; and

(D) its effect on any project in the most recent approved Transportation Program;

(2) a statement detailing how the proposal meets the Agency's criteria developed under this subchapter; and

(3) proposed legislation to confer authority to the Agency to enter into a P3 agreement with respect to the proposal.

§ 2615. REPORT

(a) Annually, on or before January 15, the Agency shall report to the House and Senate Committees on Transportation:

(1) for each P3 agreement entered into following legislative approval required under this subchapter, for as long as the agreement is in effect, a description of the current status of the project and of any substantive change to the P3 agreement since the prior year's report; and

(2) for each P3 agreement entered into since the prior year's report pursuant to section 2613 of this title that did not require legislative approval, a description of the P3 agreement and of the project.

(b) Notwithstanding 2 V.S.A. § 20(d), the annual report required under this section shall continue to be required unless the General Assembly takes specific action to repeal the report requirement.

* * * Sunset of Transportation Public-Private Partnership Authority * * *

Sec. 21. REPEAL OF TRANSPORTATION P3 AUTHORITY

19 V.S.A. §§ 2613 (Agency of Transportation's P3 authority) and 2614 (legislative approval of P3 proposals) shall be repealed on July 1, 2023.

* * * Gasoline Assessments; Calculations; Data Retention * * *

Sec. 22. 23 V.S.A. § 3106(a)(2) is amended to read:

(2) For the purposes of subdivision (1)(B) of this subsection, ~~the~~:

(A) The tax-adjusted retail price applicable for a quarter shall be the average of the retail price for regular gasoline collected and determined to three decimal places and published by the Department of Public Service for each of the three months of the preceding quarter after all federal and State taxes and assessments, and the petroleum distributor licensing fee established by 10 V.S.A. § 1942, applicable in each month have been subtracted from that month's retail price. Calculations of the tax-adjusted retail price applicable for

a quarter shall be permanently maintained on the website of the Department of Public Service.

(B) In calculating assessment amounts under subdivisions (a)(1)(B)(i)(II) and (a)(1)(B)(ii)(II) of this section, the Department of Motor Vehicles shall calculate the amounts to four decimal places. The Department of Motor Vehicles shall permanently retain the records of its calculations, any corrections thereto, and the data that are the basis for the calculations.

* * * Green Mountain Transit Authority; Name Update * * *

Sec. 23. 24 V.S.A. § 5084 is amended to read:

§ 5084. PUBLIC TRANSIT ADVISORY COUNCIL

(a) The Public Transit Advisory Council shall be created by the Secretary of Transportation under 19 V.S.A. § 7(f)(5), to consist of the following members:

* * *

(3) a representative of the ~~Chittenden County Transportation~~ Green Mountain Transit Authority;

* * *

Sec. 24. 24 App. V.S.A. chapter 801 is amended to read:

CHAPTER 801. ~~CHITTENDEN COUNTY TRANSPORTATION~~ GREEN MOUNTAIN TRANSIT AUTHORITY

§ 1. CREATION OF AUTHORITY

There is hereby created a transit authority to be known as the “~~Chittenden County Transportation~~ Green Mountain Transit Authority.”

* * *

§ 3. MEMBERSHIP IN THE AUTHORITY

Membership in the Authority shall consist of those municipalities which elect to join the Authority by majority vote of its voters present and voting on the question at an annual or special meeting duly warned for the purpose prior to July 1, 2010. Beginning on July 1, 2010, a municipality may hold an annual meeting or a special meeting for the purpose of determining through election by a majority vote of its voters present and voting on the question only if the municipality is specifically authorized to join the Authority either under section 12 of this chapter or by resolution duly passed by the ~~Chittenden County Transportation~~ Green Mountain Transit Authority Board of Commissioners. The initial meeting of a municipality called to determine whether or not to join the Authority shall be warned in the manner provided by

law, except that for such meeting only, any warning need not be posted for a period in excess of 20 days, any other provision of law or municipal charter to the contrary notwithstanding. Membership may be terminated only in the manner provided in section 8 of this chapter.

* * *

§ 11. ASSESSMENTS OF NEW MEMBERS OUTSIDE CHITTENDEN COUNTY

Municipalities outside Chittenden County that vote to join the ~~Chittenden County Transportation~~ Green Mountain Transit Authority on or after July 1, 2010 shall negotiate with the Board of Commissioners of the ~~Chittenden County Transportation~~ Green Mountain Transit Authority on the amount of the levy to be assessed upon the municipality and terms of payment of that assessment; and the municipality may not join prior to agreement with the Authority on terms of the levy and payment. Upon the addition of one municipality to the membership of the ~~Chittenden County Transportation~~ Green Mountain Transit Authority from outside Chittenden County, the Authority shall immediately begin work on the formula for assessment that will be approved in accordance with this chapter.

§ 12. MUNICIPALITIES AUTHORIZED TO VOTE FOR MEMBERSHIP IN THE ~~CHITTENDEN COUNTY TRANSPORTATION~~ GREEN MOUNTAIN TRANSIT AUTHORITY

The following municipalities are authorized to hold an election for the purpose of determining membership in the ~~Chittenden County Transportation~~ Green Mountain Transit Authority: Barre City, Berlin, Colchester, Hinesburg, Montpelier, Morristown, Richmond, St. Albans City, Stowe, and Waterbury.

§ 13. OTHER REPRESENTATION

If Washington, Lamoille, Franklin, or Grand Isle County does not have a municipal member from its county on the Board of Commissioners of the ~~Chittenden County Transportation~~ Green Mountain Transit Authority, the regional planning commission serving the ~~County~~ county may appoint a Board member to the ~~Chittenden County Transportation~~ Green Mountain Transit Authority from a member of its regional planning commission or regional planning commission staff to represent its interests on the ~~Chittenden County Transportation~~ Green Mountain Transit Authority Board.

Sec. 25. PUBLIC UTILITY COMMISSION; INVESTIGATION; ELECTRIC VEHICLE CHARGING

(a) After notice and opportunity for hearing, the Public Utility Commission (PUC or Commission) shall complete an investigation and issue a final order on or before July 1, 2019 concerning the charging of plug-in electric vehicles (EV).

(b) As used in this section, “electric distribution utility” means a company that delivers electric energy to retail customers over a pole-and-wire network.

(c) The Commission’s final order shall include:

(1) its findings, determinations, or recommendations on each of the following issues related to the role of electric distribution utilities:

(A) removal or mitigation, as appropriate, of barriers to EV charging, including strategies, such as time-of-use rates, to reduce operating costs for current and future EV users without shifting costs to ratepayers who do not own or operate EVs;

(B) strategies for managing the impact of EVs on and services provided by EVs to the electric transmission and distribution system;

(C) electric system benefits and costs of EV charging, electric utility planning for EV charging, and rate design for EV charging; and

(D) the appropriate role of electric distribution utilities with respect to the deployment and operation of EV charging stations;

(2) its findings or recommendations, or both, on each of the following issues related to EV charging stations owned or operated by persons other than electric distribution utilities:

(A) the recommended scope of the jurisdiction of the Commission, the Department of Public Service, and other State agencies over such stations;

(B) the appropriate oversight of the rates and prices charged by such stations, including the transparency to the consumer of those rates and prices; and

(C) the recommended billing and complaint procedures for such charging stations; and

(3) its findings or recommendations, or both, on each of the following issues:

(A) jointly with the Secretary of Transportation, recommended options to address how EV users pay toward the cost of maintaining the State’s transportation infrastructure;

(B) the accuracy of electric metering and submetering technology for charging EVs;

(C) strategies to encourage EV usage at a pace necessary to achieve the goals of the State's Comprehensive Energy Plan and its greenhouse gas reduction goals, without shifting costs to electric ratepayers who do not own or operate EVs; and

(D) any other issues the Commission considers relevant to ensuring a fair, cost-effective, and accessible EV charging infrastructure that will be sufficient to meet increased deployment of EVs.

(d) During the course of the investigation and in its final order, the Commission shall identify recommendations on the issues identified in subsection (c) of this section that may require enabling legislation.

(e) The Commission shall submit copies of its final order to the House and Senate Committees on Transportation, the House Committee on Energy and Technology, and the Senate Committees on Finance and on Natural Resources and Energy.

* * * All-terrain Vehicles; Enforcement * * *

Sec. 26. 23 V.S.A. § 3507 is amended to read:

§ 3507. ENFORCEMENT; PENALTIES AND REVOCATION OF REGISTRATION

* * *

(c) Law enforcement officers may conduct safety inspections on all-terrain vehicles stopped for other all-terrain vehicle law violations on the VASA Trail System. Safety inspections may also be conducted in a designated area by law enforcement officials. A designated area shall be warned solely by blue lights either on a stationary all-terrain vehicle parked on a trail or on a cruiser parked at a roadside trail crossing.

* * * All-terrain Vehicles; Operation Along Highways * * *

Sec. 27. 23 V.S.A. § 3506 is amended to read:

§ 3506. OPERATION

(a) A person ~~may~~ shall only operate or permit an all-terrain vehicle owned by him or her or under his or her control to be operated in accordance with this chapter.

(b) An all-terrain vehicle ~~may~~ shall not be operated:

(1) Along a public highway ~~unless it~~ except if one or more of the following applies:

(A) the highway is not being maintained during the snow season or unless;

(B) the highway has been opened to all-terrain vehicle travel by the selectboard or trustees or local governing body and is so posted by the municipality except an;

(C) the all-terrain vehicle is being used for agricultural purposes may be and is operated not closer than three feet from the traveled portion of any highway for the purpose of traveling within the confines of the farm; or

(D) the all-terrain vehicle is being used by an employee or agent of an electric transmission or distribution company subject to the jurisdiction of the Public Utility Commission under 30 V.S.A. § 203 for utility purposes, including safely accessing utility corridors, provided that the all-terrain vehicle shall be operated along the edge of the roadway and shall yield to other vehicles.

* * *

* * * All-terrain Vehicles; Allocation of Fees and Penalties * * *

Sec. 28. 23 V.S.A. § 3513 is amended to read:

§ 3513. LIABILITY INSURANCE; AUTHORITY TO CONTRACT FOR
LAW ENFORCEMENT SERVICES

(a) The amount of ~~85~~ 90 percent of the fees and penalties collected under this ~~subchapter~~ chapter, except interest, is ~~hereby~~ allocated to the Agency of Natural Resources for use by the Vermont ATV Sportsman's Association (VASA) for development and maintenance of a Statewide ATV Trail Program, for trail liability insurance, and to contract for law enforcement services with any constable, sheriff's department, municipal police department, the Department of Public Safety, and the Department of Fish and Wildlife for purposes of trail compliance pursuant to this chapter. The Departments of Public Safety and of Fish and Wildlife are authorized to contract with VASA to provide these law enforcement services. ~~The Agency of Natural Resources may retain for its use up to \$7,000.00 during each fiscal year to be used for administration of the State grant that supports this program.~~

(b) ~~The Office of the~~ Secretary of Administration shall assist VASA with the procurement of trail liability and other related insurance.

* * *

Sec. 29. 23 V.S.A. § 3513(a) is amended to read:

(a) The amount of ~~90~~ 85 percent of the fees and penalties collected under this chapter, except interest, is allocated to the Agency of Natural Resources

for use by the Vermont ATV Sportsman's Association (VASA) for development and maintenance of a Statewide ATV Trail Program, for trail liability insurance, and to contract for law enforcement services with any constable, sheriff's department, municipal police department, the Department of Public Safety, and the Department of Fish and Wildlife for purposes of trail compliance pursuant to this chapter. The Departments of Public Safety and of Fish and Wildlife are authorized to contract with VASA to provide these law enforcement services.

* * * Default Weight Limits on Town Highways * * *

Sec. 30. 23 V.S.A. § 1392 is amended to read:

§ 1392. GROSS WEIGHT LIMITS ON HIGHWAYS

Except as provided in section 1400 of this title, a person or corporation shall not operate or cause to be operated a motor vehicle in excess of the total weight, including vehicle, object, or contrivance and load, of:

(1) 16,000 pounds upon any bridge with a wood floor, wood subfloor, or wood stringers on a class 3 or 4 town highway or 20,000 pounds on a bridge with wood floor, wood subfloor, or wood stringers on a class 1 or 2 town highway unless otherwise posted by the selectboard of such town.

(2) 24,000 pounds, upon a class 2, 3, or 4 town highway or bridge with other than wood floor, in any town, or incorporated village, ~~or city~~.

* * *

Sec. 31. 23 V.S.A. § 1393 is amended to read:

§ 1393. ~~WEIGHT LIMITS IN INCORPORATED VILLAGES AND CITIES;~~
~~ADOPTION BY TOWNS OR INCORPORATED VILLAGES OF~~
~~STATE LIMITS; LIMITS ON CLASS 1 TOWN HIGHWAYS~~

(a)(1) On all highways in ~~an incorporated village or a~~ city, the legal load shall be as prescribed for the State Highway System in section 1392 of this title, unless otherwise restricted and posted by the local authorities, as provided in this subchapter.

(2) With the approval of the Secretary of Transportation, the ~~selectboard~~ legislative body of a town or incorporated village may designate any highway ~~in the town~~ under its jurisdiction to carry the same legal load as specified in section 1392 of this title for ~~the State highways~~ Highway System. When a certain highway has been so approved by the Secretary and the legislative body as to the legal load limit, then the Secretary shall have the highway posted for the legal load limit.

(3) ~~Notwithstanding the provisions of this chapter, Except as provided in subdivision 1392(1) of this title, State highway~~ Highway System weight limits as specified in section 1392 of this title shall apply to class 1 town highways.

* * *

* * * Signs Indicating Weight Limits * * *

Sec. 32. 23 V.S.A. § 1394 is amended to read:

§ 1394. DESIGNATION OF CLASS 1 TOWN HIGHWAYS; SIGNS INDICATING LEGAL LOAD OFF STATE HIGHWAYS OR CLASS 1 TOWN HIGHWAYS

(a) The class 1 town highways connecting the State highways through cities, villages, or ~~municipalities~~ towns shall be designated by the State Transportation Board and marked by the State Secretary of Transportation.

(b) The State Secretary of Transportation shall have signs erected on each ~~road which town highway~~ that leads off the State Highway System stating the legal load of the town highway leading from, if the legal load of the town highway differs from the legal load on the State Highway System.

(c) If the legal load limit of a class 2, 3, or 4 town highway leading off a class 1 town highway differs from the legal load limit on the class 1 town highway, the Secretary of Transportation shall furnish a sign to the municipality where the class 1 town highway is located, as needed to indicate the legal load for each town highway leading from the class 1 town highway that has a different legal load. The Secretary shall furnish the sign, and any replacement sign as may be needed, at no cost to the municipality. The municipality shall be responsible for erecting each sign furnished to it under this subsection on each town highway leading off a class 1 town highway that has a legal load limit that differs from the limit on the class 1 town highway.

* * * Aircraft Fuel Tax * * *

Sec. 33. 23 V.S.A. chapter 28 is amended to read:

CHAPTER 28. GASOLINE TAX

Subchapter 1. General Gasoline Tax

§ 3101. DEFINITIONS; SCOPE

(a) As used in this chapter:

(1) The term “distributor” as used in this subchapter shall mean a person, firm, or corporation who imports or causes to be imported gasoline or other motor fuel for use, distribution, or sale within the State, or any person,

firm, or corporation who produces, refines, manufactures, or compounds gasoline or other motor fuel within the State for use, distribution, or sale. When a person receives motor fuel in circumstances ~~which~~ that preclude the collection of the tax from the distributor by reason of the provisions of the Constitution and laws of the United States, and thereafter sells or uses the motor fuel in the State in a manner and under circumstances as may subject the sale to the taxing power of the State, the person shall be considered a distributor and shall make the same reports, pay the same taxes, and be subject to all provisions of this subchapter relating to distributors of motor fuel.

(2) "Dealer" means any person who sells or delivers motor fuel into the fuel supply tanks of motor vehicles or aircraft owned or operated by others.

(3) "Motor vehicle" means any self-propelled vehicle using motor fuel on the public highways and registered or required to be registered for operation on these highways.

(b) As used in this subchapter:

(1) ~~gasoline~~ "Gasoline or other motor fuel" or "motor fuel" includes aviation gasoline and shall not include the following:

(A) kerosene;

(B) clear or undyed diesel "fuel" as defined in section 3002 of this title;

(C) "railroad fuel" as defined in section 3002 of this title;

(D) aircraft jet fuel; or

(E) natural gas in any form.

(c) Except for "railroad fuel" taxed under section 3003 of this title, the taxation or exemption from taxation of dyed diesel fuel is not addressed under this title.

~~(4) "Motor vehicle" means any self-propelled vehicle using motor fuel on the public highways and registered or required to be registered for operation on these highways.~~

* * *

§ 3105. RECORDS OF SALES AND IMPORTATIONS

(a)(1) A distributor shall keep a record of all sales of motor fuel, ~~which~~ that shall include the number of gallons sold, the date of sale, and also the number of gallons used by the distributor. With every consignment of motor fuel to a purchaser within the State, each distributor shall also deliver a written statement containing the date and the number of gallons delivered and the

names of the purchaser and the seller. The distributor shall also keep a record of all importations of motor fuel, ~~which that~~ shall include the number of gallons imported and the date of importation.

(2) With respect to any sale, use, consignment, or importation of aviation gasoline, a distributor shall separately record the same information required under subdivision (1) of this subsection.

(3) The records and statements shall be preserved by distributors and purchasers, respectively, for a period of three years, and shall be offered for inspection upon verbal or written demand of the Commissioner or his or her agent.

* * *

(d) A dealer shall keep a record of all purchases of motor fuel ~~which that~~ shall include the date of purchase, number of gallons, and the identity of the seller, and, if applicable, shall separately record this information with respect to the purchase of aviation gasoline. The records and statements shall be preserved for a period of three years. The record shall include daily motor fuel meter readings.

§ 3106. IMPOSITION, RATE, AND PAYMENT OF TAX

(a)(1) Except for sales of motor fuels between distributors licensed in this State, which sales shall be exempt from the taxes and assessments authorized under this section, unless exempt under the laws of the United States at the time of filing the report required by section 3108 of this title, each distributor shall pay to the Commissioner:

* * *

(4) The distributor shall also pay to the Commissioner the tax and assessments specified in this subsection upon each gallon of motor fuel used within the State by him or her.

(5) Monies collected on the sales and use of aviation gasoline pursuant to this subsection shall be used exclusively for aviation purposes consistent with 49 U.S.C. § 47133 and Federal Aviation Administration regulations and policies.

* * *

(d) Since many nonresidents and residents drive to outdoor areas of Vermont in order to view our natural resources, to hunt and fish, and to use our natural resources for other healthful recreational purposes, it is the policy of this State that a portion of the gasoline tax shall be dedicated for the purpose of conserving and maintaining our natural resources. Therefore, beginning in fiscal year 1998, three-eighths of one cent of the tax collected under subsection

(a) of this section, except for the tax collected on aviation gasoline, shall be transferred 76 percent to the Fish and Wildlife Fund and 24 percent to the Department of Forests, Parks and Recreation for natural resource management. Of the funds deposited in the Fish and Wildlife Fund, the interest earned by deposited funds and all funds remaining at the end of the fiscal year shall remain in the Fish and Wildlife Fund.

* * *

§ 3108. RETURNS

For the purpose of determining the amount of the tax levied and assessed, by the 25th day of each calendar month, each distributor shall send to the Commissioner upon a form prepared and furnished by him or her a statement or return under oath or affirmation, showing:

(1) both the number of gallons of motor fuel sold and the number of gallons of motor fuel used by the distributor during the preceding calendar month. ~~The report shall contain;~~

(2) separately, both the number of gallons of aviation gasoline sold and the number of gallons of aviation gasoline used by the distributor during the preceding calendar month; and

(3) any further information ~~which~~ that the Commissioner prescribes.

* * *

Sec. 34. 23 V.S.A. § 1220a(b) is amended to read:

(b) The DUI Enforcement Special Fund shall consist of:

* * *

(3) beginning May 1, 2013 and thereafter, \$0.0038 per gallon of the revenues raised by the motor fuel tax on gasoline imposed by chapter 28 of this title, except for the revenues raised by the tax on aviation gasoline; and

(4) any additional funds transferred or appropriated by the General Assembly.

Sec. 35. 5 V.S.A. § 211 is amended to read:

§ 211. APPROPRIATION FROM GASOLINE TAXES ON AIRCRAFT FUEL

Funds appropriated from the proceeds of the any tax on gasoline used in aircraft and capital development projects for aeronautical purposes are to aircraft fuel, including jet fuel and aviation gasoline, shall be expended under the direction of the Agency exclusively for aviation purposes consistent with 49 U.S.C. § 47133 and Federal Aviation Administration regulations and policies, including to provide;

- (1) navigational aids to airmen ~~or~~;
- (2) marking, lighting, removal, or elimination of obstructions or hazards to flight; ~~and to provide~~
- (3) for the improvement of landing areas or facilities that are permanently established for the public use of aircraft ~~or in any other way that will promote aviation in the State.~~

Sec. 36. 24 V.S.A. § 138 is amended to read:

§ 138. LOCAL OPTION TAXES

* * *

(c) Any tax imposed under the authority of this section shall be collected and administered by the Department of Taxes, in accordance with State law governing such State tax or taxes; provided, however, that a sales tax imposed under this section shall be collected on each sale that is subject to the Vermont sales tax using a destination basis for taxation. ~~A~~ Except with respect to taxes collected on the sale of aviation jet fuel, a per-return fee of \$5.96 shall be assessed to compensate the Department for the costs of administration and collection, 70 percent of which shall be borne by the municipality, and 30 percent of which shall be borne by the State to be paid from the PILOT Special Fund. The fee shall be subject to the provisions of 32 V.S.A. § 605.

~~(d)(1) Of~~ Except as provided in subsection (c) and subdivision (2) of this section with respect to taxes collected on the sale of aviation jet fuel, of the taxes collected under this section, 70 percent of the taxes shall be paid on a quarterly basis to the municipality in which they were collected, after reduction for the costs of administration and collection under subsection (c) of this section. Revenues received by a municipality may be expended for municipal services only, and not for education expenditures. Any remaining revenue shall be deposited into the PILOT Special Fund established by 32 V.S.A. § 3709.

(2)(A) Of the taxes collected under this section on the sale of aviation jet fuel, on a quarterly basis, 70 percent of the taxes shall be paid to the municipality in which they were collected, and 30 percent shall be deposited in the Transportation Fund.

(B) All revenues referenced in subdivision (A) of this subdivision (2) shall be used exclusively for aviation purposes consistent with 49 U.S.C. § 47133 and Federal Aviation Administration regulations and policies.

Sec. 37. 19 V.S.A. § 11 is amended to read:

§ 11. TRANSPORTATION FUND

The Transportation Fund shall comprise the following:

* * *

(4) monies received from the sales and use tax on aviation jet fuel and on natural gas used to propel a motor vehicle under 32 V.S.A. chapter 233, and from the portion of a local option tax on the sale of aviation jet fuel specified in 24 V.S.A. § 138;

* * *

* * * Petroleum Cleanup Fund; Releases of Aircraft Fuel * * *

Sec. 38. 10 V.S.A. § 1941 is amended to read:

§ 1941. PETROLEUM CLEANUP FUND

* * *

(b) The Secretary may authorize disbursements from the Fund for the purpose of the cleanup and restoration of contaminated soil and groundwater caused by releases of petroleum, including aviation gasoline, from underground storage tanks and aboveground storage tanks, including air emissions for remedial actions, and for compensation of third parties for injury and damage caused by a release. This Fund shall be used for no other governmental purposes, nor shall any portion of the Fund ever be available to borrow from by any branch of government; it being the intent of the General Assembly that this Fund and its increments shall remain intact and inviolate for the purposes set out in this chapter. Disbursements under this section may be made only for uninsured costs incurred after January 1, 1987 and for which a claim is made prior to July 1, 2019 and judged to be in conformance with prevailing industry rates. This includes:

* * *

Sec. 39. 5 V.S.A. § 693 is amended to read:

§ 693. CONDITIONS

A municipality receiving grants from the State of Vermont shall meet such conditions as the Secretary:

(1) may establish with respect to maintenance and continued use of the subject airport site for aeronautical purposes; and

(2) shall establish in order to require the municipality to assist the State in identifying vendors that distribute, sell, or use aircraft jet fuel in the State in connection with the airport.

* * * Passing Motor Vehicles and Vulnerable Users * * *

Sec. 40. 23 V.S.A. § 1033 is amended to read:

§ 1033. PASSING MOTOR VEHICLES AND VULNERABLE USERS

(a) Passing motor vehicles generally. Motor vehicles proceeding in the same direction may be overtaken and passed only as follows:

(1) The driver of a motor vehicle overtaking another motor vehicle proceeding in the same direction may pass to its left at a safe distance, and when so doing shall exercise due care, shall not pass to the left of the center of the highway except as authorized in section 1035 of this title, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken motor vehicle shall give way to the right in favor of the overtaking motor vehicle and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(b) Passing Approaching or passing vulnerable users. The operator of a motor vehicle approaching or passing a vulnerable user as defined in subdivision 4(81) of this title shall exercise due care, which includes reducing speed and increasing clearance to a recommended distance of at least four feet, to pass the vulnerable user safely, and shall cross the center of the highway only as provided in section 1035 of this title. A person who violates this subsection shall be subject to a civil penalty of not less than \$200.00.

(c) Approaching or passing certain stationary vehicles. The operator of a motor vehicle approaching or passing a stationary sanitation, maintenance, utility, or delivery vehicle with flashing lights shall exercise due care, which includes reducing speed and increasing clearance to a recommended distance of at least four feet, to pass the vehicle safely, and shall cross the center of the highway only as provided in section 1035 of this title. A person who violates this subsection shall be subject to a civil penalty of not less than \$200.00.

* * * Effective Dates * * *

Sec. 41. EFFECTIVE DATES

(a) This section and Secs. 2 (federal infrastructure funding), 16 (penalties for furnishing alcoholic beverages to minors), 20 (transportation public-private partnerships), 23–24 (Green Mountain Transit Authority name update), and 25 (PUC investigation; electric vehicle charging) shall take effect on passage.

(b) Secs. 30–32 (town highway weight limits; signs) and 33–37 (aircraft fuel taxes) shall take effect on January 1, 2019.

(c) Sec. 29, 23 V.S.A. § 3513(a) (sunset of change to ATV fee and penalty allocation) shall take effect on July 1, 2023.

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

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 20, 2018, page 744 and March 21, 2018, page 783)

CONCURRENT RESOLUTIONS FOR NOTICE

Concurrent Resolutions For Notice Under Joint Rule 16

The following joint concurrent resolutions have been introduced for approval by the Senate and House. They will be adopted by the Senate unless a Senator requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Secretary's Office.

H.C.R. 328 - 345 (For text of Resolutions, see Addendum to House Calendar for April 19, 2018)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission shall be fully and separately acted upon.

David A. Barra of Essex Junction – Superior Judge – By Senator Ashe for the Committee on Judiciary. (4/19/18)

Scot L. Kline of Essex – Superior Judge – By Senator Benning for the Committee on Judiciary. (4/19/18)

Andrew Hathaway of Waterbury – Member, Children and Family Council for Prevention Programs – By Senator Cummings for the Committee on Health and Welfare. (4/19/18)