

# Senate Calendar

TUESDAY, MAY 08, 2018

SENATE CONVENES AT: 10:30 A.M.

## TABLE OF CONTENTS

Page No.

### ACTION CALENDAR

#### UNFINISHED BUSINESS OF MAY 3, 2018

##### House Proposal of Amendment to Senate Proposal of Amendment

<b>H. 608</b> An act relating to creating an Older Vermonters Act working group.....	3802
--	------

#### UNFINISHED BUSINESS OF MAY 4, 2018

##### Second Reading

##### Favorable with Proposal of Amendment

<b>H. 675</b> An act relating to conditions of release prior to trial	
Judiciary Report - Sen. Benning .....	3805
Education Report - Sen. Baruth .....	3808
Appropriations Report - Sen. Sears .....	3809
Amendment - Sens. Benning and Sears .....	3809

##### House Proposal of Amendment

<b>S. 281</b> An act relating to the mitigation of systemic racism.....	3809
---	------

##### House Proposal of Amendment to Senate Proposal of Amendment

<b>H. 806</b> An act relating to the Southeast State Correctional Facility .....	3814
--	------

#### UNFINISHED BUSINESS OF MAY 5, 2018

##### Third Reading

<b>H. 636</b> An act relating to miscellaneous fish and wildlife subjects.....	3815
Amendment - Sen. Rodgers .....	3815
Amendment - Sen. Rodgers .....	3816

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 410** An act relating to adding products to Vermont’s energy efficiency standards for appliances and equipment  
Natural Resources and Energy Report - Sen. Bray ..... 3819  
Amendment - Sen. Rodgers ..... 3839

**Joint Resolution for Action**

**J.R.S. 59** Joint resolution supporting the Gettysburg Battlefield Preservation Association’s effort to preserve the Camp Letterman hospital site.....3840

**UNFINISHED BUSINESS OF MAY 7, 2018**

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 196** An act relating to paid family leave  
Econ. Dev., Housing and General Affairs Report - Sen. Sirotkin ..... 3840  
Finance Report - Sen. Sirotkin ..... 3851  
Appropriations Report - Sen. Starr ..... 3854

**H. 554** An act relating to the regulation of dams  
Natural Resources and Energy Report - Sen. Bray ..... 3854

**H. 639** An act relating to banning cost-sharing for all breast imaging services  
Finance Report - Sen. Lyons ..... 3868

**H. 684** An act relating to professions and occupations regulated by the Office of Professional Regulation  
Government Operations - Sen. Pearson ..... 3869  
Finance Report - Sen. Cummings ..... 3916

**H. 727** An act relating to the admissibility of a child’s hearsay statements in a proceeding before the Human Services Board  
Judiciary Report - Sen. Sears ..... 3916

**H. 901** An act relating to health information technology and health information exchange  
Health and Welfare Report - Sen. Cummings ..... 3918  
Finance Report - Sen. Cummings ..... 3926

**H. 919** An act relating to workforce development  
Econ. Dev., Housing and General Affairs Report - Sen. Clarkson ..... 3926  
Appropriations Report - Sen. Starr ..... 3949

**House Proposals of Amendment**

**S. 105** An act relating to consumer justice enforcement..... 3950  
**S. 150** An act relating to automated license plate recognition systems..... 3952  
**S. 179** An act relating to community justice centers..... 3953  
**S. 180** An act relating to the Vermont Fair Repair Act..... 3957  
**S. 206** An act relating to business consumer protection for point-of-sale equipment leases..... 3959  
**S. 222** An act relating to miscellaneous judiciary procedures..... 3962  
**S. 262** An act relating to miscellaneous changes to the Medicaid program and the Department of Vermont Health Access..... 3971  
**S. 273** An act relating to miscellaneous law enforcement amendments..... 3978

**House Proposal of Amendment to Senate Proposal of Amendment**

**H. 908** An act relating to the Administrative Procedure Act..... 3988  
Amendment - Sens. White, et al ..... 3988

**Report of Committee of Conference**

**H. 562** An act relating to parentage proceedings..... 3988

**NEW BUSINESS**

**Third Reading**

**H. 571** An act relating to creating the Department of Liquor and Lottery and the Board of Liquor and Lottery..... 4023  
**H. 663** An act relating to municipal land use regulation of accessory on-farm businesses..... 4023  
**H. 707** An act relating to the prevention of sexual harassment..... 4023  
**H. 728** An act relating to bail reform..... 4023  
**H. 731** An act relating to miscellaneous workers' compensation and occupational safety amendments..... 4023  
**H. 764** An act relating to data brokers and consumer protection..... 4023  
**H. 777** An act relating to the Clean Water State Revolving Loan Fund..... 4023  
**H. 907** An act relating to improving rental housing safety..... 4023  
**H. 916** An act relating to increasing the moral obligation authority of the Vermont Economic Development Authority..... 4023

**NOTICE CALENDAR**

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 739** An act relating to energy productivity investments under the self-managed energy efficiency program

Finance Report - Sen. Lyons ..... 4024

Appropriations Report - Sen. Ashe ..... 4031

**House Proposal of Amendment**

**S. 197** An act relating to liability for toxic substance exposures or releases..... 4032

---

**ORDERS OF THE DAY**

---

**ACTION CALENDAR**

**UNFINISHED BUSINESS OF THURSDAY, MAY 3, 2018**

**House Proposal of Amendment to Senate Proposal of Amendment**

**H. 608**

An act relating to creating an Older Vermonters Act working group

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

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) one current member of the House of Representatives appointed by the Speaker of the House;

(2) one current member of the Senate appointed by the Committee on Committees;

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

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

(5) the Commissioner of Labor or designee;

(6) the Attorney General or designee;

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

(8) the State Long-Term Care Ombudsman;

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

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

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

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

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

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

(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, the Alzheimer's Association, Support and Services at Home (SASH), 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.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the working group serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for a total of not more than eight meetings.

(2) Other 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.

(3) Payments to members of the working group authorized under subdivision (2) of this subsection shall be made from monies appropriated to the Department of Disabilities, Aging, and Independent Living.

**UNFINISHED BUSINESS OF FRIDAY, MAY 4, 2018**

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 675.**

An act relating to conditions of release prior to trial.

**Reported favorably with recommendation of proposal of amendment by Senator Benning for the Committee on Judiciary.**

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. 13 V.S.A. § 1702 is amended to read:

§ 1702. CRIMINAL THREATENING

(a) A person shall not by words or conduct knowingly:

(1) threaten another person; and

(2) as a result of the threat, place ~~the~~ any other person in reasonable apprehension of death or serious bodily injury to themselves or any other person.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(c) A person who violates subsection (a) of this section with the intent to prevent another person from reporting to the Department for Children and Families the suspected abuse or neglect of a child shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.

(d)(1) A person shall not by words or conduct knowingly:

(A) threaten to use a firearm or an explosive device to harm another person in a school building, on school property, or in an institution of higher education; and

(B) as a result of the threat, place any other person in reasonable apprehension of death or serious bodily injury to themselves or any other person.

(2) A person who violates this subsection shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.



~~(d)~~(e) As used in this section:

(1) “Serious bodily injury” shall have the same meaning as in section 1021 of this title.

(2) “Threat” and “threaten” shall not include constitutionally protected activity.

(3) “Firearm” shall have the same meaning as in section 4016 of this title.

(4) “School property” shall have the same meaning as in section 4004 of this title.

~~(e)~~(f) Any person charged under subsection (a) or (c) of this section who is under 18 years of age shall be adjudicated as a juvenile delinquent.

~~(f)~~(g) It shall be an affirmative defense to a charge under this section that the person did not have the ability to carry out the threat. The burden shall be on the defendant to prove the affirmative defense by a preponderance of the evidence.

Sec. 2. 13 V.S.A. § 4004 is amended to read:

§ 4004. POSSESSION OF DANGEROUS OR DEADLY WEAPON IN A  
SCHOOL BUS OR SCHOOL BUILDING OR ON SCHOOL  
PROPERTY

(a) No person shall knowingly possess a firearm or a dangerous or deadly weapon while within a school building or on a school bus. A person who violates this section shall, for the first offense, be imprisoned not more than one year or fined not more than \$1,000.00, or both, and for a second or subsequent offense shall be imprisoned not more than three years or fined not more than \$5,000.00, or both.

(b) No person shall knowingly possess a firearm or a dangerous or deadly weapon on any school property with the intent to injure another person. A person who violates this section shall, for the first offense, be imprisoned not more than two years or fined not more than \$1,000.00, or both, and for a second or subsequent offense shall be imprisoned not more than three years or fined not more than \$5,000.00, or both.

(c) This section shall not apply to:

(1) A law enforcement officer ~~while engaged in law enforcement duties.~~

(2) Possession and use of firearms or dangerous or deadly weapons if the board of school directors, or the superintendent or principal if delegated authority to do so by the board, authorizes possession or use for specific occasions or for instructional or other specific purposes.

(d) As used in this section:

(1) "School property" means any property owned by a school, including motor vehicles.

(2) "Owned by the school" means owned, leased, controlled or subcontracted by the school.

\* \* \*

Sec. 3. 16 V.S.A. § 1167 is amended to read:

§ 1167. SCHOOL RESOURCE OFFICER; MEMORANDUM OF UNDERSTANDING

(a) Neither the State Board nor the Agency shall regulate the use of restraint and seclusion on school property by a school resource officer certified pursuant to 20 V.S.A. § 2358.

(b) ~~School boards~~ Prior to utilization of a school resource officer in a school, the school board and relevant law enforcement agencies—are encouraged to agency shall enter into memoranda of understanding relating to:

(1) the possession and use of weapons and devices by a school resource officer on school property; and

(2) the nature and scope of assistance that a school resource officer will provide to the school system.

Sec. 4. RESTORATIVE JUSTICE PRINCIPLES FOR RESPONDING TO SCHOOL DISCIPLINE PROBLEMS

On or before July 1, 2019, the Agency of Education shall issue a report to all public school boards and boards of approved independent schools that set out restorative justice principles for responding to school discipline problems. On or before July 1, 2020, each public school board and each board of an approved independent school shall adopt a policy on the use of restorative justice principles for responding to school discipline problems, which shall be in effect for the 2020-2021 school year. The restorative justice principles contained in the Agency report and the schools' policies shall be designed to:

(1) decrease the use of exclusionary discipline;

(2) ensure that disciplinary measures are applied fairly and do not target students based on race, ethnicity, gender, family income level, sexual orientation, immigration status, or disability status; and

(3) provide students with the opportunity to make academic progress while suspended or expelled.

## Sec. 5. EFFECTIVE DATES

Sec. 3 shall take effect July 1, 2018 and the remaining sections shall take effect on passage.

And that after passage the title of the bill be amended to read:

An act relating to school safety.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 1, 2018, page 494 and March 2, 2018, page 570)

### **Reported favorably with recommendation of proposal of amendment by Senator Baruth for the Committee on Education.**

The Committee recommends that the bill be amended as recommended by the Committee on Judiciary with the following amendments thereto:

First: By striking out Sec. 2 in its entirety and inserting in lieu thereof:

[Deleted.]

Second: By striking out Sec. 4 in its entirety and inserting in lieu thereof the following:

## Sec. 4. RESTORATIVE JUSTICE PRINCIPLES FOR RESPONDING TO SCHOOL DISCIPLINE PROBLEMS

On or before July 1, 2019, the Agency of Education shall issue guidance to all public school boards and boards of approved independent schools that sets out restorative justice principles for responding to school discipline problems. Each public school board and each board of an approved independent school shall consider this guidance and whether to adopt a policy on the use of restorative justice principles for responding to school discipline problems. The restorative justice principles contained in the Agency guidance shall be designed to:

(1) decrease the use of exclusionary discipline;

(2) ensure that disciplinary measures are applied fairly and do not target students based on race, ethnicity, gender, family income level, sexual orientation, immigration status, or disability status; and

(3) provide students with the opportunity to make academic progress while suspended or expelled.

Third: By adding a new section, to be Sec. 5, to read:

## Sec. 5. IMPLEMENTATION OF RESTORATIVE JUSTICE PRINCIPLES; GRANT PROGRAM

(a) The Agency of Education shall establish a grant program to assist public and approved independent schools with the adoption and implementation of restorative justice principles for responding to school discipline problems. The Agency shall determine the eligibility criteria for receiving a grant and determining the grant amount, and shall monitor the use of grant monies.

(b) On or before December 1, 2018, 2019, and 2020, the Secretary of Education shall submit a written report to the House Committees on Education and Judiciary and the Senate Committees on Education and on Judiciary describing the eligibility criteria for receiving a grant and for determining the grant amount, identifying the grant recipients and the amounts they received in grant monies, and the use of grant monies by the recipients.

(c) The sum of \$250,000.00 is appropriated to the Agency of Education from the General Fund for fiscal year 2019 for the Agency to administer the grant program in accordance with this section.

And by renumbering the remaining section to be numerically correct.

(Committee vote: 6-0-0)

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

The Committee recommends that the bill be amended as recommended by the Committee on Education with the following amendment thereto:

In Sec. 5, subsection (c) after the words “General Fund” by inserting in fiscal year 2018 to be carried forward

(Committee vote: 6-0-1)

**Proposal of amendment to H. 675 to be offered by Senators Benning and Sears**

Senators Benning and Sears move that the proposal of amendment of the Committee on Judiciary be amended in Sec. 1, 13 V.S.A. § 1702, in subdivision (a)(2), by striking out the word “other” and in subdivision (d)(1)(B), by striking out the word “other”

**House Proposal of Amendment**

**S. 281**

An act relating to the mitigation of systemic racism.

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. LEGISLATIVE INTENT

It is the intent of the General Assembly to promote racial justice reform throughout the State by mitigating systemic racism in all systems of State government and creating a culture of inclusiveness.

Sec. 2. 3 V.S.A. § 2102 is amended to read:

§ 2102. POWERS AND DUTIES

(a) The Governor's Cabinet shall adopt and implement a program of continuing coordination and improvement of the activities carried on at all levels of State and local government.

(b) The Cabinet shall work collaboratively with the Executive Director of Racial Equity and may provide the Director with access to all relevant records and information as permitted by law.

Sec. 3. 3 V.S.A. chapter 68 is added to read:

CHAPTER 68. EXECUTIVE DIRECTOR OF RACIAL EQUITY

§ 5001. POSITION

(a) There is created within the Executive Branch the position of Executive Director of Racial Equity to identify and work to eradicate systemic racism within State government.

(b) The Executive Director of Racial Equity shall have the powers and duties enumerated within section 2102 of this title and shall work collaboratively with and act as a liaison between the Governor's Workforce Equity and Diversity Council, the Vermont Human Rights Commission, and the Governor's Cabinet.

§ 5002. RACIAL EQUITY ADVISORY PANEL

(a) The Racial Equity Advisory Panel is established. The Panel shall be organized and have the duties and responsibilities as provided in this section. The Panel shall have administrative, legal, and technical support of the Agency of Administration.

(b)(1) The Panel shall consist of five members, as follows:

(A) one member appointed by the Senate Committee on Committees who shall not be a current legislator;

(B) one member appointed by the Speaker of the House who shall not be a current legislator;

(C) one member appointed by the Chief Justice of the Supreme Court who shall not be a current legislator;

(D) one member appointed by the Governor who shall not be a current legislator; and

(E) one member appointed by the Human Rights Commission who shall not be a current legislator.

(2) Members shall be drawn from diverse backgrounds to represent the interests of communities of color throughout the State, have experience working to implement racial justice reform and, to the extent possible, represent geographically diverse areas of the State.

(3) The term of each member shall be three years, except that of the members first appointed, one each shall serve a term of one year, to be appointed by the Human Rights Commission; two years, to be appointed by the Governor; three years, to be appointed by the Speaker of the House; four years, to be appointed by the Senate Committee on Committees; and five years, to be appointed by the Chief Justice of the Supreme Court, so that the term of one regular member expires in each ensuing year. As terms of currently serving members expire, appointments of successors shall be in accord with the provisions of this subsection. Appointments of members to fill vacancies or expired terms shall be made by the authority that made the initial appointment to the vacated or expired term. Members shall serve until their successors are elected or appointed. Members shall serve not more than three consecutive terms in any capacity.

(4) Members of the Panel shall elect by majority vote the Chair of the Panel, who shall serve for a term of three years after the implementation period. Members of the Panel shall be appointed on or before September 1, 2018 in order to prepare as they deem necessary for the establishment of the Panel, including the election of the Chair of the Panel. Terms of members shall officially begin on January 1, 2019.

(c) The Panel shall have the following duties and responsibilities:

(1) work with the Executive Director of Racial Equity to implement the reforms identified as necessary in the comprehensive organizational review as required by subsection 5003(a) of this title; and

(2) advise the Director to ensure ongoing compliance with the purpose of this chapter, and advise the Governor on strategies for remediating systemic racial disparities in statewide systems of government.

(d) Each member of the Panel shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.

#### § 5003. DUTIES OF EXECUTIVE DIRECTOR OF RACIAL EQUITY

(a) The Executive Director of Racial Equity shall work with the agencies and departments to implement a program of continuing coordination and improvement of activities in State government in order to combat systemic racial disparities and measure progress toward fair and impartial governance, including:

(1) oversee a comprehensive organizational review to identify systemic racism in each of the three branches of State government and inventory systems in place that engender racial disparities;

(2) create a strategy for implementing a centralized platform for race-based data collection and manage the aggregation, correlation, and public dissemination of the data; and

(3) develop a model fairness and diversity policy and review and make recommendations regarding the fairness and diversity policies held by all State government systems.

(b) Pursuant to section 2102 of this title, work collaboratively with State agencies and departments to gather relevant existing data and records necessary to carry out the purpose of this chapter and to develop best practices for remediating systemic racial disparities throughout State government.

(c) The Director shall work with the agencies and departments and with the Chief Performance Officer to develop performance targets and performance measures for the General Assembly, the Judiciary, and the agencies and departments to evaluate respective results in improving systems. These performance measures shall be included in the agency's or department's quarterly reports to the Director, and the Director shall include each agency's or department's performance targets and performance measures in his or her annual reports to the General Assembly.

(d) The Director shall, in consultation with the Department of Human Resources and the agencies and departments, develop and conduct trainings for agencies and departments regarding the nature and scope of systemic racism and the institutionalized nature of race-based bias. Nothing in this subsection shall be construed to discharge the existing duty of the Department of Human Resources to conduct trainings.

(e) On or before January 15, 2020, and annually thereafter, report to the House and Senate Committees on Government Operations demonstrating the State's progress in identifying and remediating systemic racial bias within State government.

#### § 5004. INFORMATION; DISCLOSURE AND CONFIDENTIALITY

(a) Confidentiality of records. Except as provided in subsection (b) of this section, the records of the Racial Equity Director and the Racial Equity Advisory Panel shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

(b) Exceptions.

(1) The Director and Panel members may make records available to each other, the Governor, and the Governor's Cabinet as necessary to fulfill their duties as set forth in this chapter. They may also make records pertaining to any alleged violations of antidiscrimination statutes available to any State or federal law enforcement agency authorized to enforce such statutes. The Director or Panel may refuse to disclose records or information the release of which may be prohibited under State or federal law absent court order.

(2) Any records or information described in subdivision (1) of this subsection made available to a party or entity pursuant to a confidentiality agreement or court order requiring confidentiality shall be kept confidential in accordance with the agreement or order, unless disclosure is otherwise authorized by law or court order.

#### § 5005. NOMINATION AND APPOINTMENT PROCESS

(a) The Racial Equity Advisory Panel shall select for consideration by the Panel, by majority vote, provided that a quorum is present, from the applications for the position of Executive Director of Racial Equity as many candidates as it deems qualified for the position.

(b) The Panel shall submit to the Governor the names of the three candidates it deems most qualified to be appointed to fill the position.

(c) The Governor shall make the appointment to the Executive Director position from the list of qualified candidates submitted pursuant to subsection (b) of this section. The names of candidates submitted and not selected shall remain confidential.

#### Sec. 4. AUTHORIZATION FOR EXECUTIVE DIRECTOR OF RACIAL EQUITY POSITION

One new permanent, exempt position of Executive Director of Racial Equity is created within the Agency of Administration.

#### Sec. 5. FISCAL YEAR 2019 APPROPRIATION

There is appropriated to the Agency of Administration from the General Fund for fiscal year 2019 the amount of \$75,000.00 for the Racial Equity Advisory Panel and the position of Executive Director of Racial Equity.

#### Sec. 6. SECRETARY OF ADMINISTRATION; RACIAL EQUITY ADVISORY PANEL; EXECUTIVE DIRECTOR OF RACIAL EQUITY; REPORT

(a) On or before September 1, 2018, the Racial Equity Advisory Panel shall be appointed.



(b) On or before November 1, 2018, the Racial Equity Advisory Panel shall, in consultation with the Secretary of Administration and the Department of Human Resources, have developed and posted a job description for the Executive Director of Racial Equity.

(c) On or before January 1, 2019, the Racial Equity Advisory Panel shall submit to the Governor the names of the three candidates for the Executive Director of Racial Equity position.

(d) On or before February 1, 2019, the Governor shall appoint the Executive Director of Racial Equity.

(e) On or before May 1, 2019, the Executive Director of Racial Equity shall update the House and Senate Committees on Government Operations regarding how best to complete a comprehensive organizational review to identify systemic racism pursuant to 3 V.S.A. § 5003, and potential private and public sources of funding to achieve the review.

#### Sec. 7. REPEAL

On June 30, 2023:

(1) Sec. 3 of this act (creating the Executive Director of Racial Equity and Racial Equity Advisory Panel in 3 V.S.A. chapter 68) is repealed and the Officer position and Panel shall cease to exist; and

(2) Sec. 4 of this act (authorization for the Executive Director of Racial Equity position) is repealed.

#### Sec. 8. 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 racial equity in State government.

### **House Proposal of Amendment to Senate Proposal of Amendment**

#### **H. 806**

An act relating to the Southeast State Correctional Facility

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

In Sec. 1, Southeast State Correctional Facility; Report, in subsection (b), by striking out the following: “, if any,”

**UNFINISHED BUSINESS OF SATURDAY, MAY 5, 2018**

**Third Reading**

**H. 636.**

An act relating to miscellaneous fish and wildlife subjects.

**Proposal of amendment to H. 636 to be offered by Senator Rodgers before  
Third Reading**

Senator Rodgers moves to amend the Senate proposal of amendment as follows:

First: By striking out Sec. 10 in its entirety and inserting in lieu thereof the following:

Sec. 10. 10 V.S.A. § 4254c is added to read:

§ 4254c. NOTICE OF TRAPPING; DOMESTIC DOG OR DOMESTIC CAT

A person who incidentally traps a domestic dog or domestic cat shall notify a fish and wildlife warden or the Department within 24 hours after discovery of the trapped domestic dog or domestic cat. The Department shall maintain records of all reports of incidentally trapped domestic dogs or domestic cats submitted under this section, and the reports shall include the disposition of each incidentally trapped domestic dog or domestic cat.

Second: By striking out Sec. 12 in its entirety and inserting in lieu thereof the following:

Sec. 12. 10 V.S.A. § 4001 is amended to read:

§ 4001. DEFINITIONS

Words and phrases used in this part, unless otherwise provided, shall be construed to mean as follows:

\* \* \*

(13) Rabbit: to include wild hare.

(14) Fur-bearing animals: beaver, otter, marten, mink, raccoon, fisher, fox, skunk, coyote, bobcat, weasel, opossum, lynx, wolf, and muskrat.

(15) Wild animals or wildlife: all animals, including birds, fish, amphibians, and reptiles, other than domestic animals, domestic cats, or domestic dogs.

\* \* \*

(40) Domestic cat: any species of Felis catus that is normally maintained in or near the household of the owner. Domestic cat shall not mean

a feral cat, bobcat, or a wild animal.

(41) Domestic dog: any species of Canis lupus familiaris that is normally maintained in or near the household of the owner. Domestic dog shall not mean a coyote or a wild animal.

(42) Feral cat: any species of Felis catus that: has no visible owner identification of any kind; lives outdoors; and displays a temperament of extreme fear in the presence of humans.

**Proposal of amendment to H. 636 to be offered by Senator Rodgers before  
Third Reading**

Senator Rodgers moves to amend the Senate proposal of amendment as follows:

By adding Secs. 16a–16d with a reader assistance heading to read as follows:

\* \* \* Gun Suppressors for Hunting \* \* \*

Sec. 16a. 13 V.S.A. § 4010 is amended to read:

§ 4010. GUN SUPPRESSORS

(a) As used in this section:

(1) “Gun suppressor” means any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a gun suppressor, and any part intended only for use in such assembly or fabrication.

(2) “Sport shooting range” shall have the same meaning as used in 10 V.S.A. § 5227(a).

(b) A person shall not manufacture, make, or import a gun suppressor, except for:

(1) a licensed manufacturer, as defined in 18 U.S.C. § 921, who is registered as a manufacturer pursuant to 26 U.S.C. § 5802;

(2) a licensed importer, as defined in 18 U.S.C. § 921, who is registered as an importer pursuant to 26 U.S.C. § 5802; or

(3) a person who makes a gun suppressor in compliance with the requirements of 26 U.S.C. § 5822.

(c) A person shall not use a gun suppressor in the State, except for use by:

(1) a Level III certified law enforcement officer or Department of Fish and Wildlife employee in connection with his or her duties and responsibilities

and in accordance with the policies and procedures of that officer's or employee's agency or department;

(2) the Vermont National Guard in connection with its duties and responsibilities;

(3) a licensed manufacturer or a licensed importer, as defined in 18 U.S.C. § 921, who is also registered as a manufacturer or an importer pursuant to 26 U.S.C. § 5802, who in the ordinary course of his or her business as a manufacturer or as an importer tests the operation of the gun suppressor; ~~or~~

(4) a person lawfully using a sport shooting range; or

(5) a person taking game as authorized under 10 V.S.A. § 4701.

(d)(1) A person who violates subsection (b) of this section shall be fined not less than \$500.00 for each offense.

(2) A person who violates subsection (c) of this section shall be fined \$50.00 for each offense.

Sec. 16b. 10 V.S.A. § 4701 is amended to read:

§ 4701. USE OF GUN, BOW AND ARROW, AND CROSSBOW; LEGAL DAY; DOGS; GUN SUPPRESSORS

(a) Unless otherwise provided by statute, a person shall not take game except with:

(1) a gun fired at arm's length;

(2) a bow and arrow; or

(3) a crossbow as authorized under section 4711 of this title or as authorized by the rules of the Board.

(b) A person shall not take game between one-half hour after sunset and one-half hour before sunrise unless otherwise provided by statute or by the rules of the Board.

(c) A person may take game and fur-bearing animals during the open season therefor, with the aid of a dog, unless otherwise prohibited by statute or by the rules of the Board.

(d) A person taking game with a gun may possess, carry, or use a gun suppressor in the act of taking game.

Sec. 16c. 10 V.S.A. § 4704 is amended to read

§ 4704. USE OF MACHINE GUNS, OR AUTOLOADING RIFLES, ~~AND~~ GUN SUPPRESSORS

(a) A person engaged in hunting for wild animals shall not use, carry, or have in his or her possession:

(1) a machine gun of any kind or description; or

(2) an autoloading rifle with a magazine capacity of over six cartridges, except a .22 caliber rifle using rim fire cartridges; or

~~(3) a gun suppressor.~~

~~(b) As used in this section, "gun suppressor" means any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a gun suppressor, and any part intended only for use in such assembly or fabrication. [Repealed.]~~

Sec. 16d. 10 V.S.A. § 4001 is amended to read:

#### § 4001. DEFINITIONS

Words and phrases used in this part, unless otherwise provided, shall be construed to mean as follows:

\* \* \*

(9) Game: game birds or game quadrupeds, or both.

(10) Game birds: quail, partridge, woodcock, pheasant, plover of any kind, Wilson snipe, other shore birds, rail, coot, gallinule, wild ducks, wild geese, and wild turkey.

\* \* \*

(15) Wild animals or wildlife: all animals, including birds, fish, amphibians, and reptiles, other than domestic animals.

\* \* \*

(23) Take and taking: pursuing, shooting, hunting, killing, capturing, trapping, snaring, and netting fish, birds, and quadrupeds and all lesser acts, such as disturbing, harrying or worrying, or wounding or placing, setting, drawing, or using any net or other device commonly used to take fish or wild animals, whether they result in the taking or not; and shall include every attempt to take and every act of assistance to every other person in taking or attempting to take fish or wild animals, provided that when taking is allowed by law, reference is had to taking by lawful means and in lawful manner.

\* \* \*

(40) Gun suppressor: any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a gun suppressor, and any part intended only for use in such assembly or fabrication.

**Second Reading**  
**Favorable with Proposal of Amendment**  
**H. 410.**

An act relating to adding products to Vermont's energy efficiency standards for appliances and equipment.

**Reported favorably with recommendation of proposal of amendment by Senator Bray for the Committee on Natural Resources and Energy.**

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:

\* \* \* Appliance Efficiency \* \* \*

Sec. 1. PURPOSE

(a) In 9 V.S.A. § 2792, the General Assembly found that efficiency standards for products sold or installed in the State provide benefits to consumers and businesses, including saving money on utility bills, saving energy and thereby reducing the environmental impacts of energy consumption, reducing or delaying the need for new power plants and upgrades to the electric transmission and distribution system, and allowing the energy cost savings to be spent on other goods and services within the State's economy.

(b) The purpose of this act is to obtain the benefits found in 9 V.S.A. § 2792 for the following products to which the State's efficiency standards under 9 V.S.A. chapter 74 do not currently apply: air compressors, commercial dishwashers, commercial fryers, commercial hot-food holding cabinets, commercial steam cookers, computers and computer monitors, faucets, high color rendering index fluorescent lamps, portable air conditioners, portable electric spas, residential ventilating fans, showerheads, spray sprinkler bodies, uninterruptible power supplies, urinals, and water coolers.

Sec. 2. 9 V.S.A. § 2793 is amended to read:

§ 2793. DEFINITIONS

As used in this chapter:

\* \* \*

(16) With respect to air compressors, the following definitions apply:

(A) "Air compressor" means a compressor that is designed to compress air that has an inlet open to the atmosphere or other source of air and

that consists of the bare compressor, also known as the compression element; one or more drivers; mechanical equipment to drive the compression element; and any ancillary equipment.

(B) “Compressor” means a machine or apparatus that converts different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher-pressure values above atmospheric pressure and has a pressure ratio at full-load operating pressure greater than 1.3.

(17) “Commercial dishwasher” means a machine designed to clean and sanitize plates, pots, pans, glasses, cups, bowls, utensils, and trays by applying sprays of detergent solution, with or without blasting media granules, and a sanitizing rinse. The phrase “commercial dishwasher” does not include dishwashers intended for consumer use as defined in 10 C.F.R. § 430.2.

(18) “Commercial fryer” means an appliance, including a cooking vessel, in which oil is placed to such a depth that the cooking food is supported by displacement of the cooking fluid rather than by the bottom of the vessel. Heat is delivered to the cooking fluid by means of an immersed electric element of band-wrapped vessel or by heat transfer from gas burners either through the walls of the fryer or through tubes passing through the cooking fluid.

(19) “Commercial hot-food holding cabinet” means a heated, fully enclosed compartment with one or more solid or transparent doors designed to maintain the temperature of hot food that has been cooked using a separate appliance. The phrase “commercial hot-food holding cabinet” does not include heated glass merchandizing cabinets, drawer warmers, or cook-and-hold appliances.

(20) “Commercial steam cooker” means a device with one or more food-steaming compartments in which the energy in the steam is transferred to the food by direct contact. A commercial steam cooker may also be known as a compartment steamer.

(21) “ENERGY STAR Program” means the federal program initiated by the U.S. Environmental Protection Agency pursuant to 42 U.S.C. § 7403(g) that includes certification of energy-saving products, buildings, and tools, and includes other resources for saving energy.

(22) With respect to faucets and showerheads, the following definitions apply:

(A) “Faucet” means a lavatory faucet, kitchen faucet, metering faucet, public lavatory faucet, or replacement aerator for a lavatory, public lavatory, or kitchen faucet. As used in this subdivision (24)(A):

(i) “Metering faucet” means a fitting that, when turned on, will gradually shut itself off over a period of several seconds.

(ii) “Public lavatory faucet” means a fitting intended to be installed in nonresidential bathrooms that are exposed to walk-in traffic.

(iii) “Replacement aerator” means an aerator sold as a replacement, separate from the faucet to which it is intended to be attached.

(B) “Showerhead” means an accessory to a supply fitting for spraying water onto a bather, typically from an overhead position. The term includes a body spray and handheld shower. As used in this subdivision (22)(B):

(i) “Body spray” means a shower device for spraying water onto a bather other than from the overhead position.

(ii) “Handheld shower” means a showerhead that can be held or fixed in place for the purpose of spraying water onto a bather and that is connected to a flexible hose.

(23) “High color rendering index (CRI) fluorescent lamp” means a fluorescent lamp with a color rendering index of 87 or greater that is not a compact fluorescent lamp.

(24) “Luminaire” means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(25) With respect to portable air conditioners, the following definitions apply:

(A) “Portable air conditioner” means a portable encased assembly, other than a packaged terminal air conditioner, room air conditioner, or dehumidifier, that includes a source of refrigeration; delivers cooled, conditioned air to an enclosed space; and is powered by single-phase electric current. The assembly may include additional means for air circulation and heating and may be a single-duct or a dual-duct portable air conditioner.

(B) “Single-duct portable air conditioner” means a portable air conditioner that draws all of the condenser inlet air from the conditioned space without the means of a duct and discharges the condenser outlet air outside the conditioned space through a single duct attached to an adjustable window bracket.

(C) “Dual-duct portable air conditioner” means a portable air conditioner that draws some or all of the condenser inlet air from outside the conditioned space through a duct attached to an adjustable window bracket,



may draw additional condenser inlet air from the conditioned space, and discharges the condenser outlet air outside the conditioned space by means of a separate duct attached to an adjustable window bracket.

(26) “Portable electric spa” means a factory-built electric spa or hot tub, which may or may not include any combination of integral controls, water heating, or water circulating equipment.

(27) “Residential ventilating fan” means a ceiling, wall-mounted, or remotely mounted in-line fan designed to be used in a bathroom or utility room whose purpose is to move air from inside the building to the outdoors.

(28) With respect to spray sprinkler bodies, the following definitions apply:

(A) “Pressure regulator” means a device that maintains constant operating pressure immediately downstream from the device, given higher pressure upstream.

(B) “Spray sprinkler body” means the exterior case or shell of a sprinkler incorporating a means of connection to the piping system designed to convey water to a nozzle or orifice.

(29) “T12 fluorescent lamp” means a tubular fluorescent lamp to which one of the following applies:

(A) The lamp has a nominal rating of 34 watts, is 48 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-1006-1). Such a lamp is often referred to as an “F34T12 lamp” or an “F40T12/ES lamp.”

(B) The lamp has a nominal rating of 40 watts, is 48 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-1010-1). Such a lamp is often referred to as an “F40T12 lamp.”

(C) The lamp has a nominal rating of 60 watts, is 96 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-3006-1). Such a lamp is often referred to as an “F96T12/ES lamp.”

(D) The lamp has a nominal rating of 75 watts, is 96 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-3007-1). Such a lamp is often referred to as an “F96T12 lamp.”

(E) The lamp has a nominal rating of 95 watts, is 96 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-1017-1). Such a lamp is often referred to as an “F96T12HO/ES lamp.”

(F) The lamp has a nominal rating of 110 watts, is 96 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-1019-1). Such a lamp is often referred to as an “F96T12HO lamp.”

(30) “Uninterruptible power supply” means a battery charger consisting of a combination of convertors, switches, and energy storage devices, such as batteries, constituting a power system that maintains continuity of load power in case of input power failure.

(31) With respect to urinals, the following definitions apply:

(A) “Plumbing fixture” means an exchangeable device that connects to a plumbing system to deliver and drain away water and waste.

(B) “Trough-type urinal” means a urinal designed for simultaneous use by two or more persons.

(C) “Urinal” means a plumbing fixture that receives only liquid body waste and conveys the waste through a trap into a drainage system.

(32) With respect to water coolers, the following definitions apply:

(A) “Cold-only unit” means a water cooler that dispenses cold water only.

(B) “Cook and cold unit” means a water cooler that dispenses both cold and room-temperature water.

(C) “Hot and cold unit” means a water cooler that dispenses both hot and cold water. A hot and cold unit also may dispense room-temperature water.

(D) “On demand” means that a water cooler heats water as it is requested, which typically takes a few minutes to deliver.

(E) “Storage-type” means that a water cooler stores thermally conditioned water in a tank and the conditioned water is available instantaneously. Storage-type water coolers include point-of-use, dry storage compartment, and bottled water coolers.

(F) “Water cooler” means a freestanding device that consumes energy to cool or heat potable water, or both.

Sec. 3. 9 V.S.A. § 2794 is amended to read:

§ 2794. SCOPE

(a) The provisions of this chapter apply to the following types of new products sold, offered for sale, or installed in the State:

(1) Medium voltage dry-type distribution transformers.

- (2) Metal halide lamp fixtures.
- (3) Residential furnaces and residential boilers.
- (4) Single-voltage external AC to DC power supplies.
- (5) State-regulated incandescent reflector lamps.
- (6) General service lamps.
- (7) Air compressors.
- (8) Commercial dishwashers.
- (9) Commercial fryers.
- (10) Commercial hot-food holding cabinets.
- (11) Commercial steam cookers.
- (12) Computers and computer monitors.
- (13) Faucets.
- (14) High CRI fluorescent lamps.
- (15) Portable air conditioners.
- (16) Portable electric spas.
- (17) Residential ventilating fans.
- (18) Showerheads.
- (19) Spray sprinkler bodies.
- (20) Uninterruptible power supplies.
- (21) Urinals.
- (22) Water coolers.

(23) Each other product for which the Commissioner is required to adopt an efficiency or water conservation standard by rule pursuant to section 2795 of this title.

~~(8)~~(24) Any other product that may be designated by the Commissioner in accordance with section 2797 of this title.

(b) The provisions of this chapter do not apply to:

- (1) New products manufactured in the State and sold outside the State and the equipment used in manufacturing those products.
- (2) New products manufactured outside the State and sold at wholesale inside the State for final retail sale and installation outside the State.

(3) Products installed in mobile manufactured homes at the time of construction.

(4) Products designed expressly for installation and use in recreational vehicles.

Sec. 4. 9 V.S.A. § 2795 is amended to read:

§ 2795. EFFICIENCY AND WATER CONSERVATION STANDARDS

(a) The Commissioner shall adopt rules in accordance with the provisions of 3 V.S.A. chapter 25 establishing minimum efficiency standards for the types of new products set forth in section 2794 of this title. The rules shall provide for the following minimum efficiency standards for products sold or installed in this State:

\* \* \*

(4)(A) Single-voltage external AC to DC power supplies shall meet the energy efficiency requirements of the following table:

\* \* \*

(C) For purposes of this subdivision (4), the efficiency of single-voltage external AC to DC power supplies shall be measured in accordance with the test methodology specified by the ~~U.S. Environmental Protection Agency's Energy Star~~ ENERGY STAR Program, "Test Method for Calculating the Energy Efficiency of Single-Voltage External AC-DC and AC-AC Power Supplies (August 11, 2004)."

\* \* \*

(6) In the rules, the Commissioner shall adopt minimum efficiency and water conservation standards for each product that is subject to a standard under 10 C.F.R. §§ 430 and 431 as those provisions existed on January 19, 2017. The minimum standard and the testing protocol for each product shall be the same as adopted in those sections of the Code of Federal Regulations, except that for faucets, showerheads, and urinals, the minimum standard and testing protocol shall be as otherwise set forth in this section.

(7) In the rules, the Commissioner shall adopt a minimum efficacy standard for general service lamps of 45 lumens per watt, when tested in accordance with 10 C.F.R. § 430.23(gg) as that provision existed on January 19, 2017.

(8) In this subdivision (8), "final rule" means the document setting forth a final action by the U.S. Department of Energy (DOE) with respect to a final rule for "Energy Conservation Standards for Air Compressors," docket no. EERE-2013-BT-STD-0040, approved by DOE on December 5, 2016. Air

compressors that meet the 12 criteria to be codified under 10 C.F.R. § 431.345(a) and set forth on pages 350 to 351 of the final rule shall meet the requirements contained in Table 1 on page 352 of the final rule using the instructions to be codified under 10 C.F.R. § 431.345(b) and set forth on page 353 of the final rule. Compliance with these requirements shall be measured in accordance with 10 C.F.R. Part 431, Subpart T, Appendix A, entitled “Uniform Test Method for Certain Air Compressors,” as in effect on July 3, 2017.

(9) Commercial dishwashers included in the scope of the “ENERGY STAR Program Requirements Product Specification for Commercial Dishwashers,” Version 2.0, shall meet the qualification criteria of that specification.

(10) Commercial fryers included in the scope of the “ENERGY STAR Program Requirements Product Specification for Commercial Fryers,” Version 2.0, shall meet the qualification criteria of that specification.

(11) Commercial hot-food holding cabinets shall have a maximum idle energy rate of 40 watts per cubic foot of interior volume, as determined by the “idle energy rate-dry test” in ASTM F2140-11, “Standard Test Method for Performance of Hot-Food Holding Cabinets,” ASTM International (2011). Interior volume shall be measured as prescribed in the “ENERGY STAR Program Requirements Product Specification for Commercial Hot-Food Holding Cabinets,” Version 2.0.

(12) Commercial steam cookers shall meet the requirements of the “ENERGY STAR Program Requirements Product Specification for Commercial Steam Cookers,” Version 1.2.

(13) Computers and computer monitors shall meet the requirements of 20 California Code of Regulations (C.C.R.) § 1605.3(v) and compliance with these requirements shall be measured in accordance with test methods prescribed in 20 C.C.R. § 1604(v).

(A) For the purposes of this subdivision (13), terms used in the referenced portions of the C.C.R. shall be as defined in 20 C.C.R. § 1602.

(B) The rules shall define “computer” and “computer monitor” to have the same meaning as set forth in 20 C.C.R. § 1602(v).

(C) The referenced portions of the C.C.R. shall be those adopted on or before the effective date of this section. However, the Commissioner shall have authority to amend the rules so that the definitions of “computer” and “computer monitor” and the minimum efficiency standards for computers and computer monitors conform to subsequently adopted modifications to the referenced sections of the C.C.R.

(14) Faucets, except for metering faucets, and showerheads shall meet the standards set forth in this subdivision (14) when tested in accordance with 10 C.F.R. Part 430, Subpart B, Appendix S, entitled “Uniform Test Method for Measuring the Water Consumption of Faucets and Showerheads,” as in effect on January 3, 2017.

(A) Lavatory faucets and replacement aerators shall not exceed a maximum flow rate of 1.5 gallons per minute (gpm) at 60 pounds per square inch (psi).

(B) Residential kitchen faucets and replacement aerators shall not exceed a maximum flow rate of 1.8 gpm at 60 psi, with optional temporary flow of 2.2 gpm, provided they default to a maximum flow rate of 1.8 gpm at 60 psi after each use.

(C) Public lavatory faucets and replacement aerators shall not exceed a maximum flow rate of 0.5 gpm at 60 psi.

(D) Showerheads shall not exceed a maximum flow rate of 2.0 gpm at 80 psi.

(15) High CRI fluorescent lamps shall meet the minimum efficacy requirements contained in 10 C.F.R. § 430.32(n)(4) as that subdivision existed on January 3, 2017. Compliance with requirements shall be measured in accordance with 10 C.F.R. Part 430, Subpart B, Appendix R, entitled “Uniform Test Method for Measuring Average Lamp Efficacy (LE), Color Rendering Index (CRI), and Correlated Color Temperature (CCT) of Electric Lamps,” as that appendix existed on January 3, 2017.

(16) Urinals, other than trough-type urinals and urinals designed and marketed exclusively for use at prisons or mental health facilities, shall have a maximum flush volume of 0.5 gallons per flush when tested in accordance with 10 C.F.R. Part 430, Subpart B, Appendix T, entitled “Uniform Test Method for Measuring the Water Consumption of Water Closets and Urinals,” as in effect on January 3, 2017 and shall pass the waste extraction test for water closets set forth in Sec. 7.10 of the American Society of Mechanical Engineers (ASME) standard A112.19.2-2013/CSA B.45.1, as that standard exists on the effective date of this section.

(17) Portable air conditioners shall have a Combined Energy Efficiency Ratio (CEER), that is greater than or equal to:  $1.04 \times [\text{SACC}/(3.7177 \times \text{SACC}^{0.6384})]$ .

(A) In this subdivision (17), “SACC” means seasonally adjusted cooling capacity expressed in British thermal units per hour.

(B) The CEER shall be measured in accordance with 10 C.F.R. Part 430, Subpart B, Appendix CC, entitled “Uniform Test Method for Measuring

the Energy Consumption of Portable Air Conditioners,” as in effect on January 3, 2017.

(18) Portable electric spas shall meet the requirements of the American National Standard for Portable Electric Spa Energy Efficiency, ANSI/APSP/ICC-14 2014, as that standard exists on the effective date of this section.

(19) Residential ventilating fans shall meet the qualification criteria of the “ENERGY STAR Program Requirements Product Specification for Residential Ventilating Fans,” Version 3.2.

(20) Spray sprinkler bodies shall include an integral pressure regulator and shall meet the water efficiency and performance criteria and other requirements of the Environmental Protection Agency’s “WaterSense Specification for Spray Sprinkler Bodies,” Version 1.0. However, this subdivision (20) shall not apply to spray sprinkler bodies that are specifically excluded from the scope of that specification.

(21) In this subdivision (21), “final rule” means the document setting forth a final action by DOE with respect to a final rule for “Energy Conservation Standards for Uninterruptible Power Supplies,” docket no. EERE-2016-BT-STD-0022, approved by DOE on December 28, 2016. Uninterruptible power supplies that use a National Electrical Manufacturer Association (NEMA) 1-15P or 5-15P input plug and have an alternating current (AC) output shall have an average load-adjusted efficiency that meets or exceed the values shown to be codified under 10 C.F.R. § 430.32(z)(3) and set forth on pages 193–194 of the final rule. Compliance with these requirements shall be measured in accordance with 10 C.F.R. Part 430, Subpart B, Appendix Y, entitled “Uniform Test Method for Measuring the Energy Consumption of Battery Chargers,” as in effect on January 11, 2017.

(22) Water coolers included in the scope of the “ENERGY STAR Program Requirements Product Specification for Water Coolers,” Version 2.0, shall have “on mode with no water draw” energy consumption less than or equal to the following values, measured in accordance with the test requirements of that specification:

(A) 0.16 kilowatt-hours (kWh) per day for cold-only units and cook and cold units;

(B) 0.87 kWh per day for storage type hot and cold units; and

(C) 0.18 kWh per day for on-demand hot and cold units.

(b) When a minimum efficiency standard as described in subsection (a) of this section sets forth requirements that change over time, the rules shall provide for compliance with the changed requirements as they come into effect.

(c) When a subdivision within subdivisions (a)(8) through (a)(22) of this section requires compliance with an efficiency standard or testing protocol contained in a document issued by an agency of the United States, another state, or a nationally or internationally recognized organization, the rules of the Commissioner may incorporate the specified standard or protocol by reference pursuant to 3 V.S.A. § 838 rather than setting forth its language.

(d) With respect to computers and computer monitors subject to subdivision (a)(13) of this section, the Commissioner shall have authority to adopt official interpretations of the applicable efficiency standards published by the staff of the California Energy Commission (CEC). The rules shall state the process for such adoption and the manner in which the Commissioner will make the adopted interpretations publicly available.

Sec. 5. 9 V.S.A. § 2796 is amended to read:

§ 2796. IMPLEMENTATION

\* \* \*

~~(d) One year after the date upon which the sale or offering for sale of certain products becomes subject to the requirements of subsection (a) or (b) of this section, no new products may be installed for compensation in the State unless the efficiency of a new product meets or exceeds the efficiency standards set forth in the rules adopted pursuant to section 2795 of this title.~~

(1) On or after July 1, 2019, no new luminaire that is designed and marketed to operate with T12 fluorescent lamps may be sold or offered for sale in the State. This prohibition shall not apply to a luminaire that the seller purchased on or before June 30, 2019.

(2) On or after July 1, 2020, no new air compressor, commercial dishwasher, commercial fryer, commercial hot-food holding cabinet, commercial steam cooker, computer or computer monitor, high CRI fluorescent lamp, portable electric spa, residential ventilating fan, spray sprinkler body, uninterruptible power supply, or water cooler may be sold or offered for sale, lease, or rent in the State unless the efficiency of the new product meets or exceeds the efficiency standards set forth in the rules adopted pursuant to section 2795 of this title.

(3) On or after July 1, 2021, no new faucet, showerhead, or urinal may be sold or offered for sale, lease, or rent in the State unless the efficiency of the new product meets or exceeds the efficiency standards set forth in the rules adopted pursuant to section 2795 of this title.

(4) This subdivision governs the date after which no new portable air conditioner may be sold or offered for sale, lease, or rent in the State unless the efficiency of the new product meets or exceeds the efficiency standards set



forth in the rules adopted pursuant to section 2795 of this title (the compliance date).

(A) The compliance date shall be on or after February 1, 2022, unless subdivision (B) of this subdivision (3) applies.

(B) If, prior to January 1, 2019, the U.S. Department of Energy (DOE) has published a final rule in the Federal Register establishing efficiency standards for portable air conditioners and the rule has not been repealed, voided, or retracted, the compliance date shall be on or after the date as of which portable air conditioners are required to comply with the DOE rule.

(5) The prohibitions set forth in subdivisions (2) through (4) of this subsection shall not apply to a product that the seller or lessor purchased:

(A) in the case of a product listed in subdivision (2) of this subsection, on or before June 30, 2020;

(B) in the case of a faucet, showerhead, or urinal, on or before June 30, 2021; and

(C) in the case of a portable air conditioner, before the first date on which compliance is required under subdivision (4).

\* \* \*

(f)(1) When federal preemption under 42 U.S.C. § 6297 applies to a standard adopted pursuant to this chapter for a product, the standard shall become enforceable on the occurrence of the earliest of the following:

(A) The federal energy or water conservation standard for the product under 42 U.S.C. chapter 77 is withdrawn, repealed, or otherwise voided. However, this subdivision (A) shall not apply to any federal energy or water conservation standard set aside by a court of competent jurisdiction upon the petition of a person who will be adversely affected, as provided in 42 U.S.C. § 6306(b).

(B) A waiver of federal preemption is issued pursuant to 42 U.S.C. § 6297.

(2) The federal standard for general service lamps shall be considered to be withdrawn, repealed, or otherwise voided within the meaning of this subsection if it does not come into effect on January 20, 2020 pursuant to the actions published at 82 Fed. Reg. 7276 and 7333 (January 19, 2017).

(3) When a standard adopted pursuant to this chapter becomes enforceable under this subsection, a person shall not sell or offer for sale in the State a new product subject to the standard unless the efficiency or water conservation of the new product meets or exceeds the requirements set forth in the standard.

Sec. 6. RULEMAKING

On or before May 1, 2019, the Commissioner of Public Service shall file with the Secretary of State proposed rules to implement Secs. 2 through 4 of this act.

Sec. 7. 26 V.S.A. § 2173 is amended to read:

§ 2173. RULES ADOPTED BY THE BOARD

(a) ~~The plumber's examining board~~ Plumber's Examining Board may, pursuant to the provisions of ~~3 V.S.A. chapter 25 (Administrative Procedure Act)~~ Administrative Procedure Act, make and revise such plumbing rules as necessary for protection of the public health, except that no rule of the ~~board~~ Board may require the installation or maintenance of a water heater at a minimum temperature. To the extent that a rule of the ~~board~~ Board conflicts with this subsection, that rule shall be invalid and unenforceable. The rules shall be in effect in every city, village, and town having a public water system or public sewerage system and apply to all premises connected to the systems and all public buildings containing plumbing or water treatment and heating specialties whether they are connected to a public water or sewerage system. The local board of health and the ~~commissioner of public safety~~ Commissioner of Public Safety shall each have authority to enforce these rules. The rules shall be limited to minimum performance standards reasonably necessary for the protection of the public against accepted health hazards and shall be consistent with any minimum efficiency standards for plumbing fixtures adopted under 9 V.S.A. chapter 74. The ~~board~~ Board may, if it finds it practicable to do so, adopt the provisions of a nationally recognized plumbing code and as needed shall adopt a Vermont-specific amendment to the adopted code to ensure that it is consistent with any minimum efficiency standards for plumbing fixtures adopted under 9 V.S.A. chapter 74.

\* \* \*

\* \* \* Energy Planning \* \* \*

Sec. 8. 30 V.S.A. § 202b is amended to read:

§ 202b. STATE COMPREHENSIVE ENERGY PLAN

(a) The Department of Public Service, in conjunction with other State agencies designated by the Governor, shall prepare a State Comprehensive Energy Plan covering at least a 20-year period. The Plan shall seek to implement the State energy policy set forth in section 202a of this title and shall be consistent with the relevant goals of 24 V.S.A. § 4302. The Plan shall include:

(1) a comprehensive analysis and projections regarding the use, cost, supply, and environmental effects of all forms of energy resources used within Vermont;

(2) recommendations for State implementation actions, regulation, legislation, and other public and private action to carry out the Comprehensive Energy Plan, including recommendations for State agency energy plans under 3 V.S.A. § 2291 and transportation planning under Title 19; and

(3) recommendations for regional and municipal energy planning and standards for issuing a determination of energy compliance pursuant to 24 V.S.A. § 4352.

\* \* \*

(e) The Commissioner of Public Service (Commissioner) shall file an annual report on progress in meeting the goals of the Plan. The report shall address each of the following sectors of energy consumption in the State: electricity, nonelectric fuels for thermal purposes, and transportation. In preparing the report, the Commissioner shall consult with the Secretaries of Administration, of Agriculture, Food and Markets, of Natural Resources, and of Transportation and the Commissioner of Buildings and General Services.

(1) The Commissioner shall file the report on or before January 15 of each year, commencing in 2019. The provisions of 2 V.S.A. § 20(d) shall not apply to this report.

(2) The Commissioner shall file the report with the House Committees on Energy and Technology and on Natural Resources, Fish, and Wildlife and with the Senate Committees on Finance and on Natural Resources and Energy.

(3) For each sector, the report shall provide:

(A) In millions of British thermal units (MMBTUs) for the most recent calendar year for which data are available, the total amount of energy consumed, the amount of renewable energy consumed, and the percentage of renewable energy consumed. For the electricity sector, the report shall also state the amounts in megawatt hours (MWH) and the Vermont and New England summer and winter peak electric demand, including the hour and day of peak demand.

(B) Projections of the energy reductions and shift to renewable energy expected to occur under existing policies, technologies, and markets. The most recent available data shall be used to inform these projections and shall be provided as a supplement to the data described in subdivision (A) of this subdivision (3).

(C) Recommendations of policies to further the renewable energy goals set forth in statute and the Plan, along with an evaluation of the relative cost-effectiveness of different policy approaches.

(4) The report shall include a supplemental analysis setting forth how progress toward the goals of the Plan is supported by complementary work in avoiding or reducing energy consumption through efficiency and demand reduction. In this subdivision (4), “demand reduction” includes dispatchable measures, such as controlling appliances that consume energy, and nondispatchable measures, such as weatherization.

(5) The report shall include recommendations on methods to enhance the process for planning, tracking, and reporting progress toward meeting statutory energy goals and the goals of the Plan. Such recommendations may include the consolidation of one or more periodic reports filed by the Department or other State agencies relating to renewable energy, with proposals for amending the statutes relevant to those reports.

(6) The report shall include a summary of the following information for each sector:

(A) major changes in relevant markets, technologies, and costs;

(B) average Vermont prices compared to the other New England states, based on the most recent available data; and

(C) significant Vermont and federal incentive programs that are relevant to one or more of the sectors.

Sec. 9. 30 V.S.A. § 218c is amended to read:

§ 218c. LEAST-COST INTEGRATED PLANNING

\* \* \*

(b) Each regulated electric or gas company shall prepare and implement a least-cost integrated plan for the provision of energy services to its Vermont customers. At least every third year on a schedule directed by the Public Utility Commission, each such company shall submit a proposed plan to the Department of Public Service and the Public Utility Commission. The Commission, after notice and opportunity for hearing, may approve a company’s least-cost integrated plan if it determines that the company’s plan complies with the requirements of subdivision (a)(1) of this section and of sections 8004 and 8005 of this title and is consistent with the goals of the Comprehensive Energy Plan issued under section 202b of this title.

\* \* \*

Sec. 10. 19 V.S.A. § 10b is amended to read:

§ 10b. STATEMENT OF POLICY; GENERAL

(a) The Agency shall be the responsible agency of the State for the development of transportation policy. It shall develop a mission statement to reflect:

(1) that State transportation policy shall be to encompass, coordinate, and integrate all modes of transportation and to consider “complete streets” principles, which are principles of safety and accommodation of all transportation system users, regardless of age, ability, or modal preference; and

(2) the need for transportation projects that will improve the State’s economic infrastructure, as well as the use of resources in efficient, coordinated, integrated, cost-effective, and environmentally sound ways, and that will be consistent with the recommendations of the Comprehensive Energy Plan (CEP) issued under 30 V.S.A. § 202b.

(b) The Agency shall coordinate planning and education efforts with those of the Vermont Climate Change Oversight Committee and those of local and regional planning entities:

(1) to ~~assure~~ ensure that the transportation system as a whole is integrated, that access to the transportation system as a whole is integrated, and that statewide, local, and regional conservation and efficiency opportunities and practices are integrated; and

(2) to support ~~employer~~ employer-led or local or regional government-led conservation, efficiency, rideshare, and bicycle programs and other innovative transportation advances, especially employer-based incentives.

(c) In developing the State’s annual Transportation Program, the Agency shall, consistent with the planning goals listed in 24 V.S.A. § 4302 as amended by 1988 Acts and Resolves No. 200 and with appropriate consideration to local, regional, and State agency plans:

(1) Develop or incorporate designs that provide integrated, safe, and efficient transportation and that are consistent with the recommendations of the CEP.

\* \* \*

Sec. 11. 19 V.S.A. § 10i is amended to read:

§ 10i. TRANSPORTATION PLANNING PROCESS

(a) Long-range systems plan. The ~~agency~~ Agency shall establish and implement a planning process through the adoption of a long-range multi-modal systems plan integrating all modes of transportation. The long-range multi-modal systems plan shall be based upon ~~agency~~ Agency transportation

policy developed under section 10b of this title, other policies approved by the legislature, ~~agency~~ General Assembly, Agency goals, mission, and objectives, and demographic and travel forecasts, design standards, performance criteria, and funding availability. The long-range systems plan shall be developed with participation of the public, and local, and regional governmental entities, and pursuant to the planning goals and processes set forth in 1988 Acts and Resolves No. 200 of the Acts of the 1987 Adj. Sess. (1988). The plan shall be consistent with the Comprehensive Energy Plan (CEP) issued under 30 V.S.A. § 202b.

\* \* \*

(c) ~~Transportation program~~ Program. The ~~transportation program~~ Transportation Program shall be developed in a fiscally responsible manner to accomplish the following objectives:

(1) ~~Managing~~ managing, maintaining, and improving the state's State's existing transportation infrastructure to provide capacity, safety, and flexibility in the most cost-effective and efficient manner;

(2) ~~Developing~~ developing an integrated transportation system that provides Vermonters with transportation choices;

(3) ~~Strengthening~~ strengthening the economy, protecting the quality of the natural environment, and improving Vermonters' quality of life; and

(4) achieving the recommendations of the CEP.

\* \* \*

Sec. 12. 3 V.S.A. § 2291 is amended to read:

§ 2291. STATE AGENCY ENERGY PLAN

\* \* \*

(c) The Secretary of Administration with the cooperation of the Commissioners of Public Service and of Buildings and General Services shall develop and oversee the implementation of a State Agency Energy Plan for State government. The Plan shall be adopted by June 30, 2005, modified as necessary, and readopted by the Secretary on or before January 15, 2010 and each sixth year subsequent to 2010. The Plan shall be consistent with the Comprehensive Energy Plan (CEP) issued under 30 V.S.A. § 202b. The Plan shall accomplish the following objectives and requirements:

\* \* \*

### Sec. 13. REPORTS; ELECTRIC GENERATION CONSTRAINTS

(a) This section requires two written submissions on matters relating to electric generation, one from the Public Utility Commission (PUC or Commission) and one from the Department of Public Service (DPS or Department). Each submission shall be made on or before January 15, 2019 to the House Committee on Energy and Technology and the Senate Committees on Finance and on Natural Resources and Energy.

(b) The Commission has pending before it several contested cases raising issues pertaining to electric generation and the area of the Sheffield-Highgate Export Interface (SHEI) and a noncontested case proceeding related to the Standard Offer Program under 30 V.S.A. § 8005a in which the Commission may examine issues related to ensuring that standard offer projects are proposed in areas that do not result in additional costs to the electric transmission or distribution system or that provide the greatest benefit to the system. The Commission's written submission under this section shall include all of the following:

(1) For each of those contested cases, a summary of its findings and conclusions on the merits of the issue or issues in the case related to the SHEI area. This subdivision (1) does not require the Commission to provide a summary for a contested case in which it has not issued a final order on the merits.

(2) For the proceeding related to the Standard Offer Program, a summary of its decisions to date of the submission on issues related to siting standard offer projects in areas that do not result in additional costs to the electric transmission or distribution system or that provide the greatest benefit to the system.

(3) As attachments, a copy of each decision summarized.

(c) The Department shall submit a written report to assist the General Assembly, renewable energy developers, and electric utilities to plan for the deployment of renewable electric generation in a manner that is consistent with the goals, requirements, and programs related to renewable energy set forth or established in 30 V.S.A. chapter 89, the statutory goals for greenhouse gas reduction at 10 V.S.A. § 578, and the goals and recommendations of the 2016 Comprehensive Energy Plan.

(1) On each of the following, the report shall include analysis and recommendations that are consistent with those goals, requirements, and programs:

(A) How to manage demands on the State's electric transmission and distribution system that relate to or affect the deployment of renewable electric

generation. The Department shall identify and review areas of the State, such as the SHEI area, in which generation that is interconnected to the electric transmission and distribution system faces constraints due to system capacity and conditions, including the relationship of interconnected generation to existing load;

(B) How to encourage the deployment of all types of renewable electric generation while minimizing curtailment of such generation.

(C) How to facilitate meeting the distributed renewable generation and energy transformation requirements of the Renewable Energy Standard at 30 V.S.A. §§ 8004–8005 in light of constraints identified under subdivision (A) of this subdivision (1).

(D) The role of energy storage in the deployment of renewable electric generation.

(E) Recommended methods to guide where renewable electric generation should be located in the State;

(F) Recommended methods to guide the location in the State of end users that consume significant amounts of electric energy.

(G) Other relevant issues as determined by the Department.

(2) Prior to submitting this report, the Department shall provide an opportunity for written submission of relevant comments and information by the public and shall conduct one or more meetings at which the public may provide comments and information. The Department shall provide prior notice of the opportunity to submit comments and information and of each meeting to each Vermont electric transmission and distribution utility, Renewable Energy Vermont, each holder of a certificate of public good for an electric generation facility within the SHEI area with a capacity greater than 500 kilowatts, each entity appointed to deliver energy efficiency programs and measures under 30 V.S.A. § 209(d), and any other person who requests such notice or whom the Department may determine to notify.

(3) With respect to the recommendations in the report, the Department shall identify those recommendations that require passage of enabling legislation and those recommendations that may be carried out under existing law. The report shall propose a timetable for implementation of the recommendations that may be carried out under existing law.

#### Sec. 14. RENEWABLE ENERGY STANDARD (RES) RULEMAKING

2015 Acts and Resolves No. 56, Sec. 8(d) is amended to read:

(d) On or before July 1, ~~2018~~ 2019, the Board Public Utility Commission shall commence rulemaking to implement Secs. 2, 3, and 7 of this act. The



~~Board~~ Commission shall finally adopt these rules within eight months of commencing rulemaking, unless this period is extended by the Legislative Committee on Administrative Rules under 3 V.S.A. § 843.

\* \* \* Authority to Reserve Parking Spaces for Plug-in  
Electric Vehicles \* \* \*

Sec. 15. 23 V.S.A. § 1104 is amended to read:

§ 1104. STOPPING PROHIBITED

(a) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of an enforcement officer or official traffic-control device, no person may:

\* \* \*

(3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or a passenger:

(A) within 50 feet of the nearest rail of a railroad crossing;

(B) at any place where official signs prohibit parking;

(C) at any place where official signs restrict parking to specific sizes or types of vehicles or impose other restrictions and the vehicle violates the restrictions.

\* \* \*

Sec. 16. 23 V.S.A. § 1106 is amended to read:

§ 1106. LIMITATIONS ON USE OF STATE HIGHWAY FACILITIES

(a) As used in this section, “State highway facility” means a State highway rest area, picnic ground, parking area, or park-and-ride facility.

(b) No person shall enter or remain on any State highway facility for the purpose of overnight camping unless the particular facility has been designated for that purpose by the Traffic Committee.

(c)(1) On the basis of an engineering and traffic investigation or findings as to adverse effects on the quiet enjoyment and property values of people living adjacent to a State highway facility, the Traffic Committee may designate the size and types of vehicles allowed to park in a State highway facility or in particular areas of a State highway facility.

(2) In addition, the Secretary may prescribe special restrictions related to parking of plug-in electric vehicles in designated areas of a State highway facility.

(d) Notice of the prohibitions or restrictions under this section shall be posted at the affected facilities by regulatory signs conforming to the Manual on Uniform Traffic Control Devices.

Sec. 17. 23 V.S.A. § 1008a is amended to read:

§ 1008a. REGULATION OF MOTOR VEHICLES AT STATE AIRPORTS

(a)(1) The Secretary may adopt rules governing the operation, use, and parking of motor vehicles on the grounds of State airports, including the access roads.

(2) In addition, the Secretary may prescribe special restrictions related to parking of plug-in electric vehicles in designated areas on such grounds.

(b) Signs indicating the ~~special regulations~~ rules or restrictions shall be conspicuously posted in and near all areas affected.

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

Sec. 18. EFFECTIVE DATES

(a) This section and Secs. 13 (reports; electric generation constraints) and 14 (RES rulemaking) shall take effect on passage.

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

And that after passage the title of the bill be amended to read:

An act relating to appliance efficiency, energy planning, and electric vehicle parking.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for January 31, 2018, pages 213-224)

**Proposal of amendment to H. 410 to be offered by Senator Rodgers**

Senator Rodgers moves that the report of the Committee on Natural Resources and Energy be amended as follows:

First: After Sec. 13 by inserting a new Sec. 13a to read as follows:

Sec. 13a. SHEFFIELD-HIGHGATE EXPORT INTERFACE

(a) The General Assembly finds that deployment of new electric generation in the area served by the Sheffield-Highgate Export Interface (SHEI) exacerbates utility system constraints that can result in curtailment of existing generation in the area, causing significant costs to Vermont ratepayers or the owners and operators of electric generation in the area, or both.

(b) On and after the effective date of this section through June 30, 2019, the Public Utility Commission shall not accept new applications under 30 V.S.A. § 248 for electric generation facilities that will interconnect with transmission or distribution lines in the area served by the SHEI, except for net metering systems with a capacity less than 15 kilowatts. The Commission shall demarcate the specific geographic scope of this area. The purpose of this subsection is to allow time for the completion of the submissions required by Sec. 13 of this act and the consideration by the General Assembly in the 2019 session of potential solutions to the constraints posed by conditions in the SHEI area.

Second: In Sec. 18 (effective dates), by striking out subsection (a) and inserting in lieu thereof a new subsection (a) to read:

(a) This section and Secs. 13 (reports; electric generation constraints), 13a (Sheffield-Highgate Export Interface), and 14 (RES rulemaking) shall take effect on passage.

### **Joint Resolution for Action**

#### **J.R.S. 59.**

Joint resolution supporting the Gettysburg Battlefield Preservation Association's effort to preserve the Camp Letterman hospital site.

**PENDING QUESTION:** Shall the Resolution be adopted?

(For text of resolution, see Senate Journal of May 4, 2018, page 979)

### **UNFINISHED BUSINESS OF MONDAY, MAY 7, 2018**

#### **Second Reading**

#### **Favorable with Proposal of Amendment**

#### **H. 196.**

An act relating to paid family leave.

**Reported favorably with recommendation of proposal of amendment by Senator Sirotkin for the Committee on Economic Development, Housing and General Affairs.**

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. 21 V.S.A. § 471 is amended to read:

§ 471. DEFINITIONS

As used in this subchapter:

(1) "Employer" means an individual, organization or governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within this State ~~which for the purposes of parental leave~~ that employs 10 or more individuals who are employed for an average of at least 30 hours per week during a year ~~and for the purposes of family leave employs 15 or more individuals for an average of at least 30 hours per week during a year.~~

\* \* \*

(3) "Family leave" means a leave of absence from employment by an employee who works for an employer ~~which~~ that employs ~~15~~ 10 or more individuals who are employed for an average of at least 30 hours per week during the year for one of the following reasons:

(A) the serious illness of the employee; or

(B) the serious illness of the employee's child, stepchild or ward who lives with the employee, foster child, parent, spouse, or parent of the employee's spouse;

~~(4) "Parental leave" means a leave of absence from employment by an employee who works for an employer which employs 10 or more individuals who are employed for an average of at least 30 hours per week during the year for one of the following reasons:~~

(C) the employee's pregnancy;

~~(A)~~(D) the birth of the employee's child; or

~~(B)~~(E) the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption or foster care.

~~(5)~~(4) "Serious illness" means an accident, disease, or physical or mental condition that:

\* \* \*

(5) "Commissioner" means the Commissioner of Labor.

Sec. 2. 21 V.S.A. § 472 is amended to read:

§ 472. FAMILY LEAVE

(a) During any 12-month period, an employee shall be entitled to take unpaid leave for a period not to exceed 12 weeks for the following reasons:

(1) ~~for parental leave,~~ during the employee's pregnancy ~~and;~~

(2) following the birth of an the employee's child ~~or;~~

(3) within a year following the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption or foster care;

~~(2)~~(4) for family leave, for the serious illness of the employee; or

(5) the serious illness of the employee's child, stepchild or ward of the employee who lives with the employee, foster child, parent, spouse, or parent of the employee's spouse.

(b) During the leave, at the employee's option, the employee may use accrued sick leave ~~or~~, vacation leave ~~or~~, any other accrued paid leave, ~~not to exceed six weeks~~ Parental and Family Leave Insurance benefits pursuant to subchapter 13 of this chapter, or short-term disability insurance or other insurance benefits. ~~Utilization~~ Use of accrued paid leave, Parental and Family Leave Insurance benefits, or insurance benefits shall not extend the leave provided ~~herein~~ by this section.

\* \* \*

(d) The employer shall post and maintain in a conspicuous place in and about each of ~~his or her~~ its places of business printed notices of the provisions of this subchapter on forms provided by the Commissioner of Labor.

(e)(1) An employee shall give his or her employer reasonable written notice of intent to take family leave under this subchapter. Notice shall include the date the leave is expected to commence and the estimated duration of the leave.

(2) In the case of the adoption or birth of a child, an employer shall not require that notice be given more than six weeks prior to the anticipated commencement of the leave.

(3) In the case of an unanticipated serious illness or premature birth, the employee shall give the employer notice of the commencement of the leave as soon as practicable.

(4) In the case of serious illness of the employee or a member of the employee's family, an employer may require certification from a physician to verify the condition and the amount and necessity for the leave requested.

(5) An employee may return from leave earlier than estimated upon approval of the employer.

(6) An employee shall provide reasonable notice to the employer of his or her need to extend the leave to the extent provided by this chapter.

\* \* \*

(h) Except for serious illness of the employee, an employee who does not return to employment with the employer who provided the family leave shall

return to the employer the value of any compensation paid to or on behalf of the employee during the leave, except payments of Parental and Family Leave Insurance benefits and payments for accrued sick leave or vacation leave. An employer may elect to waive the rights provided pursuant to this subsection.

Sec. 3. 21 V.S.A. chapter 5, subchapter 13 is added to read:

Subchapter 13. Parental and Family Leave Insurance

§ 571. DEFINITIONS

As used in this subchapter:

(1) “Employee” means an individual who performs services in employment for an employer.

(2) “Employer” means an individual, organization, governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within this State.

(3) “Employment” has the same meaning as in subdivision 1301(6) of this title.

(4) “Family leave” means a leave of absence from employment by an employee for the serious illness of the employee’s child, stepchild or ward who lives with the employee, foster child, parent, spouse, or parent of the employee’s spouse.

(5) “Parental and bonding leave” means a leave of absence from employment by an employee for:

(A) the birth of the employee’s child; or

(B) the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption or foster care.

(6) “Qualified employee” means an individual who has earned at least \$10,710.00 in employment in Vermont during the last 12 months.

(7) “Serious illness” means an accident, disease, or physical or mental condition that:

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

(C) requires continuing in-home care under the direction of a physician.

(8) “Wages” has the same meaning as in subdivision 1301(12) of this title.

§ 572. PARENTAL AND FAMILY LEAVE INSURANCE; SPECIAL  
FUND; ADMINISTRATION

(a)(1) The Parental and Family Leave Insurance Program is established for the provision of Parental and Family Leave Insurance benefits to eligible employees pursuant to this section.

(2) The collection of contributions pursuant to this section and the determination of monetary eligibility for benefits shall be administered by the Commissioner of Taxes. All other aspects of the Program shall be administered by the Commissioner of Labor.

(b) The Parental and Family Leave Insurance Special Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by the Commissioners of Labor and of Taxes for the administration of the Parental and Family Leave Insurance Program and payment of Parental and Family Leave Insurance benefits provided pursuant to this section. All interest earned on Fund balances shall be credited to the Fund.

(c)(1)(A) The Fund shall consist of contributions equal to 0.141 percent of each employee's covered wages, which an employer shall deduct and withhold from each of its employee's wages.

(B) In lieu of deducting and withholding the full amount of the contribution pursuant to subdivision (A) of this subdivision (1), an employer may elect to pay all or a portion of the contributions due from the employee's covered wages.

(C) As used in this subsection, the term "covered wages" does not include the amount of wages paid to an employee after he or she has received wages equal to \$150,000.00. Annually on January 1, the amount of wages included in the term "covered wages" shall be increased by the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1. The amount of wages included in the term "covered wages" shall not be decreased.

(2)(A) Notwithstanding subdivision (1)(A) of this subsection (c), the General Assembly shall annually establish the rate of contribution for the next fiscal year. The rate shall equal the amount necessary to provide Parental and Family Leave Insurance benefits pursuant to this subchapter, to maintain a reserve equal to at least nine months of the projected benefit payments for the next fiscal year, and to administer the Parental and Family Leave Insurance Program during the next fiscal year, adjusted by any balance in the Fund from the prior fiscal year.

(B) On or before February 1 of each year, the Commissioner of Labor, in consultation with the Commissioner of Taxes, shall report to the General Assembly the rate of contribution necessary to provide Parental and Family Leave Insurance benefits pursuant to this subchapter, to maintain a reserve equal to at least nine months of the projected benefit payments for the next fiscal year, and to administer the Program during the next fiscal year, adjusted by any balance in the Fund from the prior fiscal year.

(d) The Commissioner of Taxes shall require the withholding of the contributions required pursuant to subsection (c) of this section from wages paid by any employer, as if the contributions were an additional Vermont income tax subject to the withholding requirements of 32 V.S.A. § 5841(a). The administrative and enforcement provisions of 32 V.S.A. chapter 151, subchapter 4 shall apply to the withholding requirement under this section as if the contributions withheld were a Vermont income tax.

#### § 573. BENEFITS

(a) Except as otherwise provided pursuant to section 572 of this subchapter, a qualified employee awarded Parental and Family Leave Insurance benefits under this section shall receive 70 percent of his or her average weekly wage or an amount equal to a 40-hour workweek paid at a rate double that of the livable wage, as determined by the Joint Fiscal Office pursuant to 2 V.S.A. § 505, whichever is less.

(b) A qualified employee shall be permitted to receive a total of not more than 12 weeks of Parental and Family Leave Insurance benefits in a 12-month period for family leave or parental and bonding leave, or both, which shall include:

(1) not more than 12 weeks of parental and bonding leave, provided that if both parents are qualified employees they shall be permitted to receive a combined total of not more than 12 weeks of Parental and Family Leave Insurance benefits in a 12-month period for parental and bonding leave; and

(2) not more than six weeks of Parental and Family Leave Insurance benefits in a 12-month period for family leave.

#### § 574. APPLICATION FOR BENEFITS; PAYMENT; TAX WITHHOLDING

(a) A qualified employee shall file an application for Parental and Family Leave Insurance benefits with the Commissioner of Labor under this section on a form provided by the Commissioner. The Commissioner shall determine whether the qualified employee is eligible to receive Parental and Family Leave Insurance benefits based on the following criteria:



(1) The purposes for which the claim is made are adequately documented pursuant to rules adopted by the Commissioner.

(2) The Commissioner of Taxes certifies that the individual is a qualified employee.

(3) The qualified employee satisfies the eligibility requirements for the requested leave and has specified the duration of the leave.

(4) The benefits are being requested in relation to a family leave or a parental and bonding leave.

(b)(1) The Commissioner of Labor shall make a determination of each claim not later than five business days after the date the claim is filed, and Parental and Family Leave Insurance benefits shall be paid from the Fund created pursuant to this section. The Commissioner may extend the time in which to make a determination of a claim by not more than five business days if necessary to obtain documents or information that are needed to make the determination.

(2) The first benefit payment shall be sent to a qualified employee within 14 days after his or her claim is approved, and subsequent payments shall be sent biweekly.

(3) The provisions of section 1367 of this title shall apply to Parental and Family Leave Insurance benefits.

(c)(1) An individual filing a claim for benefits pursuant to this section shall, at the time of filing, be advised that Parental and Family Leave Insurance benefits may be subject to income tax and that the individual's benefits may be subject to withholding.

(2) The Commissioner of Labor shall follow all procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the withholding of income tax.

#### § 575. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

(a) The employer of an employee who receives Parental and Family Leave Insurance benefits under this subchapter shall reinstate the employee at the conclusion of his or her family leave or parental and bonding leave, provided the employee is not out of work for a continuous period in excess of 12 weeks. The employee shall be reinstated in the first available suitable position given the position he or she held at the time his or her leave began.

(b) Upon reinstatement, the employee shall regain seniority and any unused accrued paid leave he or she was entitled to prior to the family leave or parental and bonding leave, less any accrued paid leave used during the family leave or parental and bonding leave.

(c)(1) Nothing in this section shall be construed to diminish an employee's rights pursuant to subsection 472(f) of this chapter.

(2) The provisions of this section shall not apply if:

(A) the employee had been given notice, or had given notice, prior to the beginning of his or her leave;

(B) the employee's position would have terminated of its own terms prior to any reinstatement he or she would otherwise be entitled to under this section; or

(C) the employee fails to inform the employer of:

(i) his or her interest in being reinstated at the conclusion of the leave; and

(ii) the date on which his or her leave is anticipated to conclude.

(d)(1) An employee aggrieved by an employer's failure to comply with the provisions of this section may bring an action in the Civil Division of the Superior Court in the county where the employment is located for compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, and other appropriate relief.

(2) A copy of the complaint shall be filed with the Commissioner of Labor.

(3) The court shall award reasonable attorney's fees to the employee if he or she prevails.

#### § 576. APPEALS

(a)(1) An employer or individual aggrieved by a decision of the Commissioner of Labor under section 574 of this subchapter may file with the Commissioner a petition for reconsideration within 30 days after receipt of the decision. The petition shall set forth in detail the grounds upon which it is claimed that the decision is erroneous and may include materials supporting that claim.

(2) If an employer petitions the Commissioner to reconsider a decision pursuant to section 574 of this subchapter, the Commissioner shall promptly notify the individual of the petition by ordinary, certified, or electronic mail and provide him or her with an opportunity to file an answer to the employer's petition.

(3) The Commissioner shall promptly notify the employer or individual, or both, of his or her decision by ordinary, certified, or electronic mail.

(b)(1) An employer or individual aggrieved by the Commissioner's decision on reconsideration may file an appeal with a departmental administrative law judge within 30 days after receiving the Commissioner's decision. The appeal shall set forth in detail the grounds upon which it is claimed that the decision is erroneous.

(2) The administrative law judge shall, upon not less than five business days' notice, hold a hearing on the appeal as provided pursuant to rules adopted by the Commissioner. After the hearing, all parties to the appeal shall be promptly notified by ordinary, certified, or electronic mail of the findings of fact, conclusions, and decision of the administrative law judge.

(c) Any party may appeal the administrative law judge's decision to the Supreme Court within 30 days after receiving the decision.

(d) The provisions of section 1353 of this title shall apply to all determinations, redeterminations, findings of fact, conclusions of law, decisions, orders, or judgments entered or made pursuant to this section.

#### § 577. FALSE STATEMENT OR REPRESENTATION; PENALTY

A person who willfully makes a false statement or representation for the purpose of obtaining any benefit or payment or to avoid payment of any required contributions under the provisions of this subchapter, either for himself or herself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00 and shall forfeit all or a portion of any right to benefits under the provisions of this subchapter, as determined to be appropriate by the Commissioner of Labor or of Taxes, as appropriate, after a determination by the Commissioner that the person has willfully made a false statement or representation of a material fact.

#### § 578. RULEMAKING

(a) The Commissioner of Taxes shall adopt rules as necessary to implement the provisions of this subchapter related to the collection of contributions pursuant to section 572 of this subchapter and the determination of monetary eligibility for benefits.

(b) The Commissioner of Labor shall adopt rules as necessary to implement all other provisions of this subchapter.

#### § 579. CONFIDENTIALITY OF INFORMATION

(a) Information obtained from an employer or individual in the administration of this subchapter and determinations of an individual's right to receive benefits that reveal an employer's or individual's identity in any manner shall be kept confidential and shall be exempt from public inspection

and copying under the Public Records Act. Such information shall not be admissible as evidence in any action or proceeding other than one brought pursuant to the provisions of this subchapter.

(b) Notwithstanding subsection (a) of this section:

(1) an individual or his or her duly authorized agent may be provided with information to the extent necessary for the proper presentation of his or her claim for benefits or to inform him or her of his or her existing or prospective rights to benefits; and

(2) an employer may be provided with information that the Commissioner of Labor or of Taxes determines is necessary to enable the employer to discharge fully its obligations and protect its rights under this subchapter.

#### Sec. 4. ADOPTION OF RULES

(a) On or before January 1, 2019, the Commissioner of Taxes shall adopt rules necessary to implement the provisions of 21 V.S.A. chapter 5, subchapter 13 related to the collection of contributions and the determination of monetary eligibility, which shall include:

(1) procedures for the collection of contributions; and

(2) reporting and record-keeping requirements for employers.

(b) On or before January 1, 2019, the Commissioner of Labor shall adopt rules necessary to implement all other provisions of 21 V.S.A. chapter 5, subchapter 13, which shall include:

(1) procedures for receiving and processing applications for benefits;

(2) acceptable documentation for demonstrating eligibility for benefits;

(3) forms and requirements for providing certification from a health care provider of the need for family leave that are modeled on the federal rules governing certification of a serious health condition under the Family and Medical Leave Act;

(4) forms and procedures for obtaining authorization for an individual's health care provider to disclose to the Commissioner information necessary to make a determination of the individual's eligibility for benefits; and

(5) procedures for appealing a decision pursuant to 21 V.S.A. § 574 that are modeled, to the extent possible, on the appeals process provided for determinations of benefits in relation to unemployment insurance.

Sec. 5. EDUCATION AND OUTREACH

On or before January 1, 2019, the Commissioner of Labor shall develop and make available on the Department of Labor's website information and materials to educate and inform employers and employees about the Parental and Family Leave Insurance Program established pursuant to 21 V.S.A. chapter 5, subchapter 13.

Sec. 6. ESTABLISHMENT OF PARENTAL AND FAMILY LEAVE INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL FUND

Beginning on July 1, 2018, the Commissioner of Finance and Management may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from the Parental and Family Leave Insurance Special Fund necessary to establish the Parental and Family Leave Insurance Program in anticipation of the receipt on or after July 1, 2019 of contributions submitted pursuant to 21 V.S.A. § 572.

Sec. 7. ADEQUACY OF RESERVES; REPORT

Annually, on or before January 15, 2021, 2022, and 2023, the Commissioners of Labor and of Taxes, in consultation with the Commissioners of Finance and Management and of Financial Regulation, shall submit a written report to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance regarding the amount and adequacy of the reserves in the Parental and Family Leave Insurance Special Fund and any recommendations for legislative action necessary to ensure that an adequate reserve is maintained in the Fund.

Sec. 8. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

\* \* \*

(5) For any week with respect to which the individual is receiving or has received remuneration in the form of:

\* \* \*

(F) Parental and Family Leave Insurance benefits pursuant to chapter 5, subchapter 13 of this title.

\* \* \*

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 3, 4, 5, 6, and 7 shall take effect on July 1, 2018.

(b) Secs. 1, 2, and 8 shall take effect on October 1, 2020.

(c) Contributions shall begin being paid pursuant to 21 V.S.A. § 572 on July 1, 2019, and, beginning on October 1, 2020, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(Committee vote: 4-1-0)

(For House amendments, see House Journal for May 2, 2017, pages 1771-1791 and May 3, 2017, page 1868)

**Reported favorably with recommendation of proposal of amendment by Senator Sirotkin for the Committee on Finance.**

The Committee recommends that the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs with the following amendments thereto:

First: In Sec. 3, 21 V.S.A. chapter 5, subchapter 13, by striking out § 571 in its entirety and inserting in lieu thereof the following:

§ 571. DEFINITIONS

As used in this subchapter:

(1) “Employee” means an individual who receives payments with respect to services performed for an employer from which the employer is required to withhold Vermont income tax pursuant to 32 V.S.A. chapter 151, subchapter 4.

(2) “Employer” means an individual, organization, governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within this State.

(3) “Family leave” means a leave of absence from employment by an employee for the serious illness of the employee’s child, stepchild or ward who lives with the employee, foster child, parent, spouse, or parent of the employee’s spouse.

(4) “Parental and bonding leave” means a leave of absence from employment by an employee for:

(A) the birth of the employee’s child; or

(B) the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption or foster care.

(5) “Qualified employee” means an individual who has earned at least \$10,710.00 in wages in Vermont during the last 12 months.

(6) “Serious illness” means an accident, disease, or physical or mental condition that:

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

(C) requires continuing in-home care under the direction of a physician.

(7) “Wages” means payments from an employer to an employee that are subject to income tax withholding pursuant to 32 V.S.A. chapter 151, subchapter 4.

Second: In Sec. 3, 21 V.S.A. chapter 5, subchapter 13, in § 572, by striking out subdivision (a)(2) in its entirety and inserting in lieu thereof the following:

(2)(A) The Commissioner of Taxes shall administer the collection of contributions, the determination of monetary eligibility for benefits, and the issuance of benefits checks for the program.

(B) The Commissioner of Labor shall administer the receipt and processing of benefits applications, the determination of eligibility for benefits, the collection of overpaid benefits, and all other aspects of the program that are not administered by the Commissioner of Taxes.

Third: In Sec. 3, 21 V.S.A. chapter 5, subchapter 13, in § 572, in subdivision (c)(1)(A) by striking out “0.141” and inserting in lieu thereof 0.136

Fourth: In Sec. 3, 21 V.S.A. chapter 5, subchapter 13, in § 575, after subdivision (c)(2)(C)(ii), by adding a subdivision (D) to read:

(D) More than two years have elapsed since the conclusion of the employee’s leave.

Fifth: In Sec. 3, 21 V.S.A. chapter 5, subchapter 13, in § 576, in subsection (a), after both instances of the number “574” by inserting or 581

Sixth: In Sec. 3, 21 V.S.A. chapter 5, subchapter 13, after § 579, by adding §§ 580 and 581 to read:

#### § 580. DISQUALIFICATIONS

A qualified employee shall be disqualified for benefits for any week in which he or she has received:

(1) compensation for temporary partial disability or temporary total disability under the workers’ compensation law of any state or under a similar law of the United States; or

(2) unemployment compensation benefits under the law of any state.

§ 581. OVERPAYMENT OF BENEFITS; COLLECTION

(a)(1) Any individual who by nondisclosure or misrepresentation of a material fact, by him or her, or by another person, has received Parental and Family Leave Insurance benefits when he or she failed to fulfill a requirement for the receipt of benefits pursuant to this chapter or while he or she was disqualified from receiving benefits pursuant to section 580 of this chapter shall be liable to repay to the Commissioner of Labor the amount received.

(2) Upon determining that an individual has received benefits under this chapter that he or she was not entitled to, the Commissioner of Labor shall provide the individual with notice of the determination. The notice shall include a statement that the individual is liable to repay to the Commissioner the amount of overpaid benefits and shall identify the basis of the overpayment and the time period in which the benefits were paid.

(3) The determination shall be made within not more than three years after the date of the overpayment.

(b)(1) An individual liable under this section shall repay the overpaid amount to the Commissioner for deposit in the Fund.

(2) If the Commissioner finds that the individual intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits, in addition to the repayment under subdivision (1) of this subsection, the person shall pay an additional penalty of 15 percent of the amount of the overpaid benefits, which shall also be deposited in the Fund.

(3) The Commissioner may collect the amounts due under this section in civil action in the Superior Court.

(c) If an individual is liable to repay any amount pursuant to this section, the Commissioner may withhold, in whole or in part, any future benefits payable to the individual pursuant to this chapter and credit the withheld benefits against the amount due from the individual until it is repaid in full, less any penalties assessed under subdivision (b)(2) of this section.

(d) In addition to the remedy provided pursuant to this section, an individual who intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits may be subject to the penalties provided pursuant to section 577 of this title.

Seventh: In Sec. 4, adoption of rules, by striking out each instance of “January 1, 2019” and inserting in lieu thereof April 1, 2019

Eighth: In Sec. 4, adoption of rules, in subsection (a), by striking out subdivisions (1) and (2) in their entirety and inserting in lieu thereof the following:



- (1) procedures for the collection of contributions;
- (2) procedures for the issuance of benefits payments; and
- (3) reporting and record-keeping requirements for employers.

Ninth: In Sec. 5, education and outreach, by striking out “January 1, 2019” and inserting in lieu thereof June 1, 2019

(Committee vote: 6-1-0)

**Reported without recommendation by Senator Starr for the Committee on Appropriations.**

(Committee voted: 6-0-1)

#### **H. 554.**

An act relating to the regulation of dams.

**Reported favorably with recommendation of proposal of amendment by Senator Bray for the Committee on Natural Resources and Energy.**

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:

\* \* \* Regulation of Dams \* \* \*

Sec. 1. 10 V.S.A. chapter 43 is amended to read:

#### CHAPTER 43. DAMS

##### § 1079. PURPOSE

It is the purpose of this chapter to protect public safety and provide for the public good through the inventory, inspection, and evaluation of dams in the State.

##### § 1080. DEFINITIONS

As used in this chapter:

(1) “Department” means the ~~department of environmental conservation~~ Department of Environmental Conservation.

(2) “Person” means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the ~~state~~ State of Vermont or any agency, department, or subdivision of the ~~state~~, State; any federal agency<sub>;</sub> or any other legal or commercial entity.

(3) ~~“Person in interest”~~ “Interested person” means, in relation to any dam, a person<sub>;</sub> who has riparian rights affected by that dam<sub>;</sub> who has a substantial interest in economic or recreational activity affected by the dam<sub>;</sub> or whose safety would be endangered by a failure of the dam.

(4) “Engineer” means a professional engineer ~~registered~~ licensed under Title 26 who has experience in the design and investigation of dams.

(5) “Time” shall be reckoned in the manner prescribed by 1 V.S.A. § 138.

(6)(A) “Dam” means any artificial barrier, including its appurtenant works, that is capable of impounding water, other liquids, or accumulated sediments.

(B) “Dam” includes an artificial barrier that meets all of the following:

(i) previously was capable of impounding water, other liquids, or accumulated sediments;

(ii) was partially breached; and

(iii) has not been properly removed or mitigated.

(C) “Dam” shall not mean:

(i) barriers or structures created by beaver or any other wild animal as that term is defined in section 4001 of this title;

(ii) transportation infrastructure that has no normal water storage capacity and that impounds water only during storm events;

(iii) an artificial barrier at a stormwater management structure that is regulated by the Agency of Natural Resources under chapter 47 of this title;

(iv) an underground or elevated tank to store water otherwise regulated by the Agency of Natural Resources;

(v) an agricultural waste storage facility regulated by the Agency of Agriculture, Food and Markets under 6 V.S.A. chapter 215; or

(vi) any other structure identified by the Department by rule.

(7) “Federal dam” means:

(A) a dam owned by the United States; or

(B) a dam subject to a Federal Energy Regulatory Commission license or exemption.

(8) “Intake structure” means a dam that is constructed and operated for the primary purposes of minimally impounding water for the measurement and withdrawal of streamflow to ensure use of the withdrawn water for snowmaking, potable water, irrigation, or other purposes approved by the Department.

(9) “Nonfederal dam” means a dam that is not a federal dam.

§ 1081. JURISDICTION OF DEPARTMENT AND PUBLIC UTILITY COMMISSION

(a) Powers and duties. Unless otherwise provided, the powers and duties authorized by this chapter shall be exercised by the Department, except that the Public Utility Commission shall exercise those powers and duties over nonfederal dams and projects that relate to or are incident to the generation of electric energy for public use or as a part of a public utility system.

(b) Transfer of jurisdiction. Jurisdiction over a nonfederal dam is transferred from the Department to the Public Utility Commission ~~whenever the Federal Energy Regulatory Commission grants a license to generate electricity at the dam or whenever~~ when the Public Utility Commission receives an application for a certificate of public good for electricity generation at that dam. Jurisdiction is transferred ~~from the Public Utility Commission to the Department whenever such a federal license~~ when the license or exemption for a federal dam expires or is otherwise lost, ~~whenever such;~~ when a certificate of public good is revoked or otherwise lost; ~~or whenever~~ when the Public Utility Commission denies an application for a certificate of public good.

(c) Transfer of records. Upon transfer of jurisdiction as set forth in subsection (b) of this section and upon written request, the State agency having former jurisdiction over a dam shall transfer copies of all records pertaining to the dam to the agency acquiring jurisdiction.

§ 1082. AUTHORIZATION

(a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or otherwise alter any nonfederal dam, pond, or impoundment or other structure ~~which~~ that is or will be capable of impounding more than 500,000 cubic feet of water or other liquid after construction or alteration, or remove, breach, or otherwise lessen the capacity of an existing nonfederal dam that is or was capable of impounding more than 500,000 cubic feet within or along the borders of this ~~state~~ State where land in this ~~state~~ State is proposed to be overflowed, or at the outlet of any body of water within this ~~state~~ State, unless authorized by the ~~state~~ State agency having jurisdiction so to do. However, in the matter of flood control projects where cooperation with the federal government is provided for by the provisions of section 1100 of this title, that section shall control.

(b) For the purposes of this chapter, the volume a dam or other structure is capable of impounding is the volume of water or other liquid, including any accumulated sediments, controlled by the structure with the water or liquid level at the top of the lowest nonoverflow part of the structure.

(c) An intake structure in existence on July 1, 2018 that continues to operate in accordance with a valid Department permit or approval that contains requirements for inspection and maintenance subject to section 1105 of this title shall have a rebuttable presumption of compliance with the requirements of this chapter and rules adopted under this chapter, provided that no presumption of compliance shall apply if one or both of the following occur on or after July 1, 2018:

(1) the owner or operator of the intake takes an action that requires authorization under this section; or

(2) the Department issues an order under section 1095 of this title directing reconstruction, repair, removal, breaching, draining, or other action it considers necessary to improve the safety of the dam.

### § 1083. APPLICATION

(a) Any person who proposes to undertake an action subject to regulation pursuant to section 1082 of this title shall apply in writing to the State agency having jurisdiction. The application shall set forth:

(1) the location,<sub>;</sub> the height, length, and other dimensions,<sub>;</sub> and any proposed changes to any existing dam;

(2) the approximate area to be overflowed and the approximate number of,<sub>;</sub> or any change in the number of cubic feet of water to be impounded;

(3) the plans and specifications to be followed in the construction, remodeling, reconstruction, altering, lowering, raising, removal, breaching, or adding to;

(4) any change in operation and maintenance procedures; and

(5) other information that the state State agency having jurisdiction considers necessary to ~~properly~~ review the application.

(b) The plans and specifications shall be prepared under the supervision of an engineer.

### § 1083a. AGRICULTURAL DAMS

~~(a) Notwithstanding the provisions of sections 1082, 1083, 1084, and 1086 of this title, the owners of an agricultural enterprise who propose, as an integral and exclusive part of the enterprise, to construct or alter any dam, pond or impoundment or other structure requiring a permit under section 1083 shall apply to the natural resources conservation district in which his land is located. The natural resources conservation districts created under the provisions of chapter 31 of this title shall be the state agency having jurisdiction and shall review and approve the applications in the same manner~~

~~as would the department. The districts may request the assistance of the department for any investigatory work necessary for a determination of public good and for any review of plans and specifications as provided in section 1086.~~

~~(b) As used in this section, “agricultural enterprise” means any farm, including stock, dairy, poultry, forage crop and truck farms, plantations, ranches and orchards, which does not fall within the definition of “activities not engaged in for a profit” as defined in Section 183 of the Internal Revenue Code and regulations relating thereto. The growing of timber does not in itself constitute farming.~~

~~(c) Notwithstanding the provisions of this section, jurisdiction shall revert to the department when there is a change in use or when there is a change in ownership which affects use. In those cases the department may, on its own motion, hold meetings in order to determine the effect on the public good and public safety. The department may issue an order modifying the terms and conditions of approval.~~

~~(d) The natural resources conservation districts may adopt any rules necessary to administer this chapter. The districts shall adhere to the requirements of chapter 25 of Title 3 in the adoption of those rules.~~

~~(e) Notwithstanding the provisions of chapter 7 of Title 3, the attorney general shall counsel the districts in any case where a suit has been instituted against the districts for any decision made under the provisions of this chapter. [Repealed.]~~

#### § 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

~~The commissioner of fish and wildlife~~ Commissioner of Fish and Wildlife shall investigate the potential effects on fish and wildlife habitats of any proposal subject to section 1082 of this title and shall certify the results to the state ~~state~~ agency having jurisdiction prior to any hearing or meeting relating to the determination of public good and public safety.

#### § 1085. NOTICE OF APPLICATION

Upon receipt of the application required by section 1082 of this title, the State agency having jurisdiction shall give notice to the legislative body of each municipality in which the dam is ~~allocated~~ located and to all ~~persons~~ interested persons.

(1) The Department shall proceed in accordance with chapter 170 of this title.

(2) For any project subject to its jurisdiction under this chapter, the Public Utilities ~~Utility~~ Commission shall hold a hearing on the application.

The purpose of the hearing shall be to determine whether the project serves the public good as defined in section 1086 of this title and provides adequately for the public safety. The hearing shall be held in a municipality in the vicinity of the proposed project and may be consolidated with other hearings, including hearings under 30 V.S.A. § 248 concerning the same project. Notice shall be given at least 10 days before the hearing to interested persons by posting in the municipal offices of the towns in which the project will be completed and by publishing in a local newspaper.

§ 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

(a) “Public good” means the greatest benefit of the people of the State. In determining whether the public good is served, the State agency having jurisdiction shall give due consideration to, among other things, ~~to~~ the effect the proposed project will have on:

(1) the quantity, kind, and extent of cultivated agricultural land that may be rendered unfit for use by or enhanced by the project, including both the immediate and long-range agricultural land use impacts;

(2) scenic and recreational values;

(3) fish and wildlife;

(4) forests and forest programs;

~~(5) the need for a minimum water discharge flow rate schedule to protect the natural rate of flow and the water quality of the affected waters; [Repealed.]~~

(6) the existing uses of the waters by the public for boating, fishing, swimming, and other recreational uses;

(7) the creation of any hazard to navigation, fishing, swimming, or other public uses;

(8) the need for cutting clean and removal of all timber or tree growth from all or part of the flowage area;

(9) the creation of any public benefits;

~~(10) the classification, if any, of the affected waters under chapter 47 of this title attainment of the Vermont water quality standards;~~

(11) any applicable State, regional, or municipal plans;

(12) municipal grand lists and revenues;

(13) public safety; and

(14) in the case of the proposed removal of a dam that formerly related to or was incident to the generation of electric energy, but ~~which~~ that was not

subject to a memorandum of understanding dated prior to January 1, 2006 relating to its removal, the potential for and value of future power production.

(b) If the State agency having jurisdiction finds that the ~~proposed~~ project ~~proposed under section 1082 of this title~~ will serve the public good, and, in case of any waters designated by the Secretary as outstanding resource waters, will preserve or enhance the values and activities sought to be protected by designation, the agency shall issue its order approving the application. The order shall include conditions for ~~minimum stream flow to protect fish and instream aquatic life~~ attainment of water quality standards, as determined by the Agency of Natural Resources, and such other conditions as the agency having jurisdiction considers necessary to protect any element of the public good listed in subsection (a) of this section. Otherwise it shall issue its order disapproving the application.

(c) The ~~Agency~~ State agency having jurisdiction shall provide the applicant and interested ~~parties~~ persons with copies of its order.

(d) In the case of a proposed removal of a dam that is under the jurisdiction of the Department and that formerly related to or was incident to the generation of electric energy but that was not subject to a memorandum of understanding dated before January 1, 2006 relating to its removal, the Department shall consult with the Department of Public Service regarding the potential for and value of future power production at the site.

#### § 1087. REVIEW OF PLANS AND SPECIFICATIONS

~~Upon receipt of an application, the state~~ For any proposal subject to authorization under section 1082, the State agency having jurisdiction shall employ a ~~registered~~ an engineer ~~experienced in the design and investigation of dams~~ to investigate the property, review the plans and specifications, and make additional investigations as ~~it~~ the State agency having jurisdiction considers necessary to ensure that the project adequately provides for the public safety. The engineer shall report his or her findings to the ~~agency~~ State agency having jurisdiction.

#### § 1089. EMPLOYMENT OF HYDRAULIC ENGINEER

With the approval of the ~~governor~~ Governor, the ~~state~~ State agency having jurisdiction may employ a ~~competent hydraulic~~ an engineer to investigate the property, review the plans and specifications, and make such additional investigation as ~~such~~ the State agency shall deem necessary, and such engineer shall report to the State agency his or her findings in respect thereto.

#### § 1090. CONSTRUCTION SUPERVISION

The construction, alteration, or other action authorized in section 1086 of this title shall be supervised by a ~~registered~~ an engineer employed by the

applicant. Upon completion of the authorized project, the engineer shall certify to the agency having jurisdiction that the project has been completed in conformance with the approved plans and specifications.

§ 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

(a) On receipt of a petition signed by ~~not less~~ no fewer than ten persons in ~~interest~~ interested persons or the legislative body of a municipality, the ~~State~~ State agency having jurisdiction shall, or upon its own motion it may, institute investigations by an engineer as described in section 1087 of this title regarding the safety of any existing nonfederal dam or portion of a the dam, of any size. The agency may fix a time and place for hearing and shall give notice in the manner it directs to all ~~parties~~ interested persons. The engineer shall present his or her findings and recommendations at the hearing. After the hearing, if the agency finds that the nonfederal dam or portion of the dam as maintained or operated is unsafe or is a menace to people or property above or below the dam, it shall issue an order directing reconstruction, repair, removal, breaching, draining, or other action it considers necessary to ~~make the dam safe~~ improve the safety of the dam sufficiently to protect life and property as required by the State agency having jurisdiction.

(b) If, upon the expiration of such date as may be ordered, the ~~owner of~~ person owning legal title to such dam or the owner of the land on which the dam is located has not complied with the order directing the reconstruction, repair, breaching, removal, draining, or other action of such unsafe dam, the ~~state~~ State agency having jurisdiction may petition the ~~superior court~~ Superior Court in the county in which the dam is located to enforce its order or exercise the right of eminent domain to acquire ~~such~~ the rights as that may be necessary to effectuate a remedy as the public safety or public good may require. If the order has been appealed, the court may prohibit the exercise of of eminent domain by the State agency having jurisdiction pending disposition of the appeal.

(c) If, upon completion of the investigation described in subsection (a) of this section, the ~~state~~ State agency having jurisdiction considers the dam to present an imminent threat to human life or property, it shall take whatever action it considers necessary to protect life and property and subsequently shall conduct the hearing described in subsection (a) of this section.

§ 1097. ~~SURVEY OF EXISTING DAMS; ORDERS FOR PROTECTION OF SALMON~~

~~The Fish and Wildlife Board shall forthwith make a survey of all dams within the state which impound more than three hundred thousand cubic feet of water and determine if the operation of such dams adversely affects the propagation and preservation of salmon, or materially diminishes the amount~~



~~of flow in portions of a stream likely to be used for such preservation and propagation of salmon. If the Board determines that the operation of an existing dam does adversely affect the propagation and preservation of salmon or materially diminishes the flow of water over portions of stream likely to be used therefor, it shall order such changes in operation for such length of time or times as are reasonably necessary in its judgment to fully protect such preservation and propagation of salmon. Any order of the board made under this section shall be based upon facts found and stated. Appeal from an order of the board may be taken in the manner prescribed for appeals from the Public Utility Commission as provided in 30 V.S.A. chapter 1. [Repealed.]~~

§ 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION

~~The department may contract for the removal of sandbars, debris, or other obstructions from streams which the department finds that while so obstructed may be a menace in time of flood, or endanger property or life below, or the property of riparian owners. The expense of investigation and removal of the obstruction shall be paid by the state from funds provided for that purpose. [Repealed.]~~

\* \* \*

§ 1105. INSPECTION OF DAMS

(a) Inspection; schedule. All nonfederal dams in the State shall be inspected according to a schedule adopted by rule by the State agency having jurisdiction over the dam.

(b) Dam inspection. A nonfederal dam in the State shall be inspected under one or both of the following methods:

(1) The State agency having jurisdiction shall over a dam may employ an engineer to make periodic inspections of nonfederal dams in the State to determine their condition and the extent, if any, to which they pose a potential possible or actual probable threat to life and property, or.

(2) The State agency having jurisdiction shall adopt rules pursuant to 3 V.S.A. chapter 25 to require an adequate level of inspection by an independent registered engineer experienced in the design and investigation of dams. The agency shall provide the owner with the findings of the inspection and any recommendations.

(c) Dam safety reports. If a dam inspection report is completed by the State agency having jurisdiction, the agency shall provide the person owning legal title to the dam or the owner of the land on which the dam is located with a copy of the inspection report.

\* \* \*

#### § 1107. HAZARD POTENTIAL CLASSIFICATIONS

(a) The State agency having jurisdiction over a nonfederal dam listed in the Vermont Dam Inventory shall assess the hazard potential classification of the dam based on the potential loss of human life, property damage, and economic loss that would occur in the event of the failure of the dam. There shall be four hazard potential classifications: high, significant, low, and minimal.

(b) The State agency having jurisdiction over a nonfederal dam on the Vermont Dam Inventory may assess or reassess the hazard potential classification of the dam at any time.

#### § 1108. DAM INVENTORY; REGISTRATION

(a) Dam inventory. The Department of Environmental Conservation shall maintain a current inventory of all known dams in the State of Vermont. The Department of Environmental Conservation shall update and publish the Vermont Dam Inventory annually and shall include information collected in the Inventory as part of the Agency of Natural Resources' Natural Resources Atlas.

(b) Dam registration. If a dam is listed on the Vermont Dam Inventory and is under the jurisdiction of the Department, the person owning legal title to a dam or the person owning the land on which the dam is located shall, upon request of the Department, submit information to the Department regarding the dam, including the condition of the dam, whether and when the dam has been inspected, and any other information that the Department may require to ensure public safety. A person who fails to comply with the request of the Department under this section shall be subject to a civil penalty under chapter 201 of this title.

#### § 1109. MARKETABILITY OF TITLE

The failure of the person owning legal title to a dam or the owner of the land on which the dam is located to record a dam registration or a dam inspection report when required under this chapter or rules adopted under this chapter shall not create an encumbrance on record title or an effect on marketability of title for the real estate property or properties on which the dam is located.

#### § 1110. RULEMAKING

The Commissioner of Environmental Conservation shall adopt rules to implement the requirements of this chapter for dams under the jurisdiction of the Department. The rules shall include:

(1) a standard or regulatory threshold under which a dam is exempt from the registration or inspection requirements of this chapter;

(2) standards for:

(A) the siting, design, construction, reconstruction, enlargement, modification, or alteration of a dam;

(B) operation and maintenance of a dam;

(C) inspection, monitoring, record keeping, and reporting;

(D) repair, breach, or removal of a dam;

(E) application for authorization under section 1082 of this title; and

(F) for the development of an emergency action plan for a dam, including guidance on how to develop an emergency action plan, the content of a plan, and when and how an emergency action plan should be updated;

(3) criteria for the hazard potential classification of dams in the State;

(4) a process by which a person owning legal title to a dam or a person owning the land on which the dam is located shall register a dam and record the existence of the dam in the lands records; and

(5) requirements for the person owning legal title to a dam or the person owning the land on which the dam is located to conduct inspections of the dam; and

#### § 1111. NATURAL RESOURCES ATLAS; DAM STATUS

Annually on or before January 1, the Public Utility Commission shall submit to the Department updated inventory information from the previous calendar year for dams under the jurisdiction of the Public Utility Commission.

#### Sec. 2. DAM REGISTRATION PROGRAM REPORT

On or before January 1, 2023, the Department of Environmental Conservation shall submit a report to the House Committees on Natural Resources, Fish, and Wildlife and on Ways and Means and the Senate Committees on Natural Resources and Energy and on Finance. The report shall contain:

(1) an evaluation of the dam registration program under 10 V.S.A. chapter 43;

(2) a recommendation on whether to modify the fee structure of the dam registration program;

(3) a summary of the dams registered under the program, organized by amount of water impounded and hazard potential classification; and

(4) an evaluation of any other dam safety concerns related to dam registration.

### Sec. 3. ADOPTION OF RULES

The Secretary of Natural Resources shall adopt the rules required under 10 V.S.A. § 1110 as follows:

(1) the rules required under 10 V.S.A. § 1110(1) (exemptions), § 1110(3) (emergency action plan), § 1110(4) (hazard potential classification), § 1110(5) (dam registration), and § 1110(6) (dam inspection) shall be adopted on or before July 1, 2020; and

(2) the rules required under 10 V.S.A. § 1110(2) (dam design standards) shall be adopted on or before July 1, 2022.

\* \* \* Groundwater Source Testing \* \* \*

Sec. 4. 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, in 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. 5. 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. 6. 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. 7. 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.

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

#### Sec. 8. EFFECTIVE DATES

(a) This section and Sec 5 (groundwater testing rulemaking) shall take effect on passage.

(b) Sec. 4 (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.

And that after passage the title of the bill be amended to read:

An act relating to the regulation of dams and the testing of groundwater sources.

(Committee vote: 4-1-0)

(For House amendments, see House Journal for January 17, 2018, pages 130-141 and January 18, 2018, page 149)

## H. 639.

An act relating to banning cost-sharing for all breast imaging services.

### **Reported favorably with recommendation of proposal of amendment by Senator Lyons for the Committee on Finance.**

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. 8 V.S.A. § 4100a is amended to read:

§ 4100a. MAMMOGRAMS; COVERAGE REQUIRED

(a) Insurers shall provide coverage for screening by mammography for the presence of occult breast cancer, ~~as provided by this subchapter.~~ In addition, insurers shall provide coverage for screening by ultrasound for a patient for whom the results of a screening mammogram were inconclusive or who has dense breast tissue, or both. Benefits provided shall cover the full cost of the mammography service or ultrasound, as applicable, and shall not be subject to any co-payment, deductible, coinsurance, or other cost-sharing requirement or additional charge.

(b) ~~For females 40 years or older, coverage shall be provided for an annual screening. For females less than 40 years of age, coverage for screening shall be provided upon recommendation of a health care provider. [Repealed.]~~

(c) ~~After January 1, 1994, this~~ This section shall apply only to screening procedures conducted by test facilities accredited by the American College of Radiologists.

(d) As used in this subchapter:

(1) “Insurer” means any insurance company ~~which~~ that provides health insurance as defined in subdivision 3301(a)(2) of this title, nonprofit hospital and medical service corporations, and health maintenance organizations. The term does not apply to coverage for specified ~~disease~~ diseases or other limited benefit coverage.

(2) “Mammography” means the x-ray examination of the breast using equipment dedicated specifically for mammography, including the x-ray tube, filter, compression device, ~~screens, films, and cassettes~~ and digital detector. The term includes breast tomosynthesis.

(3) “Screening” includes the mammography or ultrasound test procedure and a qualified physician’s interpretation of the results of the procedure, including additional views and interpretation as needed.

Sec. 2. MAMMOGRAPHY COVERAGE; DEPARTMENT OF FINANCIAL REGULATION

On or before October 1, 2018, the Department of Financial Regulation shall issue a bulletin to provide clarification to health insurers regarding the coding structure for screening mammograms and ultrasounds and for call-back screenings, including clarifying that call-back mammograms and ultrasounds for patients for whom the results of a screening mammogram were inconclusive or who have dense breast tissue, or both, shall be covered without cost-sharing.

Sec. 3. EFFECTIVE DATE

(a) Sec. 1 (8 V.S.A. § 4100a) shall take effect on January 1, 2019 and shall apply to all health insurance plans issued on and after January 1, 2019 on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than January 1, 2020.

(b) Sec. 2 (mammography coverage; Department of Financial Regulation) and this section shall take effect on passage.

And that after passage the title of the bill be amended to read::

An act relating to eliminating cost-sharing for certain breast imaging services.

(Committee vote: 7-0-0)

(For House amendments, see House Journal for March 14, 2018, pages 642-643)

**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 these 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(c). [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:~~

<del>(A) Barber</del>	<del>\$110.00</del>
<del>(B) Cosmetologist</del>	<del>\$110.00</del>
<del>(C) Nail technician</del>	<del>\$110.00</del>
<del>(D) Esthetician</del>	<del>\$110.00</del>
<del>(E) Shop</del>	<del>\$330.00</del>
<del>(F) School</del>	<del>\$330.00</del>

~~(2) Biennial renewal:~~

<del>(A) Barber</del>	<del>\$130.00</del>
<del>(B) Cosmetologist</del>	<del>\$130.00</del>
<del>(C) Nail technician</del>	<del>\$130.00</del>
<del>(D) Esthetician</del>	<del>\$130.00</del>
<del>(E) Shop</del>	<del>\$225.00</del>
<del>(F) School</del>	<del>\$330.00</del>

~~(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) Crematory 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; two practical nurses; one nursing assistant; 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 ~~aforsaid~~ 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<sub>;</sub> upon a finding that the applicant does not meet a high standard as to character, integrity, and reputation<sub>;</sub> 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<sub>;</sub> 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<sub>;</sub> upon a finding that the applicant does not meet a high standard as to character, integrity, and reputation<sub>;</sub> 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

\* \* \*

~~(c) 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~~ 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 583)

**Reported favorably with recommendation of proposal of amendment by Senator Cummings for the Committee on Finance.**

The Committee recommends that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Government Operations.

(Committee vote: 7-0-0)

**H. 727.**

An act relating to the admissibility of a child's hearsay statements in a proceeding before the Human Services Board.

**Reported favorably with recommendation of proposal of amendment by Senator Sears for the Committee on Judiciary.**

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. 33 V.S.A. § 4916b is amended to read:

§ 4916b. HUMAN SERVICES BOARD HEARING

(a) Within 30 days ~~of~~ after the date on which the administrative reviewer mailed notice of placement of a report on the Registry, the person who is the subject of the substantiation may apply in writing to the Human Services Board for relief. The Board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When the Department receives notice of the appeal, it shall make note in the Registry record that the substantiation has been appealed to the Board.

(b)(1) The Board shall hold a hearing within 60 days ~~of~~ after the receipt of the request for a hearing and shall issue a decision within 30 days ~~of~~ after the hearing.

(2) Priority shall be given to appeals in which there are immediate employment consequences for the person appealing the decision.

(3) ~~Rule 804a of the Vermont Rules of Evidence (V.R.E.) shall apply to hearings held under this subsection only as follows:~~

(A) ~~V.R.E. 804a(a)(1) and (4) shall apply.~~

(B) ~~V.R.E. 804a(a)(2) shall apply, except that any deposition or testimony given under oath at another proceeding shall be admissible evidence in a hearing held under this subsection.~~

(C) ~~V.R.E. 804a(a)(3) shall apply to hearings under this subsection unless the hearing officer determines, based on a preponderance of the evidence, that requiring the child to testify will present a substantial risk of~~

trauma to the child.

~~(D) V.R.E. 804a(b) shall not apply~~ Article VIII of the Vermont Rules of Evidence (Hearsay) shall not apply to any hearing held pursuant to this subchapter with respect to statements made by a child 12 years of age or under who is alleged to have been abused or neglected and the child shall not be required to testify or give evidence at any hearing held under this subchapter. Evidence shall be admissible if the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(B) Article VIII of the Vermont Rules of Evidence (Hearsay) shall not apply to any hearing held pursuant to this subchapter with respect to statements made by a child who is at least 13 years of age and under 16 years of age who is alleged to have been abused or neglected and the child shall not be required to testify or give evidence at any hearing held under this subchapter in either of the following circumstances:

(i) The hearing officer determines, based on a preponderance of the evidence, that requiring the child to testify will present a substantial risk of trauma to the child. Evidence of trauma need not be offered by an expert and may be offered by any adult with an ongoing significant relationship with the child. Evidence shall be admissible if the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(ii) The hearing officer determines that the child is physically unavailable to testify or the Department has made diligent efforts to locate the child and was unsuccessful. Evidence shall be admissible if the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(4) Convictions and adjudications ~~which~~ that arose out of the same incident of abuse or neglect for which the person was substantiated, whether by verdict, by judgment, or by a plea of any type, including a plea resulting in a deferred sentence, shall be competent evidence in a hearing held under this subchapter.

(c) A hearing may be stayed upon request of the petitioner if there is a related case pending in the Criminal or Family Division of the Superior Court ~~which~~ that arose out of the same incident of abuse or neglect for which the person was substantiated.

(d) If no review by the Board is requested, the Department's decision in the case shall be final, and the person shall have no further right for review under this section. The Board may grant a waiver and permit such a review upon good cause shown.



Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 28, 2018, pages 469-471)

**H. 901.**

An act relating to health information technology and health information exchange.

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

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. HEALTH INFORMATION TECHNOLOGY; HEALTH INFORMATION EXCHANGE; PROGRESS REPORTS

(a) On or before May 1, 2018, the Department of Vermont Health Access and the Vermont Information Technology Leaders, Inc. (VITL) shall submit to the House Committees on Appropriations, on Health Care, and on Ways and Means; the Senate Committees on Appropriations, on Health and Welfare, and on Finance; and the Green Mountain Care Board a work plan detailing the process by which the Department and VITL shall implement the recommendations of the health information technology report submitted to the General Assembly in accordance with 2017 Acts and Resolves No. 73, Sec. 15 (Act 73 report). The work plan shall be informed by stakeholder and consumer input and by technology options and opportunities. The Plan shall identify potential steps for addressing issues of data ownership and issues of intellectual property. It shall also set forth both a timeline of tasks to be completed and a list of clear objectives to assist the General Assembly in evaluating the success or failure of the parties' work.

(b) On or before September 1, 2018, the Department of Vermont Health Access and VITL shall submit to the House Committees on Appropriations, on Health Care, and on Ways and Means; the Senate Committees on Appropriations, on Health and Welfare, and on Finance; the Health Reform Oversight Committee; and the Green Mountain Care Board a contingency plan for health information technology to be used if the Department and VITL are unable to implement the recommendations from the Act 73 report. The contingency plan shall contain the following:

(1) a description of the health information exchange services that would need to be replaced;

(2) a process for determining the manner in which the services would be replaced and the mechanism for acquiring the replacement services, such as a request for proposals;

(3) an assessment of the State's ownership interests in hardware systems, software systems, applications, data, and other physical and intellectual property that would need to be licensed to a future operator of Vermont's health information exchange;

(4) a plan for transitioning operations from VITL to the new operator or operators; and

(5) the impacts of the change on health care providers, health care consumers, State government, and Vermont's health care reform initiatives.

(c) On or before October 15, 2018, the Department of Vermont Health Access shall submit to the House Committees on Appropriations, on Health Care, and on Ways and Means; the Senate Committees on Appropriations, on Health and Welfare, and on Finance; the Health Reform Oversight Committee; and the Green Mountain Care Board the results of an evaluation, which shall be conducted by an independent entity with expertise in health information technology, of the work plan, the contingency plan, and the Department's and VITL's progress toward implementing the recommendations in the Act 73 report.

(d) On or before May 1, July 1, September 1, and November 1, 2018 and January 1, 2019, the Department of Vermont Health Access and VITL shall provide to the House Committees on Appropriations, on Health Care, and on Ways and Means; the Senate Committees on Appropriations, on Health and Welfare, and on Finance; the Health Reform Oversight Committee; and the Green Mountain Care Board written updates on their progress toward implementing the recommendations contained in the Act 73 report.

(e) In addition to the written updates required by subsection (d) of this section, the Department of Vermont Health Access and VITL shall provide testimony on their progress toward implementing the recommendations contained in the Act 73 report at a meeting of the Health Reform Oversight Committee at least once every two months or more frequently if so requested by the Committee. The testimony at the Committee's first meeting after the General Assembly has adjourned in 2018 shall also include information regarding the work plan required by subsection (a) of this section, and the testimony at the Committee's first meeting after September 1, 2018 shall also include information regarding the contingency plan required by subsection (b) of this section.

Sec. 2. 18 V.S.A. § 9351 is amended to read:

§ 9351. HEALTH INFORMATION TECHNOLOGY PLAN

(a)(1) ~~The Secretary of Administration or designee~~ Department of Vermont Health Access, in consultation with the Department's Health Information Exchange Steering Committee, shall be responsible for the overall coordination of Vermont's statewide Health Information Technology Plan. The Plan shall be revised annually and updated comprehensively every five years to provide a strategic vision for clinical health information technology.

(2) The Department shall submit the proposed Plan to the Green Mountain Care Board annually on or before November 1. The Green Mountain Care Board shall approve, reject, or request modifications to the Plan within 45 days following its submission; if the Board has taken no action after 45 days, the Plan shall be deemed to have been approved.

(3) ~~The Secretary or designee~~ Department, in consultation with the Steering Committee, shall administer the Plan, which shall include the implementation of an integrated electronic health information infrastructure for the sharing of electronic health information among health care facilities, health care professionals, public and private payers, and patients. The Plan shall include standards and protocols designed to promote patient education, patient privacy, physician best practices, electronic connectivity to health care data, access to advance care planning documents, and, overall, a more efficient and less costly means of delivering quality health care in Vermont.

\* \* \*

(c) ~~The Secretary of Administration or designee may update the Plan~~ Department of Vermont Health Access, in consultation with the Steering Committee and subject to Green Mountain Care Board approval, may propose updates to the Plan in addition to the annual updates as needed to reflect emerging technologies, the State's changing needs, and such other areas as the ~~Secretary or designee~~ Department deems appropriate. ~~The Secretary or designee~~ Department shall solicit recommendations from ~~Vermont Information Technology Leaders, Inc. (VITL) and other entities~~ interested stakeholders in order to ~~update~~ propose updates to the Health Information Technology Plan pursuant to subsection (a) of this section and to this subsection, including applicable standards, protocols, and pilot programs, and following approval of the proposed updates by the Green Mountain Care Board, may enter into a contract or grant agreement with ~~VITL or other~~ appropriate entities to update some or all of the Plan. Upon approval ~~by the Secretary~~ of the updated Plan by the Green Mountain Care Board, the Department of Vermont Health Access shall distribute the updated Plan ~~shall be distributed~~ to the Secretary of Administration; ~~the Commissioner of Information and Innovation~~ Secretary of

Digital Services; the Commissioner of Financial Regulation; ~~the Commissioner of Vermont Health Access~~; the Secretary of Human Services; the Commissioner of Health; the Commissioner of Mental Health; the Commissioner of Disabilities, Aging, and Independent Living; the Senate Committee on Health and Welfare; the House Committee on Health Care; affected parties; and interested stakeholders. Unless major modifications are required, the ~~Secretary~~ Department may present updated information about the Plan to the ~~Green Mountain Care Board~~ and legislative committees of jurisdiction in lieu of creating a written report.

\* \* \*

Sec. 3. 18 V.S.A. § 9352 is amended to read:

§ 9352. VERMONT INFORMATION TECHNOLOGY LEADERS

(a)(1) Governance. The Vermont Information Technology Leaders, Inc. (VITL) Board of Directors shall consist of no fewer than nine nor more than 14 members. The term of each member shall be two years, except that of the members first appointed, approximately one-half shall serve a term of one year and approximately one-half shall serve a term of two years, and members shall continue to hold office until their successors have been duly appointed. The Board of Directors shall comprise the following:

(A) ~~one member~~ two current members of the General Assembly, one of whom shall be a member of the House of Representatives appointed jointly by the Speaker of the House and the President Pro Tempore of the Senate one of whom shall be a member of the Senate appointed by the Committee on Committees, ~~who~~ and both of whom shall be entitled to ~~the same~~ per diem compensation and ~~expense reimbursement of expenses~~ pursuant to 2 V.S.A. § 406 as ~~provided for attendance at sessions during adjournment~~ of the General Assembly;

(B) one individual appointed by the Governor; and

(C) ~~one representative of the business community;~~

~~(D) one representative of health care consumers;~~

~~(E) one representative of Vermont hospitals;~~

~~(F) one representative of Vermont physicians;~~

~~(G) one practicing clinician licensed to practice medicine in Vermont;~~

~~(H) one representative of a health insurer licensed to do business in Vermont;~~

~~(I) the President of VITL, who shall be an ex officio, nonvoting~~

member;

~~(J) two individuals familiar with health information technology, at least one of whom shall be the chief technology officer for a health care provider; and~~

~~(K) two at-large members representatives of the business community, of health care consumers, of Vermont hospitals, of Vermont-licensed clinicians, and of health insurers licensed to offer plans in Vermont, as well as individuals familiar with health information technology, including, to the extent practicable, one or more individuals who are or have served as the chief technology officer for a health care facility.~~

(2) Except for the members appointed pursuant to subdivisions (1)(A) and (B) of this subsection, whenever a vacancy on the Board occurs, the members of the Board of Directors then serving shall appoint a new member who shall meet the same criteria as the member he or she replaces.

\* \* \*

(c)(1) Health information exchange operation. VITL shall be designated in the Health Information Technology Plan approved by the Green Mountain Care Board pursuant to section 9351 of this title to operate the exclusive statewide health information exchange network for this State. After the The Plan shall determine the manner in which Vermont's health information exchange network shall be managed. The Green Mountain Care Board approves shall have the authority to approve VITL's core activities and budget pursuant to chapter 220 of this title, ~~the Secretary of Administration or designee shall enter into procurement grant agreements with VITL pursuant to 8 V.S.A. § 4089k.~~ Nothing in this chapter shall impede local community providers from the exchange of electronic medical data.

(2) Notwithstanding any provision of 3 V.S.A. § 2222 or 2283b to the contrary, upon request of the Secretary of Administration, the ~~Department of Information and Innovation~~ Agency of Digital Services shall review VITL's technology for security, privacy, and interoperability with State government information technology, consistent with the State's health information technology plan required by section 9351 of this title.

(d) Privacy. The standards and protocols implemented by VITL shall be consistent with those adopted by the statewide Health Information Technology Plan pursuant to subsection 9351(e) of this title.

(e) Report. ~~No later than~~ On or before January 15 of each year, VITL shall file a report with the Green Mountain Care Board; the Secretary of Administration; the Commissioner of Information and Innovation ~~Secretary of Digital Services;~~ the Commissioner of Financial Regulation; the

Commissioner of Vermont Health Access; the Secretary of Human Services; the Commissioner of Health; the Commissioner of Mental Health; the Commissioner of Disabilities, Aging, and Independent Living; the Senate Committee on Health and Welfare; and the House Committee on Health Care. The report shall include an assessment of progress in implementing health information technology in Vermont and recommendations for additional funding and legislation required. In addition, VITL shall publish minutes of VITL meetings and any other relevant information on a public website. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(f) Funding authorization. VITL is authorized to seek matching funds to assist with carrying out the purposes of this section. In addition, it may accept any and all donations, gifts, and grants of money, equipment, supplies, materials, and services from the federal or any local government, or any agency thereof, and from any person, firm, foundation, or corporation for any of its purposes and functions under this section and may receive and use the same, subject to the terms, conditions, and regulations governing such donations, gifts, and grants. VITL shall not use any State funds for health care consumer advertising, marketing, or similar services unless necessary to comply with the terms of a contract or grant that requires a contribution of State funds.

(g) Waivers. The Secretary of ~~Administration~~ Human Services or designee, in consultation with VITL, may seek any waivers of federal law, of rule, or of regulation that might assist with implementation of this section.

(h) [Repealed.]

(i) Certification of meaningful use and connectivity.

(1) To the extent necessary to support Vermont's health care reform goals or as required by federal law, VITL shall be authorized to certify the meaningful use of health information technology and electronic health records by health care providers licensed in Vermont.

(2) VITL, in consultation with health care providers and health care facilities, shall establish criteria for creating or maintaining connectivity to the State's health information exchange network. VITL shall provide the criteria annually ~~by~~ on or before March 1 to the Green Mountain Care Board established pursuant to chapter 220 of this title.

(j) Scope of activities. VITL and any person who serves as a member, director, officer, or employee of VITL with or without compensation shall not be considered a health care provider as defined in subdivision 9432 of this title for purposes of any action taken in good faith pursuant to or in reliance upon provisions of this section relating to VITL's:

- (1) governance;
- (2) electronic exchange of health information and operation of the statewide Health Information Exchange Network as long as nothing in such exchange or operation constitutes the practice of medicine pursuant to 26 V.S.A. chapter 23 or 33;
- (3) implementation of privacy provisions;
- (4) funding authority;
- (5) application for waivers of federal law;
- (6) establishment and operation of a financing program providing electronic health records systems to providers; or
- (7) certification of health care providers' meaningful use of health information technology.

Sec. 4. 18 V.S.A. § 9375(b) is amended to read:

- (b) The Board shall have the following duties:

\* \* \*

(2)(A) Review and approve Vermont's statewide Health Information Technology Plan pursuant to section 9351 of this title to ensure that the necessary infrastructure is in place to enable the State to achieve the principles expressed in section 9371 of this title. ~~In performing its review, the Board shall consult with and consider any recommendations regarding the plan received from the Vermont Information Technology Leaders, Inc. (VITL).~~

(B) Review and approve the criteria required for health care providers and health care facilities to create or maintain connectivity to the State's health information exchange as set forth in section 9352 of this title. Within 90 days following this approval, the Board shall issue an order explaining its decision.

(C) ~~Annually review the budget and all activities of VITL and approve the budget, consistent with available funds, and the core activities associated with public funding, which shall include establishing the interconnectivity of electronic medical records held by health care professionals and the storage, management, and exchange of data received from such health care professionals, for the purpose of improving the quality of and efficiently providing health care to Vermonters of the Vermont Information Technology Leaders, Inc. (VITL).~~ This review shall take into account VITL's responsibilities pursuant to section 9352 of this title and the availability of funds needed to support those responsibilities.

\* \* \*

Sec. 5. 2013 Acts and Resolves No. 73, Sec. 60(10), as amended by 2017 Acts and Resolves No. 73, Sec. 14, is further amended to read:

(10) Secs. 48-51 (health claims tax) shall take effect on July 1, 2013 and 52 and 53 (health claims tax revenue; Health IT-Fund; sunset) shall take effect on July 1, ~~2018~~ 2019.

Sec. 6. FUTURE OF HEALTH INFORMATION EXCHANGE NETWORK;  
LEGISLATIVE INTENT

It is essential to the future of health information technology and health information exchange in Vermont that the recommendations of the health information technology report submitted to the General Assembly in accordance with 2017 Acts and Resolves No. 73, Sec. 15 are successfully implemented in a thorough and timely manner. If they are not successfully implemented pursuant to the timeline adopted in the work plan described in Sec. 1 of this act, it is the intent of the General Assembly to eliminate the designation of Vermont Information Technology Leaders, Inc. to operate the exclusive statewide health information exchange network for Vermont pursuant to 18 V.S.A. § 9352.

Sec. 7. HEALTH INFORMATION EXCHANGE; CONSENT POLICY;  
REPORT

The Department of Vermont Health Access, in consultation with Vermont Information Technology Leaders, Inc., the Office of the Health Care Advocate, and other interested stakeholders, shall provide recommendations to the House Committees on Health Care and on Energy and Technology and the Senate Committee on Health and Welfare on or before January 15, 2019 regarding whether individual consent to the exchange of health care information through the Vermont Health Information Exchange should be on an opt-in or opt-out basis.

Sec. 8. IMPROVING INTEROPERABILITY OF ELECTRONIC HEALTH  
RECORDS SYSTEMS; REPORT

The Department of Vermont Health Access, in consultation with Vermont Information Technology Leaders, Inc. and other interested stakeholders, shall provide recommendations to the House Committees on Health Care and on Energy and Technology and the Senate Committee on Health and Welfare on or before January 15, 2019 regarding ways to improve the utility and interoperability of electronic health records and health information exchange in Vermont.



Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

(No House amendments)

**Reported favorably with recommendation of proposal of amendment by Senator Cummings for the Committee on Finance.**

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 amendments thereto:

First: In Sec. 1, health information technology; health information exchange; progress reports, subsections (b), (c), and (d) following “the Health Reform Oversight Committee;” by inserting the Joint Information Technology Oversight Committee;

Second: In Sec. 1, health information technology; health information exchange; progress reports, subsection (e), in the first sentence, following “Health Reform Oversight Committee”, by inserting and at a meeting of the Joint Information Technology Oversight Committee, and at the end of the first sentence, by striking out “the Committee” and inserting in lieu thereof a Committee

Third: In Sec. 1, health information technology; health information exchange; progress reports, subsection (e), in the second sentence, preceding both instances of the word “Committee’s”, by striking out the word “the” and inserting in lieu thereof the word each

(Committee vote: 7-0-0)

**H. 919.**

An act relating to workforce development.

**Reported favorably with recommendation of proposal of amendment by Senator Clarkson for the Committee on Economic Development, Housing and General Affairs.**

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:

\* \* \* Stakeholder Alignment, Coordination, and Engagement \* \* \*

Sec. 1. STAKEHOLDER ALIGNMENT, COORDINATION, AND  
ENGAGEMENT PROCESS; VISION; GOALS

(a) Stakeholder alignment, coordination, and engagement. The State Workforce Development Board, in cooperation with the Department of Labor and the Agencies of Commerce and Community Development, of Education, of Human Services, of Agriculture, Food and Markets, of Natural Resources, and of Transportation shall:

(1) conduct a stakeholder alignment, coordination, and engagement process, consistent with 20 C.F.R. §§ 679.100 and 679.130 and 10 V.S.A. § 541a, to ensure and promote better coordination and agreement around the State's vision and shared goals for meeting Vermont's 21st-century workforce education, training, recruitment, and retention needs;

(2) design the stakeholder alignment, coordination, and engagement process to inform workforce-related aspects of other State strategic plans and reports, including the Workforce Innovation and Opportunity Act State Plan, the State Economic Development Marketing Plan, and the Statewide Comprehensive Economic Development Strategy; and

(3) solicit the perspectives of job seekers, incumbent workers, employers, industry representatives, program administrators, and workforce service delivery providers.

(b) Action plan. In adopting an action plan, the State Workforce Development Board shall:

(1) on or before February 1, 2020, describe the State's collective workforce development goals, which shall serve as the basis for an action plan to revitalize Vermont's workforce development system;

(2) post online the vision, goals, and any findings or recommendations; and

(3) provide advance notice to the Chair and Vice Chair of the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs if the recommendations may require legislative action during the 2020 legislative session.

(c) Regional delivery systems. The State Workforce Development Board shall review how functions performed by local workforce investment boards, career technical education regional advisory boards, regional planning commissions, regional development corporations, and other regional economic development and workforce-related boards could be more equitably executed from region to region and recommend structures that would foster better regional collaboration, alignment, and employer participation.

(d) Information sharing. The Department of Labor, with assistance from the State Workforce Development Board, shall facilitate the sharing of

information among workforce development and training-delivery organizations during and following the stakeholder alignment, coordination, and engagement process so they may stay current with initiatives and plans related to building an effective workforce development system.

(e) Board authority; permissive activities. The State Workforce Development Board may:

(1) create a workforce development network map of workforce service delivery providers, employers, workforce program administrators, and industry representatives to:

(A) develop baseline data in conformance with the Workforce Innovation and Opportunity Act about how individuals, including new Americans, and organizations, both within and outside State government, are involved with workforce development and training around the State;

(B) analyze the relative level of connectivity of people and programs managed inside and outside State government; and

(C) identify opportunities to strengthen connectivity to achieve greater program alignment toward, and realize the Board's vision for, the State's workforce development and training system;

(2) identify the resources necessary to maintain the network map over time and track changes in levels of connectivity and alignment across the stakeholder community;

(3) recommend strategies to improve:

(A) how employer-outreach positions in each of the State-funded field offices might be shared;

(B) what type of coordination is needed between the State-level employer-outreach staff and local workforce organizations, including staff of the regional development corporations and regional planning commissions, to better serve employers;

(C) whether establishing a One-Stop American Job Center in each region to provide comprehensive customer-driven services for employers and job seekers could better serve businesses, improve responsiveness to the needs of emerging sectors, and increase access to qualified, available workers through direct outreach and recruitment;

(D) scaling or expanding pilot projects that link experts who have career and industry knowledge directly with middle schools or high schools, or both, to foster career readiness and exploration;

(E) ways to share data and information collected from employers among parties who implement workforce development programs; and

(F) what knowledge and education employers may require better to respond to their employees as workers and as members of a family; and

(4) following the stakeholder alignment, coordination, and engagement process outlined in subsection (a) of this section, make recommendations to align relevant funding sources to promote:

(A) employer-driven workforce education and training opportunities;

(B) results-based outcomes;

(C) innovative and effective initiatives, pilots, or demonstration programs that can be scaled to the rest of the State;

(D) access to federal resources that enable more innovative programs and initiatives in Vermont;

(E) equitable access to employment and training opportunities for women and underrepresented populations in Vermont; and

(F) best practices aligned with a two-generation approach to eliminating poverty, as identified by the Vermont Work Group on Whole Family Approach to Jobs.

Sec. 2. 10 V.S.A. § 541a is amended to read:

§ 541a. STATE WORKFORCE DEVELOPMENT BOARD

(a) Board established; duties. Pursuant to the requirements of 29 U.S.C. § 3111, the Governor shall establish a the State Workforce Development Board to assist the Governor in the execution of his or her duties under the Workforce Innovation and Opportunity Act of 2014 and to assist the Commissioner of Labor as specified in section 540 of this title.

(b) Additional duties; planning; process.

(1) In order to To inform its decision-making decision making and to provide effective assistance under subsection (a) of this section, the Board shall:

~~(1)~~(A) conduct an ongoing public engagement process throughout the State that brings together employers and potential employees, including students, the unemployed, and incumbent employees seeking further training, to provide feedback and information concerning their workforce education and training needs; and

~~(2)~~(B) maintain familiarity and promote alignment with the federal, State, and regional Comprehensive Economic Development Strategy (CEDS)

and other economic development planning processes, and coordinate workforce and education activities in the State, including the development and implementation of the State plan required under the Workforce Innovation and Opportunity Act of 2014, with economic development planning processes occurring in the State, as appropriate.

(2) To ensure that State-funded and federally funded workforce development and training efforts are of the highest quality and aligned with the State’s workforce and economic goals, the Board shall regularly:

(A) review and approve State-endorsed Career Pathways that reflect a shared vision across multiple sectors and agencies for improving employment outcomes, meeting employers’ and workers’ needs, and leveraging available State and federal funding; and

(B) publicize the State-endorsed Career Pathways, including on websites managed by the Agency of Education, Department of Labor, and Department of Economic Development.

(3) The Board shall have the authority to approve State-endorsed and industry-recognized credentials and certificates, excluding high school diplomas and postsecondary academic degrees, that are aligned with the Career Pathways.

\* \* \*

### Sec. 3. RESERVATION OF FUNDS; IMPLEMENTATION

In fiscal year 2019, the Department of Labor shall reserve the amount of \$40,000.00 from the Workforce Development Council Fund and the amount of \$40,000.00 of federal Workforce Innovation and Opportunity Act funds reserved by the Governor for statewide workforce investment activities, subject to permissible use, to assist the State Workforce Development Board in performing the duties specified in this act.

\* \* \* CTE and Adult Technical Education; Career Pathways \* \* \*

### Sec. 4. CAREER PATHWAYS

(a) Definition. As used in this section, “career pathways” means a combination of rigorous and high-quality educational, training, and other experiences and services, beginning not later than seventh grade, that:

(1) at the secondary level, integrates the academic and technical skills required for postsecondary success;

(2) is developed in partnership with business and industry and aligns with the skill needs of industries in the local, regional, and State economies;

(3) prepares an individual to transition seamlessly from secondary to

postsecondary or adult technical education experiences and be successful in any of a full range of secondary, postsecondary, or adult technical education options, including registered apprenticeships;

(4) includes career counseling and work-based learning experiences to support an individual in achieving the individual's educational and career goals;

(5) includes, as appropriate, education offered concurrently with, and in the same context as, workforce preparation activities and training for a specific occupation or occupational cluster;

(6) organizes educational, training, and other experiences and services, with multiple entry and exit points along a training progression, to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(7) enables an individual to gain a secondary-school diploma or its recognized equivalent and allow postsecondary credit and industry certifications to be earned in high school; and

(8) prepares an individual to enter, or to advance within, a specific occupation or occupational cluster.

(b) Development of career pathways. The Agency of Education shall implement a process for developing career pathways that considers:

(1) State and local labor market demands;

(2) the recommendations of regional career technical education advisory boards or other employer-based boards;

(3) alignment with postsecondary education and training opportunities; and

(4) students' ability to gain credentials of value, dual enrollment credits, postsecondary credentials or degrees, and employment.

(c) Reporting. The Agency of Education shall report its progress in developing career pathways to the Board on an annual basis.

#### Sec. 5. CAREER READINESS; CTE PILOTS

(a) Collaboration. The Agency of Education shall promote collaboration among middle schools and regional career technical education (CTE) centers to engage in activities including:

(1) developing and delivering introductory CTE courses or lessons to middle school students that are part of broader career education, exploration, and development programs and that are connected to career pathways and CTE programs, as appropriate;

(2) increasing student exposure to local career opportunities through activities such as business tours, guest lectures, career fairs, and career-awareness days; and

(3) increasing student exposure to CTE programs through activities such as tours of regional CTE centers, virtual field trips, and CTE guest visits.

(b) Pilot projects. The Agency of Education shall approve up to four pilot projects in a variety of CTE settings. These pilot projects shall propose novel ways of integrating funding for CTE and general education and new governance structures for regional CTE centers, including unified governance structures between regional CTE centers and high schools, or both. Pilot projects shall require both high school and regional CTE center involvement, and shall be designed to enhance the delivery of educational experiences to both high school students and CTE students while addressing the current competitive nature of funding CTE programs.

(1) A pilot project shall extend not longer than two years.

(2) The Agency shall establish guidelines, proposal submission requirements, and a review process to approve pilot projects.

(3) On or before January 15, 2020, the Agency shall report on the outcomes of the pilot projects to the House and Senate Committees on Education, the House Committee on Commerce and Economic Development, and the Senate Committee on Economic Development, Housing and General Affairs.

(c) Recommendation on CTE pre-tech programs. On or before January 15, 2020, the Agency of Education shall recommend to the House and Senate Committees on Education, the House Committee on Commerce and Economic Development, and the Senate Committee on Economic Development flexible and student-centered policies that support equitable access and opportunity to participate in CTE pre-tech foundation and exploratory programs for students in grades 9 and 10. This recommendation shall include building such activities into students' personalized learning plans when appropriate, so that students are exposed to a wide variety of career choices in their areas of interest. In making its recommendation, the Agency shall consider:

(1) the existing practices of regional CTE centers currently offering CTE pre-tech foundation and exploratory programs for students in grades 9 and 10;

(2) the results of the collaborative efforts made between regional CTE centers and middle schools as required under subsection (a) of this section; and

(3) the results of the pilot projects under subsection (b) of this section.

(d) Technical assistance.

(1) The Agency of Education shall provide technical assistance to schools to help them develop career education, exploration, and development, beginning in middle school, and introduce opportunities available through the regional CTE centers.

(2) The Agency of Education shall offer technical assistance so that regional CTE centers provide rigorous programs of study to students that are aligned with approved career pathways. Such programs of study may be combined with a registered apprenticeship program when the registered apprenticeship program is included in a student's personalized learning plan.

(3) The Agency of Education shall offer technical assistance to local education agencies to ensure that each high school student has the opportunity to experience meaningful work-based learning when included in the student's personalized learning plan, and that high schools coordinate effectively with regional CTE centers to avoid unnecessary duplication of programs of student placements and study already provided by the centers.

(e) Definition. As used in this section, "career pathways" shall have the same meaning as in Sec. 4 of this act.

Sec. 6. ADULT TRAINING PROGRAMS

(a) Effective use of State investments. The Department of Labor shall ensure that the State's investments in adult training programs are part of a system that is responsive to labor-market demands, provides equitable access to a broad variety of training opportunities, and provides to those jobseekers with barriers to employment the accommodations or services they need to be successful.

(b) Delivery of training programs. Training programs delivered by regional CTE centers, nonprofit and private entities, and institutions of higher education shall be included in the system.

(c) Technical assistance. The Agency of Education shall provide technical and programmatic guidance and assistance, as appropriate, to the Department of Labor to ensure alignment between secondary and postsecondary programs, policies, funding, and institutions.

Sec. 7. ADULT CAREER TECHNICAL EDUCATION

(a) Regional career technical education (CTE) centers. Vermont's regional CTE centers shall offer adult CTE programs that:

(1) develop technical courses for adults, aligned with a career pathway when possible, that support the occupational training needs of Vermonters seeking to up-skill, re-skill, and obtain credentials leading to employment;



(2) ensure that new and existing training responds to local or Statewide labor market demands;

(3) coordinate with State and regional partners, including other CTE centers, high schools, postsecondary educational institutions, and private training providers, to ensure quality, consistency, efficiency, and efficacy of State and federally funded training opportunities;

(4) support expansion of adult work-based learning experiences, such as registered apprenticeships, by providing related instruction, as appropriate; and

(5) maximize use of federal and State funds by aligning with the State's goals, priorities, and strategies outlined in Vermont's Workforce Innovation and Opportunity Act Unified plan.

(b) Evaluation of technical and occupational training. The State Workforce Development Board shall review how technical and occupational training is delivered to adults throughout the State and consider how adult CTE programs, delivered through the regional CTE centers, contribute to this system. The Board shall make recommendations on:

(1) staffing levels and structures that best support a strong adult technical education system;

(2) optimal hours of operation and facility availability for adult programs; and

(3) any other issues it finds relevant to enhancing support for adult technical education.

(c) Reporting. On or before January 15, 2019, the Board shall report its findings and recommendations to the House Committees on Education and on Commerce and Economic Development and the Senate Committees on Education and on Economic Development, Housing and General Affairs.

(d) Partnering with employers. Nothing in this section shall prevent an adult CTE program or regional CTE center from partnering directly with employers to design and deliver programs meeting specific needs of employers or provide additional courses that meet a State or community need.

(e) Definition. As used in this section, "career pathways" shall have the same meaning as in Sec. 4 of this act.

\* \* \* Workforce Training \* \* \*

## Sec. 8. STRENGTHENING AND ALIGNING WORKFORCE TRAINING PROGRAMS

The State Workforce Development Board shall:

(1) create a process for identifying, monitoring, and evaluating occupational trainings and industry-recognized credentials, which may include a mechanism for endorsing programs that offer credentials or certificates in order to facilitate targeted investments in programs that meet industry needs, ensuring that:

(A) business and industry are participants and are engaged early in the process;

(B) the credential review process involves relevant stakeholders;

(C) credentials are differentiated based on rigor and industry demand; and

(D) systems are designed to be responsive to the changing needs of industry;

(2) create and periodically review publicly available documents that list:

(A) current industry-recognized, State-recognized, and federally recognized credentials;

(B) the requirements to obtain these credentials;

(C) training programs that lead to these credentials; and

(D) the cost of training and educational programs required to obtain the credential; and

(3) work with the Office of Professional Regulation:

(A) to increase recognition of professional skills and credentialing across states; and

(B) to support professional paths that involve more than one industry-recognized, State-recognized, or federally recognized credential and rules adopted by the Office.

Sec. 9. 10 V.S.A. § 543 is amended to read:

§ 543. WORKFORCE EDUCATION AND TRAINING FUND; GRANT PROGRAMS

(a) Creation. There is created the Workforce Education and Training Fund in the Department of Labor to be managed in accordance with 32 V.S.A. chapter 7, subchapter 5.

(b) Purposes. The Department shall use the Fund for the following purposes:

(1) training for Vermont workers, including those who are unemployed, underemployed, or in transition from one job or career to another;

(2) internships to provide students with work-based learning opportunities with Vermont employers;

(3) apprenticeship, preapprenticeship, and industry-recognized credential training; and

(4) assistance to small businesses for recruiting, including building connections with secondary and postsecondary institutions and others to locate, hire, and retain workers from among Vermont's students and graduates; and

(5) other workforce development initiatives related to current and future job opportunities in Vermont as determined by the Commissioner of Labor.

\* \* \*

(f) Awards. The Commissioner of Labor, in consultation with the Chair of the State Workforce Development Board, shall develop award criteria and may grant awards to the following:

\* \* \*

(2) Vermont ~~Strong~~ Internship Program. Funding for eligible internship programs and activities under the Vermont ~~Strong~~ Internship Program established in section 544 of this title.

(3) Vermont ~~Strong~~ Returnship Program. Funding for eligible returnship programs and activities under the Vermont ~~Strong~~ Returnship Program established in section 545 of this title.

(4) Apprenticeship Program. The Vermont Apprenticeship Program established under 21 V.S.A. chapter 13. Awards under this subdivision may be used to fund the cost of apprenticeship-related instruction provided by the Department of Labor.

~~(4)~~(5) Career Focus and Planning programs. In collaboration with the Agency of Education, funding for one or more programs that institute career training and planning for young Vermonters, beginning in middle school.

(g) Career Pathways. Programs that are funded under this section resulting in a credit, certificate, or credential shall demonstrate alignment with a Career Pathway.

(h) Expanding offerings. A regional career and technical education center that develops an adult technical education program of study using funding under this section shall:

(1) make the program materials available to other regional career and technical education centers and adult technical education programs;

(2) to the extent possible, align the program with subsequent programs offered through the Vermont State College System, the University of Vermont and State Agricultural College, or an accredited independent college located in Vermont; and

(3) respond to current or projected occupational demands.

\* \* \*

\* \* \* Growing the Workforce and Increasing Workforce Participation \* \* \*

Sec. 10. 10 V.S.A. § 544 is amended to read:

§ 544. VERMONT STRONG INTERNSHIP PROGRAM

(a)(1) The Department of Labor, in consultation with the Agency of Education, shall develop, and the Department shall implement, a statewide Vermont Strong Internship Program for students who are in high school or in college and for those who are recent graduates of 24 months or less.

(2) The Department of Labor shall coordinate and provide funding to public and private entities for internship programs that match Vermont employers with students from public and private secondary schools, regional technical centers, the Community High School of Vermont, colleges, and recent graduates of 24 months or less.

(3) Funding awarded through the Vermont Strong Internship Program may be used to build and administer an internship program and to provide participants with a stipend during the internship, based on need. Funds may be made only to programs or projects that:

(A) do not replace or supplant existing positions;

(B) expose students to the workplace or create real workplace expectations and consequences;

(C) provide a process that measures progress toward mastery of skills, attitude, behavior, and sense of responsibility required for success in that workplace;

(D) are designed to motivate and educate participants through work-based learning opportunities with Vermont employers;

(E) include mechanisms that promote employer involvement with secondary and postsecondary students and curriculum and the delivery of education at the participating schools; or

(F) offer participants a continuum of learning, experience, and relationships with employers that will make it financially possible and attractive for graduates to continue to work and live in Vermont.

(4) As used in this section, “internship” means a learning experience working with an employer where the intern may, but does not necessarily, receive academic credit, financial remuneration, a stipend, or any combination of these.

(b) The Department of Labor, in collaboration with the Agencies of Agriculture, Food and Markets and of Education, State-funded postsecondary educational institutions, the State Workforce Development Board, and other State agencies and departments that have workforce education and training and training monies, shall:

(1) identify new and existing funding sources that may be allocated to the Vermont Strong Internship Program;

(2) collect data and establish program goals and performance measures that demonstrate program results for internship programs funded through the Vermont Strong Internship Program;

(3) develop or enhance a website that will connect students and graduates with internship opportunities with Vermont employers;

(4) engage appropriate agencies and departments of the State in the Vermont Internship Program to expand internship opportunities with State government and with entities awarded State contracts; and

(5) work with other public and private entities to develop and enhance internship programs, opportunities, and activities throughout the State.

Sec. 11. 10 V.S.A. 545 is added to read:

§ 545. VERMONT RETURNSHIP PROGRAM

(a) As used in this section, “returnship” means:

(1) an on-the-job learning experience working with an employer where an individual may, but does not necessarily, receive academic credit, financial remuneration, a stipend, or any combination of these; and

(2) is targeted to Vermonters who are returning to the workforce after an extended absence or are seeking a limited-duration on-the-job work experience in a different occupation or occupational setting.

(b)(1) The Department of Labor shall develop and implement the statewide Vermont Returnship Program.

(2) The Department of Labor shall coordinate and provide funding to public and private entities for returnship programs and opportunities that match experienced workers with Vermont employers.

(3) Funding awarded through the Program may be used to build and

administer coordinated and cohesive programs and to provide participants with a stipend during the returnship, based on need. Funds may be made available only to programs or projects that:

(A) do not replace or supplant existing positions;

(B) expose individuals to real and meaningful workplace experiences;

(C) provide a process that measures progress toward mastery of hard and soft professional skills and other factors that indicate a likelihood of success in the workplace;

(D) are designed to motivate and educate participants through work-based learning opportunities with Vermont employers; or

(E) offer participants a continuum of learning, experience, and relationships with employers that will make it financially possible and attractive for individuals to continue to work and live in Vermont.

(c) The Department of Labor shall:

(1) identify new and existing funding sources that may be allocated to the Program;

(2) collect data and establish program goals and performance measures that demonstrate program results for returnship programs funded through the Program;

(3) engage appropriate agencies and departments of the State in the Program to expand returnship opportunities within State government and with entities awarded State contracts; and

(4) work with other public and private entities to develop and enhance returnship programs, opportunities, and activities throughout the State.

## Sec. 12. VERMONT RETURNSHIP PROGRAM; APPROPRIATIONS

In fiscal year 2019 the amount of \$100,000.00 is appropriated from the General Fund to the Department of Labor for the Vermont Returnship Program created in 10 V.S.A. § 545.

## Sec. 13. GROWING THE SIZE AND QUALITY OF THE WORKFORCE

(a) Increasing participation. The Department of Labor and the Agencies of Commerce and Community Development, of Education, and of Human Services, in partnership with the State Workforce Development Board, shall:

(1) increase Vermonters' labor force participation by creating multitiered engagement, training, and support activities that help working-age Vermonters who are able to participate or to participate to a greater degree in the workforce;

(2) recruit and relocate new workers and employers to Vermont; and

(3) assist businesses in locating and retaining qualified workers.

(b) Methods. The Department of Labor and the Agencies of Commerce and Community Development, of Education, and of Human Services shall:

(1) engage regional and statewide stakeholders, including regional CTE centers, regional development corporations, and regional planning commissions, to identify needs and strategies, and define success;

(2) identify targets and methods of recruitment, relocation, retraining, and retention;

(3) leverage resources available in current State and federal programs to support more workers from within and outside Vermont entering and staying in the Vermont workforce;

(4) create metrics for tracking the success of outreach efforts and economic impact; and

(5) develop policies and identify tools that support a two-generation approach to successful employment, addressing the needs of children in the lives of working adults.

(c) Relocation assistance unit.

(1) The Department of Labor may develop a relocation assistance unit to assist resident jobseekers and prospective new Vermont workers with finding and securing employment opportunities in Vermont.

(2) If the Department develops the relocation assistance unit:

(A) In addition to providing employment matching and career navigation services, dedicated specialists shall provide individualized assistance and support to individuals looking to relocate to Vermont for employment.

(B) Support services may include specific assistance in researching, accessing, or making referrals to resources, information, or services related to the labor market, employment, training, transportation, housing, childcare, economic services, education, safety, or recreation.

(C) The Department shall access existing tools, resources, and organizations such as the State or local Chambers of Commerce, Parent Child Centers, Regional Development Corporations, the Vermont National Guard, and other One-Stop American Job Center Network partners to assist in providing relocation information and support.

(D) The Department shall offer the services available under this subsection to Vermont customers as it would to a nonVermont citizen customer.

(E)(i) The Department shall use State funds provided under this section to leverage federal Wagner-Peyser funds, and any other relevant source of federal funds, to deliver employment and relocation services.

(ii) The Department shall ensure that functions provided under this section do not jeopardize the use and continued eligibility for federal funding under the Workforce Innovation and Opportunity Act (WIOA).

(F) The Department shall ensure that the Agency of Commerce and Community Development has access to information, data, and customer feedback so that the Agency may better understand the impact of its recruitment efforts, messaging, and any other ThinkVermont MOVE activity it implements.

(d) Board authority; identifying potential incentives. The State Workforce Development Board may identify incentives to enable and encourage targeted populations to participate in the labor force, including unemployment insurance waivers, income tax reductions, exemption of State tax on Social Security, housing and transportation vouchers, greater access to mental health and addiction treatment, and tuition and training reimbursements. The Board shall notify the House Committees on Commerce and Economic Development and on Human Services of any findings or recommendations, as appropriate.

Sec. 14. 10 V.S.A. § 540 is amended to read:

§ 540. WORKFORCE EDUCATION AND TRAINING LEADER

The Commissioner of Labor shall be the leader of workforce education and training in the State, and shall have the authority and responsibility for the coordination of workforce education and training within State government, including the following duties:

(1) Perform the following duties in consultation with the State Workforce Development Board:

\* \* \*

(G) design and implement criteria and performance measures for workforce education and training activities; and

(H) establish goals for the integrated workforce education and training system; and

(I) with the assistance of the Secretaries of Commerce and Community Development, of Human Services, of Education, of Agriculture,



Food and Markets, and of Transportation and of the Commissioner of Public Safety, develop and implement a coordinated system to recruit, relocate, and train workers to ensure the labor force needs of Vermont's businesses are met.

\* \* \*

(8) Coordinate intentional outreach and connections between students graduating from Vermont's colleges and universities and employment opportunities in Vermont.

\* \* \*

\* \* \* Accountability; Data Collection and Monitoring; Reporting \* \* \*

#### Sec. 15. RESULTS-BASED MONITORING

(a)(1) The Department of Labor, with the assistance of the Government Accountability Committee and the State Workforce Development Board, shall develop a framework to evaluate workforce education, training, and support programs and services.

(2) The Department shall apply the framework to the State's workforce system inventory and shall distinguish programs and services based on method of delivery, customer, program administrator, goal, or other appropriate category.

(3) The framework shall:

(A) establish population-level indicators based on desired outcomes for the workforce development delivery system;

(B) along with workforce development network mapping work that the Board may pursue, support program and service alignment of State-grant-funded projects with the State Workforce Innovation and Opportunity Act Plan;

(C) align with the Board's vision;

(D) note performance measures that already exist in the workforce system and identify where State-specific measures would help monitor progress in achieving the State's goals; and

(E) identify gaps in service delivery and areas of duplication in services.

(b) The State Workforce Development Board shall:

(1) consider whether the information and data currently collected and reported throughout the workforce development system are useful;

(2) identify what information and data are not available or not readily accessible;

- (3) make its findings publicly available; and
- (4) recommend a process to improve the collection and reporting of data.

(c) The State Workforce Development Board may:

(1) create a process and a timeline to collect program-level data for the purposes of updating the State's workforce system inventory; and

(2) develop tools for program and service delivery providers that support continuous improvement using data-driven decision making, common information-sharing systems, and a customer-focused service delivery system.

#### Sec. 16. REPORTING

(a) On or before January 15, 2019, the State Workforce Development Board shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a report that specifically addresses the implementation of each section of this act.

(b) On or before January 15, 2019, the Department of Labor, in collaboration with the Agency of Education and the State Workforce Development Board, shall report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs concerning:

(1) how to encourage more businesses to offer apprenticeships;

(2) how to encourage more labor force participation in apprenticeships; and

(3) of the myriad federal and private apprenticeship opportunities available, what additional opportunities in what industry sectors should be offered or enhanced in Vermont.

\* \* \* WIOA Youth Funds \* \* \*

#### Sec. 17. PROCESS FOR AWARDING WIOA YOUTH FUNDS

(a) On or before December 1, 2018, the Department of Labor shall review the current delivery of youth workforce investment activities funded by WIOA Youth Funds and consider whether more youth might be better served through awards or grants to youth service providers, consistent with section 123 of the federal Workforce Innovation and Opportunity Act.

(b)(1) If the Department decides not to provide directly some or all of the youth workforce investment activities, the State Workforce Development Board shall award grants or contracts for specific elements or activities on a competitive basis, consistent with 20 CFR 681.400.

(2) The providers of youth services shall meet criteria established in the State Plan and be able to meet performance accountability measures for the federally established primary indicators of performance for youth programs.

Sec. 18. TARGETED ENHANCED YOUTH WORKFORCE READINESS PROGRAM

(a) In fiscal year 2019 the amount of \$100,000.00 is appropriated from the General Fund to the Department of Labor for the first year of a three-year project to contract with the Vermont Youth Conservation Corps for the purpose of enhancing its workforce preparedness and on-the-job training programs, with special attention for at-risk youth 18 to 24 years of age.

(b) The programs funded through this section shall include classroom training at Vermont Technical College and shall focus on vocations where the Department and Vermont employers have identified a shortage of workers.

\* \* \* Promoting Remote Workers and Remote Work Arrangements \* \* \*

Sec. 19. 32 V.S.A. chapter 151, subchapter 11P is added to read:

Subchapter 11P. New Remote Worker Tax Credit

§ 5930pp. NEW REMOTE WORKER TAX CREDIT

(a) As used in this section:

(1) “New resident remote worker” means an individual who:

(A) is a full-time employee of a business with its domicile or primary place of business outside Vermont;

(B) becomes a full-time resident of this State on or after January 1, 2019; and

(C) performs the majority of his or her employment duties remotely from a home office or a co-working space located in this State.

(2) “New Vermont remote worker” means an individual who:

(A) becomes a full-time employee of a business with its domicile or primary place of business in this State on or after January 1, 2019; and

(B) performs the majority of his or her employment duties remotely from a home office or a co-working space located in this State.

(3) “Qualifying remote worker expenses” means the actual costs incurred by a new Vermont remote worker or a new resident remote worker for one or more of the following that are necessary to perform his or her employment duties:

(A) relocation to this State;

(B) computer software and hardware;

(C) broadband access or upgrade; and

(D) membership in a co-working or similar space.

(b)(1) A new Vermont remote worker and a new resident remote worker shall be eligible for a nonrefundable credit against the income tax liability imposed under this chapter for qualifying remote worker expenses in an amount not to exceed \$2,000.00 per year for five years, and not to exceed \$10,000.00 per worker.

(2)(A) The Agency of Commerce and Community Development shall develop a process to certify new Vermont remote workers and new resident remote workers for eligibility for a credit under this section.

(B) Upon certifying that a new Vermont remote worker or new resident remote worker meets the eligibility requirements of this section and certifying his or her qualifying expenses incurred in the year, the Agency shall issue to the worker a credit certificate for the amount of his or her qualifying expenses, which the worker shall file with his or her tax return.

(3) The Agency shall have the authority to annually award not more than \$500,000.00 in credit certificates to new Vermont remote workers and to new resident remote workers on a first-come, first-served basis, as follows:

(A) not more than \$250,000.00 in total credits for new Vermont remote workers; and

(B) any remaining amount of the annual total for new resident remote workers.

(c) A new Vermont remote worker or new resident remote worker may:

(1) first claim a credit under this section in the year following the year in which he or she first qualifies as a new Vermont remote worker or new resident remote worker;

(2) claim an additional credit in each of the subsequent four tax years, provided he or she remains a resident of this State and a full-time remote worker; and

(3) carry forward the amount of any unused credit for five tax years.

(d) The Agency of Commerce and Community Development shall:

(1) promote awareness of the tax credit authorized in this section; and

(2) adopt measurable goals, performance measures that demonstrate results, and an audit strategy to assess the utilization and performance of the credit authorized in this section.

Sec. 20. IMPROVING INFRASTRUCTURE AND SUPPORT FOR  
REMOTE WORK IN VERMONT; STUDY; REPORT

(a) The Secretary of Commerce and Community Development, in consultation with the Commissioners of Labor, of Public Service, and of Buildings and General Services and other interested stakeholders, shall identify and examine the infrastructure improvements and other support needed to enhance the ability of businesses to establish a remote presence in Vermont and to allow Vermonters and businesses developing from maker spaces, co-working spaces, remote work hubs, and innovation spaces to work and provide services remotely.

(b) Based on his or her findings, and in consultation with the Commissioners of Labor, of Public Service, and of Buildings and General Services and other interested stakeholders, the Secretary shall design a program to address the needs identified pursuant to subsection (a) of this section.

(c) Specifically, the program shall:

(1) address the infrastructure needs of remote workers and businesses developing from generator spaces;

(2) promote and facilitate the use of remote worksites and maker spaces, co-working spaces, remote work hubs, and innovation spaces;

(3) encourage out-of-state companies to use remote workers in Vermont;

(4) reduce the administrative and regulatory burden on businesses employing remote workers in Vermont;

(5) increase the ease of start-up companies finding remote work or maker spaces, co-working spaces, remote work hubs, and innovation spaces in the State; and

(6) support the interconnection of current and future maker spaces, co-working spaces, remote work hubs, and innovation spaces in this State.

(d) On or before January 15, 2019, the Secretary shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a written report detailing:

(1) his or her findings, program, and any recommendations for legislative action to implement the program; and

(2) any additional policy changes to improve the climate for remote workers, including zoning measures, insurance and liability issues, workforce training needs, broadband access, access to co-working spaces, and an

assessment of environmental implications of working remotely.

#### Sec. 21. INTEGRATED PUBLIC-PRIVATE STATE WORKSITES

(a) The Secretary of Administration, in consultation with the Secretary of Commerce and Community Development and the Commissioner of Buildings and General Services, shall examine the potential for the State to establish remote worksites that are available for use by both State employees and remote workers in the private sector.

(b) The Secretary shall examine the feasibility of and potential funding models for the worksites, including the opportunity to provide at low or no cost co-working space within State buildings that are currently vacant or underutilized.

(c) On or before January 15, 2019, the Secretary shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs detailing his or her findings and any recommendations for legislative action.

#### Sec. 22. BROADBAND AVAILABILITY FOR REMOTE WORKERS

On or before January 15, 2019, the Director of Telecommunications and Connectivity, in consultation with the Agency of Commerce and Community Development, shall submit with the annual report required by 30 V.S.A. § 202e findings and recommendations concerning:

(1) the current availability of broadband service in municipal downtown centers that do, or could at reasonable cost, support one or more co-working spaces or similar venues for remote workers and small businesses; and

(2) strategies for expanding and enhancing broadband availability for such spaces.

\* \* \* Workforce Development in Particular Sectors;  
Television and Film Production \* \* \*

#### Sec. 23. WORKFORCE DEVELOPMENT; FILM AND TELEVISION TRADES

(a) The Vermont Department of Labor, in partnership with the Vermont Film Institute, Vermont Technical College, and local institutes of higher education shall explore and pursue opportunities to access current federal ApprenticeshipUSA funds to develop and offer registered apprenticeships in the film and television production trades industry, including electrical work, lighting, set building, and art direction.

(b) Related instruction that is developed and administered as part of a

registered apprenticeship program shall also provide the registered apprentice with college credit that is recognized by an accredited post-secondary institution in Vermont.

(c) The Department of Labor, in partnership with the Agency of Education and Agency of Commerce and Community development, shall:

(1) promote other work-based learning experiences, including internships, job shadowing, returnships, and on-the-job training, in the film and television production trades industry;

(2) build connections with and among industry professionals; and

(3) conduct outreach to middle school, high school, and postsecondary students.

\* \* \* Workforce Development in Particular Sectors;  
Green Energy and Technology \* \* \*

#### Sec. 24. WORKFORCE DEVELOPMENT; GREEN ENERGY AND TECHNOLOGY

The Department of Labor, in partnership with the Agency of Education, the Agency of Commerce and Community Development, the Agency of Natural Resources, and interested stakeholders, shall:

(1) develop career pathways, beginning in middle school, that lead to employment in the green energy sector;

(2) work with employers in the green energy sector to explore opportunities to create registered apprenticeships,

(3) identify certifications and credentials that support workforce expansion in the green energy sector; and

(4) collaborate, to the extent possible, to create, fund, and offer instruction that leads industry recognized credentials in the green energy sector.

\* \* \* Effective Date \* \* \*

#### Sec. 25. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 16, 2018, pages 708-709 and March 20, 2018, page 719)

**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 Economic Development, Housing and General Affairs with the following amendments thereto:

First: By striking out Sec. 3 in its entirety

Second: By striking out Sec. 9 in its entirety and inserting in lieu thereof a new Sec. 9 to read:

Sec. 9. 10 V.S.A. § 543 is amended to read:

§ 543. WORKFORCE EDUCATION AND TRAINING FUND; GRANT PROGRAMS

\* \* \*

(g) Career Pathways. Programs that are funded under this section resulting in a credit, certificate, or credential shall demonstrate alignment with a Career Pathway.

(h) Expanding offerings. A regional career and technical education center that develops an adult technical education program of study using funding under this section shall:

(1) make the program materials available to other regional career and technical education centers and adult technical education programs;

(2) to the extent possible, align the program with subsequent programs offered through the Vermont State College System, the University of Vermont and State Agricultural College, or an accredited independent college located in Vermont; and

(3) respond to current or projected occupational demands.

Third: By striking out Secs. 11–12 in their entirety

Fourth: In Sec. 13 by striking out subsection (c) in its entirety and redesignating subsection (d) as subsection (c)

Fifth: By striking out Sec. 18 in its entirety and inserting in lieu thereof a new Sec. 18 to read:

Sec. 18. TARGETED ENHANCED YOUTH WORKFORCE READINESS PROGRAM

(a) The Department of Forests, Parks and Recreation (DFPR) shall coordinate with the Department of Labor when granting to the Vermont Youth Conservation Corps the amounts appropriated to DFPR in fiscal year 2019 from the Tobacco Litigation Settlement Fund.



(b) The Departments shall ensure that the Vermont Youth Conservation Corps uses the funds to enhance its workforce preparedness and on-the-job training programs, with special attention for at-risk youths 18 to 24 years of age.

(c) Programs funded pursuant to this section may include classroom training at Vermont Technical College that focuses on vocations where the Department and Vermont employers have identified a shortage of workers.

And by renumbering the sections of the bill to be numerically correct

(Committee vote: 5-0-2)

### **House Proposals of Amendment**

#### **S. 105**

An act relating to consumer justice enforcement.

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. 9 V.S.A. chapter 152 is added to read:

#### CHAPTER 152. MODEL STATE CONSUMER JUSTICE ENFORCEMENT ACT; STANDARD-FORM CONTRACTS

##### § 6055. UNCONSCIONABLE TERMS IN STANDARD-FORM CONTRACTS PROHIBITED

(a) Unconscionable terms. There is a rebuttable presumption that the following contractual terms are substantively unconscionable when included in a standard-form contract to which one of the parties to the contract is an individual and that individual does not draft the contract:

(1) A requirement that resolution of legal claims take place in an inconvenient venue. As used in this subdivision, "inconvenient venue" includes for State law claims a place other than the state in which the individual resides or the contract was consummated, and for federal law claims a place other than the federal judicial district where the individual resides or the contract was consummated. Inconvenient venue shall not include the State or federal judicial district in which the individual suffered injury during the performance of the contract.

(2) A waiver of the individual's right to assert claims or seek remedies provided by State or federal statute.

(3) A waiver of the individual's right to seek punitive damages as provided by law.

(4) Pursuant to 12 V.S.A. § 465, a provision that limits the time in which an action may be brought under the contract or that waives the statute of limitations.

(5) A requirement that the individual pay fees and costs to bring a legal claim substantially in excess of the fees and costs that this State's courts require to bring such a State law claim or that federal courts require to bring such a federal law claim.

(b) Relation to common law and the Uniform Commercial Code.

(1) In determining whether the terms described in subsection (a) of this section are unenforceable, a court shall consider the principles that normally guide courts in this State in determining whether unconscionable terms are enforceable. Additionally, the common law and Uniform Commercial Code shall guide courts in determining the enforceability of unfair terms not specifically identified in subsection (a) of this section.

(2) When a party claims or it appears to the court that the contract or any clause within the contract is unconscionable, the parties shall be afforded a reasonable opportunity to present evidence regarding its commercial setting, purpose, and effect to aid the court in making a determination.

(c) Severability. If a court finds that a standard-form contract contains an unconscionable term, the court shall:

(1) so limit the application of the unconscionable term or the clause containing that term as to avoid any illegal or unconscionable result; or

(2) refuse to enforce the entire contract or the specific part, clause, or provision containing the unconscionable term.

(d) Unfair and deceptive act and practice.

(1) In an underlying legal dispute between the drafting and non-drafting parties in which the drafting party seeks to enforce one or more terms identified in subsection (a) of this section, and upon a finding that such terms are actually unconscionable, the court may also find that the drafting party has thereby committed an unfair and deceptive practice in violation of section 2453 of this title and may order up to \$1,000.00 in statutory damages per violation and an award of reasonable costs and attorney's fees.

(2) Each term the drafting party seeks to enforce that is found by the court to be actually unconscionable may constitute a separate violation of this section.

(e) Limitation on applicability. This section shall not apply to contracts to which one party is:

(1) regulated by the Vermont Department of Financial Regulation; or

(2) a financial institution as defined by 8 V.S.A. § 11101(32).

(f) Nothing in this chapter shall be construed to limit the application of 12 V.S.A. § 1037 (acceptance of inherent risks).

Sec. 1a. LEGISLATIVE INTENT

The General Assembly acknowledges that outdoor recreation is an important part of Vermont's economy and culture that encourages healthy communities and individuals, increases our connection to nature, enhances the Vermont lifestyle, and supports the attraction of high-quality employers and a sustainable workforce in all economic sectors. It is not the intent of the General Assembly to change the way courts allocate responsibility for the inherent risks of any outdoor recreational activity or sport.

Sec. 2. EFFECTIVE DATE

This act shall take effect on October 1, 2019.

**S. 150**

An act relating to automated license plate recognition systems.

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. EXTENSION OF SUNSET

Subsection (b) of 2013 Acts and Resolves No. 69, Sec. 3, as amended by 2015 Acts and Resolves No. 32, Sec. 1, as further amended by 2016 Acts and Resolves No. 169, Sec. 6, is further amended to read:

(b) Secs. 1–2 of this act, 23 V.S.A. §§ 1607 and 1608, shall be repealed on July 1, ~~2018~~ 2019.

Sec. 2. AUTOMATED LICENSE PLATE RECOGNITION SYSTEMS;  
AUDITOR EXAMINATION OF COMPLIANCE

(a) On or before January 15, 2019, with respect to data collected by Automated License Plate Recognition (ALPR) systems, the Auditor of Accounts (Auditor) shall:

(1) examine requests for “historical data” as defined in 23 V.S.A. § 1607 that resulted in a release of historical data to the requester from July 1, 2016 through June 30, 2018 by the Vermont Intelligence Center (VIC), and shall examine such additional records as may be required, to enable the Auditor to determine whether the request and the release complied with requirements of 23 V.S.A. § 1607(c)(2); and

(2) submit a written report to the House and Senate Committees on Judiciary and on Transportation summarizing the findings of the examination required under this subsection.

(b) Notwithstanding any exemption under the Public Records Act (PRA) or other provision of State law to the contrary, a public agency shall release to the Auditor records that the Auditor may need in order to conduct the examination required under subsection (a) of this section. After receiving any record that is exempt from public inspection and copying under the PRA, the Auditor shall have the authority and the obligation to assert the PRA exemption if the Auditor receives a request to inspect or copy the record.

Sec. 3. 23 V.S.A. § 1607(e) is amended to read:

(e) Oversight; rulemaking.

(1) The Department of Public Safety, in consultation with the Department of Motor Vehicles, shall establish a review process to ensure that information obtained through use of ALPR systems is used only for the purposes permitted by this section. The Department of Public Safety shall report the results of this review annually on or before January 15 to the Senate and House Committees on Judiciary and on Transportation. The report shall contain the following information based on prior calendar year data:

(A) the total number of ALPR units being operated by government agencies in the State, the number of such units that are stationary, and the number of units submitting data to the statewide ALPR database;

\* \* \*

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

#### **S. 179**

An act relating to community justice centers.

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. 28 V.S.A. § 107 is amended to read:

§ 107. OFFENDER AND INMATE RECORDS; CONFIDENTIALITY;  
EXCEPTIONS; CORRECTIONS

(a)(1) The Commissioner shall adopt a rule pursuant to 3 V.S.A. chapter 25 defining what are “offender and inmate records,” as that phrase is produced or acquired by the Department.

(2) As used in this section, the phrase “offender and inmate records” means the records defined under the rule required under subdivision (1) of this subsection.

(b) Offender and inmate records ~~maintained by the Department~~ are exempt from public inspection and copying under the Public Records Act and shall be kept confidential, except that the Department:

(1) Shall release or permit inspection of such records if required under federal or State law, including 42 U.S.C. §§ 10805 and 10806 (Protection and Advocacy Systems).

(2) Shall release or permit inspection of such records pursuant to a court order for good cause shown or, in the case of an offender or inmate seeking records relating to him or her in litigation, in accordance with discovery rules.

(3) Shall release or permit inspection of such records to a State or federal prosecutor as part of a criminal investigation pursuant to a court order issued ex parte if the court finds that the records may be relevant to the investigation. The information in the records may be used for any lawful purpose but shall not otherwise be made public.

(4) Shall release or permit inspection of such records to the Department for Children and Families for the purpose of child protection, unless otherwise prohibited by law.

(5) Shall release or permit inspection of ~~designated~~ specific categories or types of offender and inmate records to specific persons, or to any person, in accordance with ~~rules~~ a rule that the Commissioner shall adopt pursuant to 3 V.S.A. chapter 25, provided that the Commissioner shall redact any information that may compromise the safety of any person, or that is required by law to be redacted, prior to releasing or permitting inspection of such records under the ~~rules~~ rule. ~~The Commissioner shall authorize release or inspection of offender and inmate records under these rules~~ rule shall provide for disclosure of a category or type of record in either of the following circumstances:

(A) ~~When~~ when the public interest served by disclosure of a record outweighs the privacy, security, or other interest in keeping the record confidential; ~~or~~

(B) ~~To~~ in order to provide an offender or inmate access to offender and inmate records relating to him or her ~~if access is not otherwise guaranteed under this subsection, unless providing such access would reveal information that, unless:~~

(i) the category or type of record is confidential or exempt from disclosure under a law other than this section; ~~;~~

(ii) providing access would unreasonably interfere with the Department's ability to perform its functions, including unreasonable interference due to the staff time or other cost associated with providing a category or type of record; or

(iii) providing access may compromise the health, safety, security, or rehabilitation of the offender or inmate or of another person.

(c)(1) The rules may specify circumstances under which the Department Unless otherwise provided in this section or required by law, the rule required under subdivision (b)(5) of this section:

(A) shall specify the categories or types of records to be disclosed and to whom they are to be disclosed, and shall not provide for any exceptions to disclosure of records that fall within these categories or types except for redactions required by law;

(B) shall specify which categories or types of records relating to an offender or inmate shall be provided to the offender or inmate as a matter of course and which shall be provided only upon request;

(C) may limit the offender's or inmate's access to include only records produced or acquired in the year preceding the date of the request;

(D) may limit the number of requests by an offender or inmate that will be fulfilled per calendar year, as long as provided that the Department fulfills at least one request two requests by the offender or inmate per calendar year excluding any release of records ordered by a court, and at least one additional request in the same calendar year limited to records not in existence at the time of the original request or not within the scope of the original request. The rules also;

(E) may specify circumstances when the an offender's or inmate's right of access will be limited to an inspection overseen by an agent or employee of the Department;

(F) may provide that the Department has no obligation to provide an offender or inmate a record previously provided if he or she still has access to the record. The rules; and

(G) shall reflect the Department's obligation not to withhold a record in its entirety on the basis that it contains some confidential or exempt content, to redact such content, and to make the redacted record available.

(2) The Department shall provide records available to an offender or inmate under the rule free of charge, except that if the offender or inmate is responsible for the loss or destruction of a record previously provided, the Department may charge him or her for a replacement copy at \$0.01 per page.

~~(e)~~(d) Notwithstanding the provisions of 1 V.S.A. chapter 5, subchapter 3 (Public Records Act) that govern the time periods for a public agency to respond to a request for a public record and rights of appeal, the Commissioner shall adopt a rule pursuant to 3 V.S.A. chapter 25 governing response and appeal periods and appeal rights in connection with a request by an offender or inmate to access records relating to him or her maintained by the Department. The rule shall provide for a final exhaustion of administrative appeals no later than 45 days from the Department's receipt of the initial request.

~~(d)~~(e) An offender or inmate may request that the Department correct a fact in a record maintained by the Department that is material to his or her rights or status, except for a determination of fact that resulted from a hearing or other proceeding that afforded the offender or inmate notice and opportunity to be heard on the determination. The rule required under subsection ~~(e)~~(d) of this section shall reference that requests for such corrections are handled in accordance with the Department's grievance process. If the Department issues a final decision denying a request under this subsection, the offender or inmate may appeal the decision to the Civil Division of the Superior Court pursuant to Rule 74 of the Vermont Rules of Civil Procedure. The Court shall not set aside the Department's decision unless it is clearly erroneous.

## Sec. 2. REPEAL

In 2016 Acts and Resolves No. 137, Sec. 7, as amended by 2017 Acts and Resolves No. 78, Sec. 10, subsections (b)–(e) and (g) hereby are repealed.

## Sec. 3. EFFECTIVE DATE; TRANSITION PROVISION

(a) This act shall take effect on passage.

(b) Prior to the Commissioner of Corrections' (Commissioner) adopting a rule pursuant to the rulemaking mandates of 28 V.S.A. § 107(a) and (b)(5) as amended in Sec. 1 of this act, the Department of Corrections (Department) shall keep confidential "offender and inmate records" as defined in Department policies or directives in effect prior to the effective date of the rule, except that the Department:

(1) shall apply the exceptions to the confidentiality of offender and inmate records that exist under 28 V.S.A. § 107(b)(1)–(4);

(2) shall apply the exceptions to the confidentiality of offender and inmate records that exist under directives, policies, and practices adopted by the Department prior to the effective date of the rule, and in so doing shall apply the redaction requirements of 28 V.S.A. § 107(b)(5) as amended in Sec. 1 of this act; and

(3) may rely upon the limitations on offender and inmate access to records, and the provisions related to charging for copies of such records, in

28 V.S.A. § 107(c)(1)(C)–(F) and (c)(2) as amended in Sec. 1 of this act.

(c) On or before September 15, 2018, the Commissioner shall prefile rules with the Interagency Committee on Administrative Rules in accordance with the rulemaking requirements of 28 V.S.A. § 107, as amended in Sec. 1 of this act. The Commissioner shall update the Joint Legislative Justice Oversight Committee on the status of its efforts to adopt the rules at the Oversight Committee’s first meeting on or after September 15, 2018.

And that after passage the title of the bill be amended to read:

An act relating to offender and inmate records.

### **S. 180**

An act relating to the Vermont Fair Repair Act.

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. FINDINGS

The General Assembly finds:

(1) The repair of modern electronic products, even for such minor repairs as replacing a battery or screen, often becomes difficult or impossible due to manufacturers’ limitation of access to information or parts to effect those repairs.

(2) Manufacturers may limit access to only those customers who are under warranty; may refuse access for owners of older models; and may refuse to stock or sell parts at fair and reasonable prices. Consequently, consumers are often left with few options other than to buy new.

(3) Modern repairs involve electronics. Repairing those electronics requires information, parts, firmware access, and tooling specifications from the product designers.

(4) The knowledge and tools to repair and refurbish consumer electronic products should be distributed as widely and freely as the products themselves. In contrast to centralized manufacturing, reuse must be broadly distributed to achieve economies of scale.

(5) Many manufacturers have made commitments to sustainability, repair, and reuse, and the innovation economy of Vermont and the United States has had many positive economic and environmental impacts. Legislation that further promotes extending the lifespan of consumer electronic products can create jobs and benefit the environment.



(6) As demonstrated by Massachusetts's experience with a right to repair initiative concerning automobiles in 2014, which resulted in a compromise between manufacturers and independent repair providers to adopt a voluntary nationwide approach for providing diagnostic codes and repair data available in a common format by the 2018 model year, legislative action to secure a right to repair can achieve positive benefits for manufacturers, independent businesses, and consumers.

## Sec. 2. RIGHT TO REPAIR TASK FORCE; REPORT

(a) Creation. There is created the Right to Repair Task Force.

(b) Membership. The Task Force shall be composed of the following five members:

(1) one current member of the House of Representatives, appointed by the Speaker of the House;

(2) one current member of the Senate, appointed by the Committee on Committees;

(3) the Attorney General or designee;

(4) the Secretary of Commerce and Community Development or designee; and

(5) the Secretary of Digital Services or designee.

(c) Stakeholder engagement. The Task Force shall solicit testimony and participation in its work from representatives of relevant stakeholders, including authorized and independent repair providers, and business and consumer groups with an interest in consumer electronic products.

(d) Powers and duties. The Task Force shall review and consider the following issues relating to potential legislation designed to secure the right to repair consumer electronic products, including personal electronic devices such as cell phones, tablets, and computers:

(1) the scope of products to include;

(2) economic costs and benefits, including economic development and workforce opportunities;

(3) effects on the cost and availability to consumers of new and used consumer electronic products in the marketplace, including diminished availability of refurbished products for secondary users;

(4) environmental and economic costs of electronic waste;

(5) legal issues, including intellectual property and trade secrets, potential for alignment or conflict with federal law, and litigation risks;

(6) privacy and security features in electronic products; and

(7) any other issues the Task Force considers relevant and necessary to accomplish its work.

(e) Assistance. The Task Force shall have the administrative, legal, and fiscal assistance of the Office of Legislative Council and the Joint Fiscal Office. Relevant agencies and departments within State government shall provide their technical and other expertise upon request of the Task Force.

(f) Report. On or before January 15, 2019, the Task Force shall submit a written report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development with its findings and any recommendations for legislative action, including specific findings and recommendations concerning personal electronic devices such as cell phones, tablets, and computers.

(g) Meetings.

(1) The Office of Legislative Council shall call the first meeting of the Task Force to occur on or before August 15, 2018.

(2) The legislative members of the Task Force shall serve as co-chairs.

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

(4) The Task Force shall cease to exist on January 15, 2019.

(h) Compensation and reimbursement. For attendance at meetings during adjournment of the General Assembly, a legislative member of the Task Force serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than five meetings. These payments shall be made from monies appropriated to the General Assembly.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

## **S. 206**

An act relating to business consumer protection for point-of-sale equipment leases.

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. 9 V.S.A. chapter 63, subchapter 9 is added to read:

### Subchapter 9. Credit Card Terminal Finance Leases

§ 2482h. SOLICITATION; MATERIAL MISREPRESENTATION

(a) As used in this subchapter, “credit card terminal” means physical equipment used at the point of sale to accept payment by a payment card, including a credit card, debit card, EBT card, prepaid card, or gift card.

(b) A person who solicits a finance lease for the use of a credit card terminal shall accurately disclose:

(1) the nature and scope of his or her relationship to the person or persons who own, lease, service, and finance the credit card terminal and, if known, provide related services, including whether he or she is an employee, independent contractor, or agent of one or more of those persons;

(2) the terms of a finance lease and whether oral statements or commitments he or she makes to the prospective lessee while soliciting a finance lease are included in the terms of the finance lease and enforceable against a party to a finance lease; and

(3) whether the consumer has an option to purchase the credit card terminal that is the subject of the finance lease.

#### § 2482i. CREDIT CARD TERMINAL; FINANCE LEASE PROVISIONS

The following provisions apply to a finance lease for the use of a credit card terminal:

(1) Plain language. The party primarily responsible for drafting the finance lease shall use plain language designed to be understood by ordinary consumers, presented in a reasonable format, typeface, and font.

(2) Finance lease; costs; disclosure. The finance lease shall specify:

(A) the terms of the finance lease;

(B) the total price of the finance lease;

(C) the total monthly payment due, including any recurring monthly fees or charges; and

(D) any other penalties, charges, or fees and the conditions under which they may be incurred.

(3) Relationship to processing services and fees. If a lessee who enters into a finance lease for a credit card terminal also agrees to receive bundled services for the terminal, such as credit card processing services, from the lessor or a business affiliated with the lessor, either the finance lease or a separate agreement for the bundled services shall include an itemized statement of the terms, costs, fees, and potential penalties for each service, as specified in subdivision (2) of this section.

(4) Contact information. The finance lease shall clearly and conspicuously identify the lessor of the credit card terminal and the name, mailing address, telephone number, email address or website, and relationship to the lessor of:

(A) the person to whom the lessee is required to make payments for the credit card terminal;

(B) the person whom the lessee should contact with questions or problems concerning the credit card terminal;

(C) the person to whom the lessee should deliver the credit card terminal for return or repair; and

(D) the sales representative or other person acting with actual or apparent authority on behalf of the lessor to solicit the finance lease.

(5) Prohibited provisions.

(A) A provision of a finance lease that permits or requires a dispute to be resolved in a judicial forum that would not otherwise have jurisdiction over the lessee is against public policy and unenforceable.

(B) A lessor shall not collect any charge or fee for business personal property tax on the credit card terminal unless the tax is actually imposed.

(6) Duty to retain and provide finance lease; right to cancel.

(A) A lessor shall provide a copy of the executed finance lease to the lessee and shall retain a written or electronic copy of the finance lease for not less than four years after the lease terminates.

(B) A lessee shall have the right to cancel a finance lease not later than 45 days after the lessor provides a copy of the executed finance lease to the lessee.

(C) If the lessee exercises his or her right to cancel:

(i) the lessor may retain any payments made by the lessee after the lessor delivered a copy of the executed finance lease;

(ii) the lessor may impose a reasonable cancellation fee, not to exceed the total monthly payment amount specified in subdivision (2)(C) of this section.

#### § 2482j. VIOLATIONS

A person who violates this subchapter commits an unfair and deceptive act in trade and commerce in violation of section 2453 of this title.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

**S. 222**

An act relating to miscellaneous judiciary procedures.

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. 10 V.S.A. § 8007(c) is amended to read:

(c) An assurance of discontinuance shall be in writing and signed by the respondent and shall specify the statute or regulation alleged to have been violated. The assurance of discontinuance shall be simultaneously filed with the Attorney General and the Environmental Division. The Secretary or the Natural Resources Board shall post a final draft assurance of discontinuance to its website and shall provide a final draft assurance of discontinuance to a person upon request. When signed by the Environmental Division, the assurance shall become a judicial order. Upon motion by the Attorney General made within ~~10~~ 14 days ~~of~~ after the date the assurance is signed by the Division and upon a finding that the order is insufficient to carry out the purposes of this chapter, the Division shall vacate the order.

Sec. 2. 12 V.S.A. § 1 is amended to read:

§ 1. RULES OF PLEADING, PRACTICE, AND PROCEDURE; FORMS

The Supreme Court is empowered to prescribe and amend from time to time general rules with respect to pleadings, practice, evidence, procedure, and forms for all actions and proceedings in all courts of this State. The rules thus prescribed or amended shall not abridge, enlarge, or modify any substantive rights of any person provided by law. The rules when initially prescribed or any amendments thereto, including any repeal, modification, or addition, shall take effect on the date provided by the Supreme Court in its order of promulgation, unless objected to by the ~~Joint~~ Legislative Committee on Judicial Rules as provided by this chapter. If objection is made by the ~~Joint~~ Legislative Committee on Judicial Rules, the initially prescribed rules in question shall not take effect until they have been reported to the General Assembly by the Chief Justice of the Supreme Court at any regular, adjourned, or special session thereof, and until after the expiration of 45 legislative days of that session, including the date of the filing of the report. The General Assembly may repeal, revise, or modify any rule or amendment thereto, and its action shall not be abridged, enlarged, or modified by subsequent rule.

Sec. 3. 12 V.S.A. § 2 is amended to read:

§ 2. DEFINITIONS

As used in sections 3 and 4 of this chapter:

(1) "Adopting authority" means the Chief Justice of the Supreme Court or the ~~administrative judge~~ Chief Superior Judge, where appropriate;

(2) "Court" means the Supreme Court, except in those instances where the statutes permit rules to be adopted by the ~~administrative judge~~ Chief Superior Judge, in which case, the word "court" means the ~~administrative judge~~; Chief Superior Judge.

\* \* \*

Sec. 4. 12 V.S.A. § 701 is amended to read:

§ 701. SUMMONS

(a) Any law enforcement officer authorized to serve criminal process or a State's Attorney may summon a person who commits an offense to appear before Superior Court by a summons in such form as prescribed by the Court Administrator, stating the time when, and the place where, the person shall appear, signed by the enforcement officer or State's Attorney and delivered to the person.

\* \* \*

~~(d) A person who does not so appear in response to a summons for a traffic offense as defined in 23 V.S.A. § 2201 shall be fined not more than \$100.00. [Repealed.]~~

Sec. 5. 12 V.S.A. § 3125 is amended to read:

§ 3125. PAYMENT OF TRUSTEE'S CLAIM BY CREDITOR

When it appears that personal property in the hands of a person summoned as a trustee is mortgaged, pledged, or liable for the payment of a debt due to him or her, the court may allow the attaching creditor to pay or tender the amount due to the trustee, and he or she shall thereupon deliver such property, as ~~hereinbefore~~ provided in this subchapter, to the officer holding the execution.

Sec. 6. 12 V.S.A. § 3351 is amended to read:

§ 3351. ATTACHMENT, TAKING IN EXECUTION, AND SALE

Personal property not exempt from attachment, subject to a mortgage, pledge, or lien, may be attached, taken in execution, and sold as the property of the mortgagor, pledgor, or general owner, in the same manner as other personal property, except as ~~hereinafter~~ otherwise provided in this subchapter.

Sec. 7. 18 V.S.A. § 4245 is amended to read:

§ 4245. REMISSION OR MITIGATION OF FORFEITURE

(a) On petition filed within 90 days of after completion of a forfeiture proceeding, the claims commission established in 32 V.S.A. § 931 a court that issued a forfeiture order pursuant to section 4244 of this title may order that the forfeiture be remitted or mitigated. The petition shall be sworn, and shall include all information necessary for its resolution or shall describe where such information can be obtained. Upon receiving a petition, the ~~claims commission~~ court shall investigate and may conduct a hearing if in its judgment it would be helpful to resolution of the petition. The ~~claims commission~~ court shall either grant or deny the petition within 90 days.

(b) The ~~claims commission~~ court may remit or mitigate a forfeiture upon finding that relief should be granted to avoid extreme hardship or upon finding that the petitioner has a valid, good faith interest in the property which is not held through a straw purchase, trust, or otherwise for the benefit of another and that the petitioner did not at any time have knowledge or reason to believe that the property was being or would be used in violation of the law.

Sec. 8. 18 V.S.A. § 4474g(b) is amended to read:

(b) Prior to acting on an application for a Registry identification card, the Department shall obtain with respect to the applicant a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation. Each applicant shall consent to the release of criminal history records to the Department on forms developed by the Vermont Crime Information Center. A fingerprint-supported, out-of-state criminal history record and a criminal history record from the Federal Bureau of Investigation shall be required only every three years for renewal of a card for a dispensary owner, principal, and financier.

Sec. 9. REPEAL

2017 Acts and Resolves No. 11, Sec. 60 (amending 32 V.S.A. § 5412) is repealed.

Sec. 10. 3 V.S.A. § 163 is amended to read:

§ 163. JUVENILE COURT DIVERSION PROJECT

(a) The Attorney General shall develop and administer a juvenile court diversion project for the purpose of assisting juveniles charged with delinquent acts. ~~Rules which were adopted by the Vermont Commission on the Administration of Justice to implement the juvenile court diversion project shall be adapted by the Attorney General to the programs and projects established under this section.~~ In consultation with the diversion programs, the Attorney General shall adopt a policies and procedures manual in compliance with this section.

(b) The diversion ~~project~~ program administered by the Attorney General shall ~~encourage the development~~ support the operation of diversion ~~projects~~ programs in local communities through grants of financial assistance to, or by contracting for services with, municipalities, private groups, or other local organizations. The Attorney General may require local financial contributions as a condition of receipt of project ~~grants~~ funding.

\* \* \*

(i) Notwithstanding subdivision (c)(1) of this section, the diversion program may accept cases from the Youth Substance Abuse Safety Program pursuant to 7 V.S.A. § 656 or 18 V.S.A. § 4230b. The confidentiality provisions of this section shall become effective when a notice of violation is issued under 7 V.S.A. § 656(b) or 18 V.S.A. § 4230b(b), and shall remain in effect unless the person fails to register with or complete the Youth Substance Abuse Safety Program.

Sec. 11. 3 V.S.A. § 164 is amended to read:

§ 164. ADULT COURT DIVERSION PROGRAM

(a) The Attorney General shall develop and administer an adult court diversion program in all counties. ~~The program shall be operated through the juvenile diversion project. The~~ In consultation with diversion programs, the Attorney General shall adopt ~~only such rules as are necessary to establish an adult court diversion program for adults~~ a policies and procedures manual, in compliance with this section.

\* \* \*

(c) The program shall ~~encourage the development~~ support the operation of diversion programs in local communities through grants of financial assistance to, or contracts for services with, municipalities, private groups, or other local organizations. The Attorney General may require local financial contributions as a condition of receipt of program ~~grants~~ funding.

\* \* \*

(e) All adult court diversion programs receiving financial assistance from the Attorney General shall adhere to the following provisions:

(1) The diversion program shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The prosecuting attorney may refer a person to diversion either before or after arraignment and shall notify in writing the diversion program and the court of his or her intention to refer the person to diversion. The matter shall become confidential when notice is provided to the court. If a person is charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A)



and the crime is a misdemeanor, the prosecutor shall provide the person with the opportunity to participate in the court diversion program unless the prosecutor states on the record at arraignment or a subsequent hearing why a referral to the program would not serve the ends of justice. If the prosecuting attorney refers a case to diversion, the prosecuting attorney may release information to the victim upon a showing of legitimate need and subject to an appropriate protective agreement defining the purpose for which the information is being released and in all other respects maintaining the confidentiality of the information; otherwise files held by the court, the prosecuting attorney, and the law enforcement agency related to the charges shall be confidential and shall remain confidential unless:

- (A) the ~~Board~~ diversion program declines to accept the case;
- (B) the person declines to participate in diversion;
- (C) the ~~Board~~ diversion program accepts the case, but the person does not successfully complete diversion; or
- (D) the prosecuting attorney recalls the referral to diversion.

\* \* \*

(5) All information gathered in the course of the adult diversion process shall be held strictly confidential and shall not be released without the participant's prior consent (except that research and reports that do not ~~require~~ ~~or~~ establish the identity of individual participants are allowed).

\* \* \*

(7)(A) ~~The~~ Irrespective of whether a record was expunged, the adult court diversion program shall maintain sufficient records so that the reasons for success or failure of the program in particular cases and overall can be investigated by program staff. These records shall include a centralized statewide filing system that will include the following information about individuals who have successfully completed an adult court diversion program:

- (i) name and date of birth;
- (ii) offense charged and date of offense;
- (iii) place of residence;
- (iv) county where diversion process took place; and
- (v) date of completion of diversion process.

(B) These records shall not be available to anyone other than the participant and his or her attorney, State's Attorneys, the Attorney General, and directors of adult court diversion programs.

(C) Notwithstanding subdivision (B) of this subdivision (e)(7), the Attorney General shall, upon request, provide to a participant or his or her attorney sufficient documentation to show that the participant successfully completed diversion.

\* \* \*

(g)(1) Within 30 days ~~of~~ after the two-year anniversary of a successful completion of adult diversion, the court shall provide notice to all parties of record of the court's intention to order the ~~sealing~~ expungement of all court files and records, law enforcement records other than entries in the adult court diversion program's centralized filing system, fingerprints, and photographs applicable to the proceeding. The court shall give the State's Attorney an opportunity for a hearing to contest the ~~sealing~~ expungement of the records. The court shall ~~seal~~ expunge the records if it finds:

~~(1)(A)~~ (A) two years have elapsed since the successful completion of the adult diversion program by the participant and the dismissal of the case by the State's Attorney;

~~(2)(B)~~ (B) the participant has not been convicted of a subsequent felony or misdemeanor during the two-year period, and no proceedings are pending seeking such conviction; ~~and~~

~~(3)(C)~~ (C) rehabilitation of the participant has been attained to the satisfaction of the court; and

(D) the participant does not owe restitution related to the case under a contract executed with the Restitution Unit.

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

(3)(A) The court shall keep a special index of cases that have been expunged pursuant to this section together with the expungement order. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(B) The special index and related documents specified in subdivision (A) of this subdivision (3) shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(C) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case. The Chief Superior Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

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

~~(h) Upon~~ Except as otherwise provided in this section, upon the entry of an order ~~sealing such expunging~~ files and records under this section, the proceedings in the matter ~~under this section~~ shall be considered never to have occurred, all index references thereto shall be deleted, and the participant, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such participant inquiry in any matter. Copies of the order shall be sent to each agency or official named therein.

~~(i) Inspection of the files and records included in the order may thereafter be permitted by the court only upon petition by the participant who is the subject of such records, and only to those persons named therein. [Repealed.]~~

(j) The process of automatically sealing expunging records as provided in this section shall only apply to those persons who completed diversion on or after July 1, 2002. Any person who completed diversion prior to July 1, 2002 must apply to the court to have his or her records sealed expunged. Sealing Expungement shall occur if the requirements of subsection (g) of this section are met.

\* \* \*

~~(k) Subject to the approval of the~~ The Attorney General, in consultation with the Vermont Association of Court Diversion Programs, may develop and administer programs to assist persons under this section charged with delinquent, criminal, and civil offenses.

(l) Notwithstanding subdivision (e)(1) of this section, the diversion program may accept cases from the Youth Substance Abuse Safety Program pursuant to 7 V.S.A. § 656 or 18 V.S.A. § 4230b. The confidentiality provisions of this section shall become effective when a notice of violation is issued under 7 V.S.A. § 656(b) or 18 V.S.A. § 4230b(b), and shall remain in effect unless the person fails to register with or complete the Youth Substance Abuse Safety Program.

Sec. 12. 13 V.S.A. § 15 is added to read:

§ 15. USE OF VIDEO

(a) Except as provided by subsection (b) of this section, proceedings governed by Rules 5 and 10 of the Vermont Rules of Criminal Procedure and chapter 229 of this title shall be in person and on the record, and shall not be performed by video conferencing or other electronic means until the Defender General and the Executive Director of the Department of Sheriffs and State's Attorneys execute a joint certification that the video conferencing program in use by the court at the site where the proceeding occurs adequately ensures attorney-client confidentiality and the client's meaningful participation in the proceeding.

(b) A proceeding at which subsection (a) of this section applies may be performed by video conferencing if counsel for the defendant or a defendant not represented by counsel consents.

Sec. 13. 13 V.S.A. § 2301 is amended to read:

§ 2301. MURDER-DEGREES DEFINED

Murder committed by means of poison, or by lying in wait, or by ~~wilful~~ willful, deliberate, and premeditated killing, or committed in perpetrating or attempting to perpetrate arson, sexual assault, aggravated sexual assault, kidnapping, robbery, or burglary, shall be murder in the first degree. All other kinds of murder shall be murder in the second degree.

Sec. 14. 15 V.S.A. § 554 is amended to read:

§ 554. DECREES NISI

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

(b) Either party may file any post-trial motions under the Vermont Rules of Civil Procedure. The time within which any such motion shall be filed shall run from the date of entry of the decree of divorce and not from the date the nisi period expires. The court shall retain jurisdiction to hear and decide the motion after expiration of the nisi period. A decree of divorce shall constitute a civil judgment under the Vermont Rules of Civil Procedure.

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

Sec. 15. 18 V.S.A. § 4230f(f) is amended to read:

(f) This section shall not apply to a dispensary that lawfully provides marijuana to a registered patient or caregiver or to a registered caregiver who provides marijuana to a registered patient pursuant to chapter 86 of this title.

Sec. 16. 20 V.S.A. § 3903 is amended to read:

§ 3903. ANIMAL SHELTERS AND RESCUE ORGANIZATIONS

(a) [Repealed.]

(b) Animal intake. An animal shelter or rescue organization ~~under this chapter shall not accept an animal unless the person transferring the animal to the shelter provides~~ as defined by section 3901 of this title shall make every effort to collect the following information about an animal it accepts: the name and address of the person transferring the animal and, if known, the name of the animal, its vaccination history, and other information concerning the background, temperament, and health of the animal.

(c) Nonprofit status. A rescue organization under this chapter shall be recognized and approved as a nonprofit organization under 26 U.S.C. § 501(c)(3).

(d) Immunity from liability. Notwithstanding section 3901a of this title, any animal shelter or rescue organization assisting law enforcement in an animal cruelty investigation or seizure that, in good faith, provides care and treatment to an animal involved in the investigation or seizure shall not be held liable for civil damages by the owner of the animal unless the actions of the shelter or organization constitute gross negligence.

Sec. 17. EARNED GOOD TIME; REPORT

On or before November 15, 2018, the Commissioner of Corrections, in consultation with the Chief Superior Judge, the Attorney General, the Executive Director of the Department of Sheriffs and State's Attorneys, and the Defender General, shall report to the Senate and House Committees on Judiciary, the Senate Committee on Institutions, and the House Committee on Corrections and Institutions on the advisability and feasibility of reinstating a system of earned good time for persons under the supervision of the Department of Corrections.

Sec. 18. EFFECTIVE DATES

This act shall take effect on passage, except that Sec. 15 shall take effect on July 2, 2018.

**S. 262**

An act relating to miscellaneous changes to the Medicaid program and the Department of Vermont Health Access.

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:

\* \* \* Medicaid for Working Persons with Disabilities \* \* \*

Sec. 1. 33 V.S.A. § 1902 is amended to read:

§ 1902. QUALIFICATION FOR MEDICAL ASSISTANCE

(a) In determining whether a person is medically indigent, the Secretary of Human Services shall prescribe and use an income standard and requirements for eligibility ~~which~~ that will permit the receipt of federal matching funds under Title XIX of the Social Security Act.

(b) Workers with disabilities whose income is less than 250 percent of the federal poverty level shall be eligible for Medicaid. The income also must not exceed the Medicaid protected income level for one or the Supplemental Security Income (SSI) payment level for two, whichever is higher, after disregarding ~~all~~ the earnings of the working individual with disabilities, ~~any~~ Social Security disability insurance benefits, ~~and~~ including Social Security retirement benefits converted automatically from Social Security Disability Insurance (SSDI), if applicable; any veteran's disability benefits; and, if the working individual with disabilities is married, all income of the spouse. Earnings of the working individual with disabilities shall be documented by evidence of Federal Insurance Contributions Act tax payments, Self-Employment Contributions Act tax payments, or a written business plan approved and supported by a third-party investor or funding source. The resource limit for this program shall be \$10,000.00 for an individual and \$15,000.00 for a couple at the time of enrollment in the program. Assets attributable to earnings made after enrollment in the program shall be disregarded.

\* \* \* Eligibility for Health Vermonters and VPharm \* \* \*

Sec. 2. 2013 Acts and Resolves No. 79, Sec. 53(d), as amended by 2014 Acts and Resolves No. 179, Sec. E.307, 2015 Acts and Resolves No. 58, Sec. E.307, 2016 Acts and Resolves No. 172, Sec. E.307.3, and 2017 Acts and Resolves No. 85, Sec. E.307, is further amended to read:

(d) Secs. 31 (Healthy Vermonters) and 32 (VPharm) shall take effect on January 1, 2014, except that the Agency of Human Services may continue to calculate household income under the rules of the Vermont Health Access Plan after that date if the system for calculating modified adjusted gross income for

the Healthy Vermonters and VPharm programs is not operational by that date, but not later than ~~December 31, 2018~~ the implementation of Vermont's Integrated Eligibility system.

\* \* \* Increasing Income Threshold for Dr. Dynasaur Premiums \* \* \*

Sec. 3. 33 V.S.A. § 1901(c) is amended to read:

(c) The Secretary may charge a monthly premium, in amounts set by the General Assembly, per family for pregnant women and children eligible for medical assistance under Sections 1902(a)(10)(A)(i)(III), (IV), (VI), and (VII) of Title XIX of the Social Security Act, whose family income exceeds ~~185~~ 195 percent of the federal poverty level, as permitted under section 1902(r)(2) of that act. Fees collected under this subsection shall be credited to the State Health Care Resources Fund established in section 1901d of this title and shall be available to the Agency to offset the costs of providing Medicaid services. Any co-payments, coinsurance, or other cost sharing to be charged shall also be authorized and set by the General Assembly.

\* \* \* Provider Taxes \* \* \*

Sec. 4. 33 V.S.A. § 1958 is amended to read:

§ 1958. APPEALS

(a) Any health care provider may submit a written request to the Department for reconsideration of the determination of the assessment within 20 days of notice of the determination. The request shall be accompanied by written materials setting forth the basis for reconsideration. If requested, the Department shall hold a hearing within ~~20~~ 90 days from the date on which the reconsideration request was received. The Department shall mail written notice of the date, time, and place of the hearing to the health care provider at least ~~40~~ 30 days before the date of the hearing. On the basis of the evidence submitted to the Department or presented at the hearing, the Department shall reconsider and may adjust the assessment. Within 20 days ~~of~~ following the hearing, the Department shall provide notice in writing to the health care provider of the final determination of the amount it is required to pay based on any adjustments made by it. Proceedings under this section are not subject to the requirements of 3 V.S.A. chapter 25.

\* \* \*

Sec. 5. 33 V.S.A. § 1959(a)(3) is amended to read:

(3) Ambulance agencies shall remit the assessment amount to the Department annually on or before ~~March 31, beginning with March 31, 2017~~ June 1.

\* \* \* Medicaid; Asset Verification \* \* \*

Sec. 6. 33 V.S.A. § 403 is added to read:

§ 403. FINANCIAL INSTITUTIONS TO FURNISH INFORMATION

(a) As used in this section:

(1) “Bank” shall have the same meaning as in 8 V.S.A. § 11101.

(2) “Broker-dealer” shall have the same meaning as in 9 V.S.A. § 5102.

(3) “Credit union” shall have the same meaning as in 8 V.S.A. § 30101.

(4) “Financial institution” means any financial services provider, including a bank, credit union, broker-dealer, investment advisor, mutual fund, or investment company.

(5) “Investment advisor” shall have the same meaning as in 9 V.S.A. § 5102.

(6) “Mutual fund” shall have the same meaning as in 8 V.S.A. § 3461.

(b) A financial institution, when requested by the Commissioner of Vermont Health Access, shall furnish to the Commissioner or to an agent of the Department of Vermont Health Access information in the possession of the financial institution with reference to any person or his or her spouse who is applying for or is receiving assistance or benefits from the Department of Vermont Health Access. The Department of Vermont Health Access shall issue instructions to the financial institution detailing the nature of the request and the information necessary to satisfy the request.

(c) A financial institution shall not be subject to criminal or civil liability for actions taken in accordance with subsection (b) of this section.

Sec. 7. ASSET VERIFICATION; NOTICE TO APPLICANTS AND BENEFICIARIES

(a)(1) Each application for assistance under the Medicaid Long-Term Care or Medicaid for the Aged, Blind, and Disabled program shall contain a form of authorization, executed by the applicant or beneficiary, granting authority for the Department of Vermont Health Access and its agents to obtain financial information about the applicant’s or beneficiary’s assets from financial institutions in order to verify the applicant’s or beneficiary’s eligibility for the applicable program. The Department or its agent shall obtain the applicant’s or beneficiary’s authorization prior to requesting his or her financial information from any financial institution.

(2) The Department of Vermont Health Access shall collaborate with the Office of the Health Care Advocate to ensure that applicants to and



beneficiaries of the Medicaid Long-Term Care and Medicaid for the Aged, Blind, and Disabled programs receive notice written in plain and accessible language explaining the Department's electronic asset verification system.

(b) In the event that the financial information of an applicant's or beneficiary's spouse is required in order to determine the applicant's or beneficiary's eligibility for the Medicaid Long-Term Care or Medicaid for the Aged, Blind, and Disabled program, the Department of Vermont Health Access shall provide written notice regarding the asset verification process to the spouse and shall obtain the spouse's written authorization for the Department and its agents to obtain his or her financial information from financial institutions prior to requesting the spouse's financial information from any financial institution. The Department may determine an applicant or beneficiary to be ineligible for Medicaid if the applicant's or beneficiary's spouse refuses to provide, or revokes, his or her consent.

Sec. 8. 33 V.S.A. § 404 is added to read:

#### § 404. STATE AGENCIES TO FURNISH INFORMATION

(a) Any governmental official or agency in the State, when requested by the Department of Vermont Health Access, shall furnish to the Department information in the official's or agency's possession with reference to aid given or money paid or to be paid to any person or person's spouse who is applying for or is receiving assistance or benefits from the Department of Vermont Health Access.

(b) The Commissioner of Taxes, when requested by the Commissioner of Vermont Health Access, and unless otherwise prohibited by federal law, shall compare the information furnished by an applicant or recipient of assistance with the State income tax returns filed by such person and shall report his or her findings to the Commissioner of Vermont Health Access. Each application for assistance shall contain a form of consent, executed by the applicant, granting permission to the Commissioner of Taxes to disclose such information to the Commissioner of Vermont Health Access.

(c) On the first day of each month, each unit of the Superior Court shall provide to the Commissioner of Vermont Health Access a list of all estates, including testate, intestate, and small estates, opened during the previous calendar month within the jurisdiction of that unit's Probate Division. The list shall contain the following information for each estate:

- (1) the decedent's full name;
- (2) the decedent's date of birth;
- (3) the decedent's date of death;

(4) the docket number;

(5) the date on which the estate was opened; and

(6) the full name and contact information for the executor or administrator or his or her legal representative.

#### Sec. 9. RULEMAKING

The Vermont Supreme Court may promulgate rules under 12 V.S.A. § 1 to implement the provisions of Sec. 8, 33 V.S.A. § 404, of this act.

Sec. 10. 8 V.S.A. § 10204 is amended to read:

#### § 10204. EXCEPTIONS

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

\* \* \*

(26) Disclosure of information sought by the Department of Vermont Health Access or its agents pursuant to the Department's authority and obligations under 33 V.S.A. § 403.

\* \* \* Maximum Out-of-Pocket Prescription Drug Limit for Bronze Plans \* \* \*

Sec. 11. 2016 Acts and Resolves No. 165, Sec. 6(f), as amended by 2017 Acts and Resolves No. 25, Sec. 3, is further amended to read:

(f)(4) The Director of Health Care Reform in the Agency of Administration, in consultation with the Department of Vermont Health Access and the Office of Legislative Council, shall determine whether the Secretary of the U.S. Department of Health and Human Services has the authority under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (ACA), to waive annual limitations on out-of-pocket expenses or actuarial value requirements for bronze-level plans, or both. On or before October 1, 2016, the Director shall present information to the Health Reform Oversight Committee regarding the authority of the Secretary of the U.S. Department of Health and Human Services to waive out-of-pocket limits and actuarial value requirements, the estimated costs of applying for a waiver, and alternatives to a waiver for preserving the out-of-pocket prescription drug limit established in 8 V.S.A. § 4089i.

~~(2) If the Director of Health Care Reform determines that the Secretary has the necessary authority, then on or before March 1, 2019, the Commissioner of Vermont Health Access, with the Director's assistance, shall apply for a waiver of the cost-sharing or actuarial value limitations, or both, in order to preserve the availability of bronze-level qualified health benefit plans that meet Vermont's out-of-pocket prescription drug limit established in 8 V.S.A. § 4089i.~~

Sec. 12. 33 V.S.A. § 1814 is added to read:

§ 1814. MAXIMUM OUT-OF-POCKET LIMIT FOR PRESCRIPTION DRUGS IN BRONZE PLANS

(a)(1) Notwithstanding any provision of 8 V.S.A. § 4089i to the contrary, the Green Mountain Care Board may approve modifications to the out-of-pocket prescription drug limit established in 8 V.S.A. § 4089i for one or more bronze-level plans.

(2) The Department of Vermont Health Access shall certify at least two standard bronze-level plans that include the out-of-pocket prescription drug limit established in 8 V.S.A. § 4089i, as long as the plans comply with federal requirements. Notwithstanding any provision of 8 V.S.A. § 4089i to the contrary, the Department may certify one or more bronze-level qualified health benefit plans with modifications to the out-of-pocket prescription drug limit established in 8 V.S.A. § 4089i.

(b)(1) For each individual enrolled in a bronze-level qualified health benefit plan for the previous two plan years who had out-of-pocket prescription drug expenditures that met the out-of-pocket prescription drug limit established in 8 V.S.A. § 4089i for the most recent plan year for which information is available, the health insurer shall, absent an alternative plan selection or plan cancellation by the individual, automatically reenroll the individual in a bronze-level qualified health plan for the forthcoming plan year with an out-of-pocket prescription drug limit at or below the limit established in 8 V.S.A. § 4089i.

(2) Prior to reenrolling an individual in a plan pursuant to subdivision (1) of this subsection, the health insurer shall notify the individual of the insurer's intent to reenroll the individual automatically in a bronze-level qualified health plan for the forthcoming plan year with an out-of-pocket prescription drug limit at or below the limit established in 8 V.S.A. § 4089i unless the individual contacts the insurer to select a different plan and of the availability of bronze-level plans with higher out-of-pocket prescription drug limits. The health insurer shall collaborate with the Department of Vermont Health Access and the Office of the Health Care Advocate as to the notification's form and content.

\* \* \* Human Services Board; Fair Hearings \* \* \*

Sec. 13. 3 V.S.A. § 3091 is amended to read:

§ 3091. HEARINGS

\* \* \*

(e)(1) The Board shall give written notice of its decision to the person applying for fair hearing and to the Agency.

(2) Unless a continuance is requested or consented to by an aggrieved person, decisions and orders concerning Temporary Assistance to Needy Families (TANF) under 33 V.S.A. chapter 11, TANF-Emergency Assistance (TANF-EA) under Title IV of the Social Security Act, and medical assistance (Medicaid) under 33 V.S.A. chapter 19 shall be issued by the Board within 75 days of after the request for hearing.

(3) Notwithstanding any provision of subsection (c) or (d) or subdivision (1) of this subsection (e) to the contrary, in the case of an expedited Medicaid fair hearing, the Board shall delegate both its fact-finding and final decision-making authority to a hearing officer, and the hearing officer's written findings and order shall constitute the Board's decision and order in accordance with timelines set forth in federal law.

\* \* \*

(h)(1) Notwithstanding subsections (d) and (f) of this section, the Secretary shall review all Board decisions and orders concerning TANF, TANF-EA, Office of Child Support Cases, Medicaid, and the Vermont Health Benefit Exchange. The Secretary shall:

(A) adopt a Board decision or order, except that the Secretary may reverse or modify a Board decision or order if:

(i) the Board's findings of fact lack any support in the record; or

(ii) ~~the decision or order implicates the validity or applicability of any Agency~~ misinterprets or misapplies State or federal policy or rule; and

(B) issue a written decision setting forth the legal, factual, or policy basis for reversing or modifying a Board decision or order.

\* \* \*

(i) In the case of an appeal of a Medicaid covered service decision made by the Department of Vermont Health Access or any entity with which the Department of Vermont Health Access enters into an agreement to perform service authorizations that may result in an adverse benefit determination, the right to a fair hearing granted by subsection (a) of this section shall be

available to an aggrieved beneficiary only after that individual has exhausted, or is deemed to have exhausted, the Department of Vermont Health Access's internal appeals process and has received a notice that the adverse benefit determination was upheld.

Sec. 14. APPEAL OF MEDICAID COVERED SERVICE DECISIONS;  
FAIR HEARING; RULEMAKING

The Agency of Human Services shall adopt rules pursuant to 3 V.S.A. chapter 25 establishing a process by which the Agency shall ensure that a Medicaid beneficiary who files a request for a fair hearing with the Human Services Board prior to exhausting the Department of Vermont Health Access's internal appeals process receives consideration by the Department as though the beneficiary had properly filed an internal appeal and, if the internal appeal results in an adverse determination, that the Department shall provide to the beneficiary appropriate assistance with filing a timely request for a fair hearing with the Human Services Board if the beneficiary wishes to do so.

\* \* \* Repeal \* \* \*

Sec. 15. REPEAL

33 V.S.A. § 2010 (actual price disclosure and certification of prescription drugs) is repealed.

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

Sec. 16. EFFECTIVE DATES

This act shall take effect on passage, except:

(1) Notwithstanding 1 V.S.A. § 214, Sec. 5 (ambulance agency provider tax) shall take effect on passage and apply retroactively to January 1, 2018; and

(2) In Sec. 8, 33 V.S.A. § 404(c) (monthly list of new probate estates) shall take effect on October 1, 2018.

**S. 273**

An act relating to miscellaneous law enforcement amendments.

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:

\* \* \* Training \* \* \*

Sec. 1. 20 V.S.A. § 2351 is amended to read:

§ 2351. CREATION AND PURPOSE OF COUNCIL

\* \* \*

(b) The Council is created to encourage and assist municipalities, counties, and governmental agencies of this State in their efforts to improve the quality of law enforcement and citizen protection by maintaining a uniform standard of ~~recruitment~~ recruit and in-service training for law enforcement officers.

\* \* \*

Sec. 2. 20 V.S.A. § 2351a is amended to read:

§ 2351a. DEFINITIONS

As used in this chapter:

(1) “Executive officer” means the highest-ranking law enforcement officer of a law enforcement agency.

(2) “Law enforcement agency” means the employer of a law enforcement officer.

(3) “Law enforcement officer” means an employee of the Vermont Police Academy as permitted under section 2356 of this chapter; a member of the Department of Public Safety who exercises law enforcement powers; a member of the State Police; a Capitol Police officer; a municipal police officer; a constable who exercises law enforcement powers; a motor vehicle inspector; an employee of the Department of Liquor Control who exercises law enforcement powers; an investigator employed by the Secretary of State; a Board of Medical Practice investigator employed by the Department of Health; an investigator employed by the Attorney General or a State’s Attorney; a fish and game warden; a sheriff; a deputy sheriff who exercises law enforcement powers; a railroad police officer commissioned pursuant to 5 V.S.A. chapter 68, subchapter 8; or a police officer appointed to the University of Vermont’s Department of Police Services.

\* \* \*

Sec. 3. 20 V.S.A. § 2356 is added to read:

§ 2356. VERMONT POLICE ACADEMY; LAW ENFORCEMENT OFFICERS

(a) A person employed by the Vermont Police Academy who is certified as a law enforcement officer under this chapter and who maintains that certification shall be a law enforcement officer with statewide law enforcement authority.

(b) The ability of a person to be a certified law enforcement officer solely through his or her employment at the Vermont Police Academy pursuant to subsection (a) of this section shall not qualify that person for Group C membership in the Vermont State Retirement System.

Sec. 4. 20 V.S.A. § 2352 is amended to read:

§ 2352. COUNCIL MEMBERSHIP

(a)(1) The Vermont Criminal Justice Training Council shall consist of:

(A) the Commissioners of Public Safety, of Corrections, of Motor Vehicles, ~~and of Fish and Wildlife, and of Mental Health;~~

(B) the Attorney General;

(C) a member of the Vermont Troopers' Association or its successor entity, elected by its membership;

(D) a member of the Vermont Police Association, elected by its membership; ~~and~~

~~(E) five additional members appointed by the Governor.~~

~~(i) The Governor's appointees shall provide broad representation of all aspects of law enforcement and the public in Vermont on the Council.~~

~~(ii) The Governor shall solicit recommendations for appointment from the Vermont State's Attorneys Association, the Vermont State's Sheriffs Association, the Vermont Police Chiefs Association, and the Vermont Constables Association~~ a member of the Chiefs of Police Association of Vermont, appointed by the President of the Association;

~~(F) a member of the Vermont Sheriffs' Association, appointed by the President of the Association;~~

~~(G) a law enforcement officer appointed by the President of the Vermont State Employees Association;~~

~~(H) an employee of the Vermont League of Cities and Towns, appointed by the Executive Director of the League;~~

~~(I) an employee of the Vermont Center for Crime Victim Services, appointed by the Executive Director of the Center; and~~

~~(J) three public members who shall not be law enforcement officers or current legislators or otherwise be employed in the criminal justice system, one of whom shall be appointed by the Speaker of the House, one of whom shall be appointed by the Senate Committee on Committees, and one of whom shall be appointed by the Governor.~~

(2) A member's term shall be three years.

\* \* \*

(c) The public members of the Council set forth in subdivision (a)(1)(J) of this section shall be entitled to receive no per diem compensation for their

services, but the other members of the Council shall not be entitled to such compensation; provided, however, that all members of the Council shall be allowed their actual and necessary expenses incurred in the performance of their duties. Per diem compensation and reimbursement of expenses under this subsection shall be made as permitted under 32 V.S.A. § 1010 from monies appropriated to the Council.

\* \* \*

Sec. 4a. TRANSITIONAL PROVISION TO ADDRESS NEW COUNCIL MEMBERSHIP

Any existing member of the Vermont Criminal Justice Training Council who will serve on the Council under its new membership as set forth in Sec. 4 of this act may serve the remainder of his or her term in effect immediately prior to the effective date of Sec. 4.

Sec. 5. 20 V.S.A. § 2355 is amended to read:

§ 2355. COUNCIL POWERS AND DUTIES

(a) The Council shall adopt rules with respect to:

(1) the approval, or revocation thereof, of law enforcement officer training schools and off-site training programs, which shall include rules to identify and implement alternate routes to certification aside from the training provided at the Vermont Police Academy;

\* \* \*

(b)(1) The Council shall conduct and administer training schools and offer courses of instruction for law enforcement officers and other criminal justice personnel. The Council shall offer courses of instruction for law enforcement officers in multiple regions of the State and shall strive to replace overnight courses with these regional trainings whenever possible.

(2) The Council may also offer the basic officer's course for ~~pre-service~~ preservice students and educational outreach courses for the public, including firearms safety and use of force.

\* \* \*

Sec. 6. COUNCIL; REPORT ON TRAINING ALTERNATIVES

On or before January 15, 2019, the Executive Director of the Vermont Criminal Justice Training Council shall report to the Senate and House Committees on Government Operations regarding the Council's identification and implementation of alternate routes to certification and its plan to replace some of its overnight law enforcement training requirements at the Robert H. Wood, Jr. Criminal Justice and Fire Service Training Center of Vermont



(Police Academy) with training in multiple regions of the State, in accordance with 20 V.S.A. § 2355 in Sec. 5 of this act. The report shall specifically address any budgetary implications of the provisions of Sec. 5.

Sec. 7. 20 V.S.A. § 2358 is amended to read:

§ 2358. MINIMUM TRAINING STANDARDS; DEFINITIONS

\* \* \*

(b) The Council shall offer or approve basic training and annual in-service training for each of the following three levels of law enforcement officer certification in accordance with the scope of practice for each level, and shall determine by rule the scope of practice for each level in accordance with the provisions of this section:

(1) Level I certification.

\* \* \*

(2) Level II certification.

\* \* \*

(3) Level III certification.

\* \* \*

(c)(1) All programs required by this section shall be approved by the Council.

(2) The Council shall structure its programs so that an officer certified as a Level II law enforcement officer may complete additional training in block steps in order to transition to Level III certification, without such an officer needing to restart the certification process.

(3) Completion of a program shall be established by a certificate to that effect signed by the Executive Director of the Council.

\* \* \*

Sec. 8. 20 V.S.A. § 2361 is amended to read:

§ 2361. ADDITIONAL TRAINING

(a) ~~Nothing in this chapter prohibits any State law enforcement agency, department, or office or any municipality or county of the State from providing additional training beyond basic training to its personnel where no certification is requested of or required by the Council or its Executive Director.~~

(b) ~~The head of a State agency, department, or office, a municipality's chief of police, or a sheriff~~ executive officer of a law enforcement agency may

seek certification from the Council for any in-service training he or she, or his or her designee may provide to his or her employees law enforcement officers of his or her agency or of another agency, or both.

\* \* \* Vermont State Retirement System; Group C Membership \* \* \*

Sec. 9. LAW ENFORCEMENT STATE RETIREMENT BENEFITS  
STUDY COMMITTEE; REPORT

(a) Creation. There is created the Law Enforcement State Retirement Benefits Study Committee to evaluate the requirements for membership in Group C of the Vermont State Retirement System (System) and to make recommendations to the General Assembly on any proposed changes to those requirements.

(b) Membership.

(1) The Committee shall be composed of the following 10 members:

(A) a current member of the House Committee on Appropriations, appointed by the Speaker;

(B) a current member of the Senate Committee on Appropriations, appointed by the Committee on Committees;

(C) a current member of the House Committee on Government Operations, appointed by the Speaker;

(D) a current member of the Senate Committee on Government Operations, appointed by the Committee on Committees;

(E) the State Treasurer or designee;

(F) the Secretary of Administration or designee;

(G) the Commissioner of Human Resources or designee;

(H) the Commissioner of Public Safety or designee;

(I) the President of the Vermont State Employees' Association or designee; and

(J) the Executive Director of the Vermont Troopers' Association or designee.

(2) Any vacancy in membership shall be filled by the appointing authority for the remainder of the term.

(c) Powers and duties.

(1) Group C analysis. The Committee shall review the requirements for membership in Group C of the System as set forth in 3 V.S.A. § 455(a)(9)(B)

and (11)(C) and shall review all current employee positions classified as Group C in order to perform the following analyses:

(A) whether the requirements for membership in Group C are appropriately tailored to provide the appropriate retirement benefit to the appropriate group of employees; and

(B) whether applicable federal requirements, including the provisions of the Age Discrimination in Employment Act, merit changes to the requirements of Group C.

(2) Retirement benefit recommendations. In accordance with its findings made pursuant to subdivision (1) of this subsection, the Committee shall make the following recommendations:

(A) whether any State employee positions currently in Group C should be reclassified to another group within the System, given the nature of the job duties performed by members in those positions;

(B) whether any State employee positions not currently in Group C should be reclassified into Group C, given the nature of the job duties performed by members in those positions; and

(C) whether the General Assembly should consider any revisions or enhancements to the retirement benefits for certain State employee positions that do not qualify for the current or recommended Group C requirements, if the Committee finds that the nature of the position and job duties performed merits such revisions.

(3) Legal and IRS compliance consulting; appropriation. The amount of \$5,000.00 is appropriated to the Office of Treasurer for the purpose of contracting with a legal and Internal Revenue Service compliance consultant in order to assist the Committee with its powers and duties set forth in subdivisions (1) and (2) of this subsection.

(d) Assistance.

(1) The Committee shall have the administrative, technical, legal, and fiscal assistance of the Office of Legislative Council and the Joint Fiscal Office.

(2) The Offices of the State Treasurer and of the Attorney General, the Agency of Administration, the Department of Finance and Management, the Department of Human Resources, and the Agency of Digital Services shall provide support to the Committee as applicable.

(e) Meetings.

(1) The Office of Legislative Council shall call the first meeting of the Committee to occur as soon as practicable in fiscal year 2019.

(2) The Committee shall select co-chairs from among its membership, one of whom shall be a member of the House and one of whom shall be a member of the Senate, serving in their capacity as legislators.

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

(4) The Committee shall cease to exist on June 30, 2019.

(f) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Committee serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than six meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Committee shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than six meetings. These payments shall be made from monies appropriated to the Agency of Administration.

(g) Reports. On or before January 15, 2019, the Committee shall report its findings and recommendations to the House and Senate Committees on Government Operations and on Appropriations.

\* \* \* Law Enforcement Advisory Board \* \* \*

Sec. 10. LEAB; REPEAL FOR RECODIFICATION

24 V.S.A. § 1939 (Law Enforcement Advisory Board) is repealed.

Sec. 11. 20 V.S.A. § 1818 is added to read:

§ 1818. LAW ENFORCEMENT ADVISORY BOARD

(a) The Law Enforcement Advisory Board is created within the Department of Public Safety to advise the Commissioner of Public Safety, the Governor, and the General Assembly on issues involving the cooperation and coordination of all agencies that exercise law enforcement responsibilities. The Board shall review any matter that affects more than one law enforcement agency. The Board shall comprise the following members:

(1) the Commissioner of Public Safety or designee;

(2) a member of the Chiefs of Police Association of Vermont appointed by the President of the Association;

(3) a member of the Vermont Sheriffs' Association appointed by the President of the Association;

(4) a representative of the Vermont League of Cities and Towns appointed by the Executive Director of the League;

(5) a member of the Vermont Police Association appointed by the President of the Association;

(6) the Attorney General or designee;

(7) a State's Attorney appointed by the Executive Director of the Department of State's Attorneys and Sheriffs;

(8) the U.S. Attorney or designee;

(9) the Executive Director of the Vermont Criminal Justice Training Council;

(10) the Executive Director of the Vermont Troopers' Association or designee;

(11) a member of the Vermont Constables Association appointed by the President of the Association; and

(12) the President of the Vermont State Employees Association or designee.

(b) The Board shall elect a chair and a vice chair, which positions shall rotate among the various member representatives. Each member shall serve a term of two years. The Board shall meet at the call of the Chair or a majority of the members. A quorum shall consist of seven members, and decisions of the Board shall require the approval of a majority of those members present and voting.

(c) The Board shall undertake an ongoing formal process of reviewing law enforcement policies and practices with a goal of developing a comprehensive approach to providing the best services to Vermonters, given the monies available. The Board shall also provide educational resources to Vermonters about public safety challenges in the State.

(d)(1) The Board shall meet at its discretion to develop policies and recommendations for law enforcement priority needs, including retirement benefits, recruitment of officers, training, homeland security issues, dispatching, and comprehensive drug enforcement.

(2) The Board shall present its findings and recommendations in brief summary form to the House and Senate Committees on Judiciary and on Government Operations annually on or before January 15.

Sec. 12. LEAB; RECODIFICATION DIRECTIVE

(a) 24 V.S.A. § 1939 is recodified as 20 V.S.A. § 1818. During statutory revision, the Office of Legislative Council shall revise accordingly any references to 24 V.S.A. § 1939 in the Vermont Statutes Annotated.

(b) Any references in session law and adopted rules to 24 V.S.A. § 1939 as previously codified shall be deemed to refer to 20 V.S.A. § 1818.

Sec. 13. LEAB; 2019 REPORT ON MUNICIPAL ACCESS TO LAW ENFORCEMENT SERVICES AND ON AGENCY DATA STANDARDS FOR RECORD SYSTEMS

As part of its annual report in the year 2019, the Law Enforcement Advisory Board shall:

(1) specifically recommend ways that towns can increase access to law enforcement services; and

(2) consult with the Vermont Crime Information Center, the Crime Research Group, and other interested stakeholders regarding the manner in which law enforcement agencies enter data into their systems of records of the commission of crimes and related information in order to recommend in the report how agencies can improve that data entry so that crime data is entered uniformly and in a manner that meets the Center's requirement to have a uniform system of crime records as set forth in 20 V.S.A. § 2053.

\* \* \* State Dispatch Costs \* \* \*

Sec. 14. DEPARTMENT OF PUBLIC SAFETY; REPORT ON EXISTING STATE COSTS OF PROVIDING DISPATCH SERVICES

On or before October 1, 2018, the Commissioner of Public Safety shall provide to the House and Senate Committees on Government Operations the existing cost to the State of the Department of Public Safety providing dispatch services.

\* \* \* Effective Dates and Implementation \* \* \*

Sec. 15. EFFECTIVE DATES; IMPLEMENTATION

This act shall take effect on July 1, 2018, except:

(1) Sec. 5, amending 20 V.S.A. § 2355 (Council powers and duties) shall take effect on July 1, 2019, except that the requirement to adopt rules set forth in subdivision (a)(1) of that section shall take effect on July 1, 2018 so that those rules are adopted on or before July 1, 2019; and

(2) Sec. 7, amending 20 V.S.A. § 2358 (minimum training standards; definitions) shall take effect on July 1, 2020.

## **House Proposal of Amendment to Senate Proposal of Amendment**

### **H. 908**

An act relating to the Administrative Procedure Act

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

In Sec. 2, 3 V.S.A. chapter 25, in § 838 (filing of proposed rules), in subsection (b) (economic impact analysis; rules affecting small businesses and school districts), in subdivision (2) (small businesses), in the first sentence, by striking out “,when appropriate,”

#### **Proposal of amendment H. 908 to be offered by Senators White, Ayer, Clarkson, Collamore and Pearson**

Senators White, Ayer, Clarkson, Collamore and Pearson move that the Senate concur in the House proposal of amendment with a further proposal of amendment as follows:

In Sec. 2, 3 V.S.A. chapter 25, in § 838 (filing of proposed rules), in subsection (b) (economic impact analysis; rules affecting small businesses and school districts), in subdivision (2) (small businesses), in the first sentence, after “the agency shall include” by inserting , when appropriate,

#### **Report of Committee of Conference**

##### **H. 562.**

An act relating to parentage proceedings.

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House Bill entitled:

H. 562. An act relating to parentage proceedings.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. Title 15C is added to read:

#### TITLE 15C. PARENTAGE PROCEEDINGS

#### CHAPTER 1. SHORT TITLE; DEFINITIONS; SCOPE; GENERAL PROVISIONS

#### § 101. SHORT TITLE

This title may be cited as the Vermont Parentage Act.

§ 102. DEFINITIONS

As used in this title:

(1) “Acknowledged parent” means a person who has established a parent-child relationship under chapter 3 of this title.

(2) “Adjudicated parent” means a person who has been adjudicated by a court of competent jurisdiction to be a parent of a child.

(3) “Alleged genetic parent” means a person who is alleged to be, or alleges that the person is, a genetic parent or possible genetic parent of a child whose parentage has not been adjudicated. The term includes an alleged genetic father and alleged genetic mother. The term does not include:

(A) a presumed parent;

(B) a person whose parental rights have been terminated or declared not to exist; or

(C) a donor.

(4) “Assisted reproduction” means a method of causing pregnancy other than sexual intercourse and includes:

(A) intrauterine, intracervical, or vaginal insemination;

(B) donation of gametes;

(C) donation of embryos;

(D) in vitro fertilization and transfer of embryos; and

(E) intracytoplasmic sperm injection.

(5) “Birth” includes stillbirth.

(6) “Child” means a person of any age whose parentage may be determined under this title.

(7) “Domestic assault” shall include any offense as set forth in 13 V.S.A. chapter 19, subchapter 6 (domestic assault).

(8) “Donor” means a person who contributes a gamete or gametes or an embryo or embryos to another person for assisted reproduction or gestation, whether or not for consideration. This term does not include:

(A) a person who gives birth to a child conceived by assisted reproduction except as otherwise provided in chapter 8 of this title; or

(B) a parent under chapter 7 of this title or an intended parent under chapter 8 of this title.



(9) “Embryo” means a cell or group of cells containing a diploid complement of chromosomes or a group of such cells, not including a gamete, that has the potential to develop into a live born human being if transferred into the body of a person under conditions in which gestation may be reasonably expected to occur.

(10) “Gamete” means a sperm, egg, or any part of a sperm or egg.

(11) “Genetic population group” means, for purposes of genetic testing, a recognized group that a person identifies as all or part of the person’s ancestry or that is so identified by other information.

(12) “Gestational carrier” means an adult person who is not an intended parent and who enters into a gestational carrier agreement to bear a child conceived using the gametes of other persons and not the gestational carrier’s own, except that a person who carries a child for a family member using the gestational carrier’s own gametes and who fulfills the requirements of chapter 8 of this title is a gestational carrier.

(13) “Gestational carrier agreement” means a contract between an intended parent or parents and a gestational carrier intended to result in a live birth.

(14) “Intended parent” means a person, whether married or unmarried, who manifests the intent to be legally bound as a parent of a child resulting from assisted reproduction or a gestational carrier agreement.

(15) “Marriage” includes civil union and any legal relationship that provides substantially the same rights, benefits, and responsibilities as marriage and is recognized as valid in the state or jurisdiction in which it was entered.

(16) “Parent” means a person who has established parentage that meets the requirements of this title.

(17) “Parentage” means the legal relationship between a child and a parent as established under this title.

(18) “Presumed parent” means a person who is recognized as the parent of a child under section 401 of this title.

(19) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(20) “Sexual assault” shall include sexual assault as provided in 13 V.S.A. § 3252(a), (b), (d), and (e); aggravated sexual assault as provided in 13 V.S.A. § 3253; aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a; lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602; and similar offenses in other jurisdictions.

(21) “Sexual exploitation” shall include sexual exploitation of an inmate as provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A. § 1379, and similar offenses in other jurisdictions.

(22) “Sign” means, with the intent to authenticate or adopt a record, to:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(23) “Signatory” means a person who signs a record and is bound by its terms.

(24) “Spouse” includes a partner in a civil union or a partner in a legal relationship that provides substantially the same rights, benefits, and responsibilities as marriage and is recognized as valid in the state or jurisdiction in which it was entered.

#### § 103. SCOPE AND APPLICATION

(a) Scope. This title applies to determination of parentage in this State.

(b) Choice of law. The court shall apply the law of this State to adjudicate parentage.

(c) Effect on parental rights. This title does not create, enlarge, or diminish parental rights and responsibilities under other laws of this State or the equitable powers of the courts, except as provided in this title.

#### § 104. PARENTAGE PROCEEDING

(a) Proceeding authorized. A proceeding to adjudicate the parentage of a child shall be maintained in accordance with this title and with the Vermont Rules for Family Proceedings, except that proceedings for birth orders under sections 708 and 804 of this title shall be maintained in accordance with the Vermont Rules of Probate Procedure.

(b) Actions brought by the Office of Child Support. If the complaint is brought by the Office of Child Support, the complaint shall be accompanied by an affidavit of the parent whose rights have been assigned. In cases where the assignor is not a genetic parent or is a genetic parent who refuses to provide an affidavit, the affidavit may be submitted by the Office of Child Support, but the affidavit alone shall not support a default judgment on the issue of parentage.

(c) Original actions. Original actions to adjudicate parentage may be commenced in the Family Division of the Superior Court, except that proceedings for birth orders under sections 708 and 804 of this title shall be commenced in the Probate Division of the Superior Court.

(d) No right to jury. There shall be no right to a jury trial in an action to determine parentage.

(e) Disclosure of Social Security numbers. A person who is a party to a parentage action shall disclose that person's Social Security number to the court. The Social Security number of a person subject to a parentage adjudication shall be placed in the court records relating to the adjudication. The court shall disclose a person's Social Security number to the Office of Child Support.

#### § 105. STANDING TO MAINTAIN PROCEEDING

Subject to other provisions of this chapter, a proceeding to adjudicate parentage may be maintained by:

(1) the child;

(2) the person who gave birth to the child unless a court has adjudicated that the person is not a parent or the person is a gestational carrier who is not a parent under subdivision 803(1)(A) of this title;

(3) a person whose parentage is to be adjudicated;

(4) a person who is a parent under this title;

(5) the Department for Children and Families, including the Office of Child Support; or

(6) a representative authorized by law to act for a person who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

#### § 106. NOTICE OF PROCEEDING

(a) A petitioner under this chapter shall give notice of the proceeding to adjudicate parentage to the following:

(1) the person who gave birth to the child unless a court has adjudicated that the person is not a parent;

(2) a person who is a parent of the child under this chapter;

(3) a presumed, acknowledged, or adjudicated parent of the child;

(4) a person whose parentage of the child is to be adjudicated; and

(5) the Office of Child Support, in cases in which either party is a recipient of public assistance benefits from the Economic Services Division and has assigned the right to child support, or in cases in which either party has requested the services of the Office of Child Support.

(b) A person entitled to notice under subsection (a) of this section and the Office of Child Support, where the Office is involved pursuant to subdivision (a)(5), has a right to intervene in the proceeding.

(c) Lack of notice required by subsection (a) of this section shall not render a judgment void. Lack of notice does not preclude a person entitled to notice under subsection (a) from bringing a proceeding under this title.

(d) This section shall not apply to petitions for birth orders under chapters 7 and 8 of this title.

#### § 107. FORM OF NOTICE

Notice shall be by first-class mail to the person's last known address.

#### § 108. PERSONAL JURISDICTION

(a) Personal jurisdiction. A person shall not be adjudicated a parent unless the court has personal jurisdiction over the person.

(b) Personal jurisdiction over nonresident. A court of this State having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident person, or the guardian or conservator of the person, if the conditions prescribed in Title 15B are fulfilled.

(c) Adjudication. Lack of jurisdiction over one person does not preclude the court from making an adjudication of parentage binding on another person over whom the court has personal jurisdiction.

#### § 109. VENUE

Venue for a proceeding to adjudicate parentage shall be in the county in which:

(1) the child resides or is present or, for purposes of chapter 7 or 8 of this title, is or will be born;

(2) any parent or intended parent resides;

(3) the respondent resides or is present if the child does not reside in this State;

(4) a proceeding for probate or administration of the parent or alleged parent's estate has been commenced; or

(5) a child protection proceeding with respect to the child has been commenced.

#### § 110. JOINDER OF PROCEEDINGS

(a) Joinder permitted. Except as otherwise provided in subsection (b) of this section, a proceeding to adjudicate parentage may be joined with a

proceeding for parental rights and responsibilities, parent-child contact, child support, child protection, termination of parental rights, divorce, annulment, legal separation, guardianship, probate or administration of an estate or other appropriate proceeding, or a challenge or rescission of acknowledgment of parentage. Such proceedings shall be in the Family Division of the Superior Court.

(b) Joinder not permitted. A respondent may not join a proceeding described in subsection (a) of this section with a proceeding to adjudicate parentage brought as part of an interstate child support enforcement action under Title 15B.

#### § 111. ORDERS

(a) Interim order for support. In a proceeding under this title, the court may issue an interim order for support of a child in accordance with the child support guidelines under 15 V.S.A. § 654 with respect to a person who is:

- (1) a presumed, acknowledged, or adjudicated parent of the child;
- (2) petitioning to have parentage adjudicated;
- (3) identified as the genetic parent through genetic testing under chapter 6 of this title;
- (4) an alleged genetic parent who has declined to submit to genetic testing;
- (5) shown by a preponderance of evidence to be a parent of the child;
- (6) the person who gave birth to the child, other than a gestational carrier; or
- (7) a parent under this chapter.

(b) Interim order for parental rights and responsibilities. In a proceeding under this title, the court may make an interim order regarding parental rights and responsibilities on a temporary basis.

(c) Final orders. Final orders concerning child support or parental rights and responsibilities shall be governed by Title 15.

#### § 112. ADMISSION OF PARENTAGE AUTHORIZED

(a) Admission of parentage. A respondent in a proceeding to adjudicate parentage may admit parentage of a child when making an appearance or during a hearing in a proceeding involving the child or by filing a pleading to such effect. An admission of parentage pursuant to this section is different from an acknowledgment of parentage as provided in chapter 3 of this title.

(b) Order adjudicating parentage. If the court finds an admission to be

consistent with the provisions of this chapter and rejects any objection filed by another party, the court may issue an order adjudicating the child to be the child of the person admitting parentage.

#### § 113. ORDER ON DEFAULT

The court may issue an order adjudicating the parentage of a person who is in default, providing:

- (1) the person was served with notice of the proceeding; and
- (2) the person is found by the court to be the parent of the child.

#### § 114. ORDER ADJUDICATING PARENTAGE

(a) Issuance of order. In a proceeding under this chapter, the court shall issue a final order adjudicating whether a person alleged or claiming to be a parent is the parent of a child.

(b) Identify child. A final order under subsection (a) of this section shall identify the child by name and date of birth.

(c) Change of name. On request of a party and for good cause shown, the court may order that the name of the child be changed.

(d) Amended birth record. If the final order under subsection (a) of this section is at variance with the child's birth certificate, the Department of Health shall issue an amended birth certificate.

#### § 115. BINDING EFFECT OF DETERMINATION OF PARENTAGE

(a) Determination binding. Except as otherwise provided in subsection (b) of this section, a determination of parentage shall be binding on:

(1) all signatories to an acknowledgment of parentage or denial of parentage as provided in chapter 3 of this title; and

(2) all parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of section 108 of this title.

(b) Adjudication in proceeding to dissolve marriage. In a proceeding to dissolve a marriage, the court is deemed to have made an adjudication of the parentage of a child if:

(1) the court acts under circumstances that satisfy the jurisdictional requirements of section 108 of this title; and

(2) the final order:

(A) expressly identifies a child as a "child of the marriage" or "issue of the marriage" or by similar words indicates that the parties are the parents of the child; or

(B) provides for support of the child by the parent or parents.

(c) Determination a defense. Except as otherwise provided in this chapter, a determination of parentage shall be a defense in a subsequent proceeding seeking to adjudicate parentage by a person who was not a party to the earlier proceeding.

(d) Challenge to adjudication.

(1) Challenge by a person who was a party to an adjudication. A party to an adjudication of parentage may challenge the adjudication only by appeal or in a manner otherwise consistent with the Vermont Rules for Family Proceedings.

(2) Challenge by a person who was not a party to an adjudication. A person who has standing under section 105 of this title, but who did not receive notice of the adjudication of parentage under section 106 of this title and was not a party to the adjudication, may challenge the adjudication within two years after the effective date of the adjudication. The court, in its discretion, shall permit the proceeding only if it finds that it is in the best interests of the child. If the court permits the proceeding, the court shall adjudicate parentage under section 206 of this title.

(e) Child not bound. A child is not bound by a determination of parentage under this chapter unless:

(1) the determination was based on an unrescinded acknowledgment of parentage and the acknowledgment is consistent with the results of genetic testing;

(2) the determination was based on a finding consistent with the results of genetic testing;

(3) the determination of parentage was made under chapter 7 or 8 of this title; or

(4) the child was a party or was represented by an attorney, guardian ad litem, or similar person in the proceeding in which the child's parentage was adjudicated.

#### § 116. FULL FAITH AND CREDIT

A court of this State shall give full faith and credit to a determination of parentage and to an acknowledgment of parentage from another state if the determination is valid and effective in accordance with the law of the other state.

### CHAPTER 2. ESTABLISHMENT OF PARENTAGE

#### § 201. RECOGNIZED PARENTS

A person may establish parentage by any of the following:

(1) Birth. Giving birth to the child, except as otherwise provided in chapter 8 of this title.

(2) Adoption. Adoption of the child pursuant to Title 15A.

(3) Acknowledgment. An effective voluntary acknowledgment of parentage under chapter 3 of this title.

(4) Adjudication. An adjudication based on an admission of parentage under section 112 of this title.

(5) Presumption. An unrebutted presumption of parentage under chapter 4 of this title.

(6) De facto parentage. An adjudication of de facto parentage, under chapter 5 of this title.

(7) Genetic parentage. An adjudication of genetic parentage under chapter 6 of this title.

(8) Assisted reproduction. Consent to assisted reproduction under chapter 7 of this title.

(9) Gestational carrier agreement. Consent to a gestational carrier agreement by the intended parent or parents under chapter 8 of this title.

#### § 202. NONDISCRIMINATION

Every child has the same rights under law as any other child without regard to the marital status or gender of the parents or the circumstances of the birth of the child.

#### § 203. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE

Unless parentage has been terminated by a court order or an exception has been stated explicitly in this title, parentage established under this title applies for all purposes, including the rights and duties of parentage under the law.

#### § 204. DETERMINATION OF MATERNITY AND PATERNITY

Provisions of this title relating to determination of paternity may apply to determination of maternity as needed to determine parentage consistent with this title.

#### § 205. NO LIMITATION ON CHILD

Nothing in this chapter limits the right of a child to bring an action to adjudicate parentage.



§ 206. ADJUDICATING COMPETING CLAIMS OF PARENTAGE

(a) Competing claims of parentage. Except as otherwise provided in section 616 of this title, in a proceeding to adjudicate competing claims of parentage or challenges to a child's parentage by two or more persons, the court shall adjudicate parentage in the best interests of the child, based on the following factors:

(1) the age of the child;

(2) the length of time during which each person assumed the role of parent of the child;

(3) the nature of the relationship between the child and each person;

(4) the harm to the child if the relationship between the child and each person is not recognized;

(5) the basis for each person's claim to parentage of the child; and

(6) other equitable factors arising from the disruption of the relationship between the child and each person or the likelihood of other harm to the child.

(b) Preservation of parent-child relationship. Consistent with the establishment of parentage under this chapter, a court may determine that a child has more than two parents if the court finds that it is in the best interests of the child to do so. A finding of best interests of the child under this subsection does not require a finding of unfitness of any parent or person seeking an adjudication of parentage.

CHAPTER 3. VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

§ 301. ACKNOWLEDGMENT OF PARENTAGE

(a) The following persons may sign an acknowledgment of parentage to establish parentage of a child:

(1) a person who gave birth to the child;

(2) a person who is the alleged genetic parent of the child;

(3) a person who is an intended parent to the child pursuant to chapter 7 or 8 of this title; and

(4) a presumed parent pursuant to chapter 4 of this title.

(b) The acknowledgment shall be signed by both the person who gave birth to the child and by the person seeking to establish a parent-child relationship and shall be witnessed and signed by at least one other person.

§ 302. ACKNOWLEDGMENT OF PARENTAGE VOID

An acknowledgment of parentage shall be void if, at the time of signing:

(1) a person other than the person seeking to establish parentage is a presumed parent, unless a denial of parentage in a signed record has been filed with the Department of Health; or

(2) a person, other than the person who gave birth, is an acknowledged, admitted, or adjudicated parent, or an intended parent under chapter 7 or 8 of this title.

§ 303. DENIAL OF PARENTAGE

A person presumed to be a parent or an alleged genetic parent may sign a denial of parentage only in the limited circumstances set forth in this section. A denial of parentage shall be valid only if:

(1) an acknowledgment of parentage by another person has been filed pursuant to this chapter;

(2) the denial is in a record and is witnessed and signed by at least one other person; and

(3) the person executing the denial has not previously:

(A) acknowledged parentage, unless the previous acknowledgment has been rescinded pursuant to section 307 of this title or successfully challenged the acknowledgment pursuant to section 308 of this title; or

(B) been adjudicated to be the parent of the child.

§ 304. CONDITIONS FOR ACKNOWLEDGMENT OR DENIAL OF PARENTAGE

(a) Completed forms for acknowledgment of parentage and denial of parentage shall be filed with the Department of Health.

(b) An acknowledgment of parentage or denial of parentage may be signed before or after the birth of a child.

(c) An acknowledgment of parentage or denial of parentage takes effect on the date of the birth of the child or the filing of the document with the Department of Health, whichever occurs later.

(d) An acknowledgment of parentage or denial of parentage signed by a minor shall be valid provided it is otherwise in compliance with this title.

§ 305. EQUIVALENT TO ADJUDICATION; NO RATIFICATION REQUIRED

(a) Acknowledgment. Except as otherwise provided in sections 307 and 308 of this title, a valid acknowledgment of parentage under section 301 of this title filed with the Department of Health is equivalent to an adjudication of parentage of a child and confers upon the acknowledged parent all of the rights and duties of a parent.

(b) Ratification. Judicial or administrative ratification is neither permitted nor required for an unrescinded or unchallenged acknowledgment of parentage.

(c) Denial. Except as otherwise provided in sections 307 and 308 of this title, a valid denial of parentage under section 303 of this title filed with the Department of Health in conjunction with a valid acknowledgment of parentage under section 301 of this title is equivalent to an adjudication of the nonparentage of the presumed parent or alleged genetic parent and discharges the presumed parent or alleged genetic parent from all rights and duties of a parent.

(d) Rescission or challenge. A signatory of an acknowledgment of parentage may rescind or challenge the acknowledgment in accordance with sections 307-309 of this title.

#### § 306. NO FILING FEE

The Department of Health shall not charge a fee for filing an acknowledgment of parentage or denial of parentage.

#### § 307. TIMING OF RESCISSION

(a) A person may rescind an acknowledgment of parentage or denial of parentage under this chapter by any of the following methods:

(1) Filing a rescission with the Department of Health within 60 days after the effective date of the acknowledgment or denial. The signing of the rescission shall be witnessed and signed by at least one other person.

(2) Commencing a court proceeding within 60 days after:

(A) the effective date of the acknowledgment or denial, as provided in section 304 of this title; or

(B) the date of the first court hearing in a proceeding in which the signatory is a party to adjudicate an issue relating to the child, including a proceeding seeking child support.

(b) If an acknowledgment of parentage is rescinded under this section, any associated denial of parentage becomes invalid, and the Department of Health shall notify the person who gave birth to the child and any person who signed a denial of parentage of the child that the acknowledgment of parentage has

been rescinded. Failure to give notice required by this section does not affect the validity of the rescission.

§ 308. CHALLENGE TO ACKNOWLEDGMENT AFTER EXPIRATION OF PERIOD FOR RESCISSION

(a) Challenge by signatory. After the period for rescission under section 307 of this title has expired, a signatory of an acknowledgment of parentage or denial of parentage may commence a proceeding to challenge the acknowledgment or denial only:

(1) on the basis of fraud, duress, coercion, threat of harm, or material mistake of fact; and

(2) within two years after the acknowledgment or denial is effective in accordance with section 304 of this title.

(b) Challenge by person not a signatory. If an acknowledgment of parentage has been made in accordance with this chapter, a person who is neither the child nor a signatory to the acknowledgment who seeks to challenge the validity of the acknowledgment and adjudicate parentage shall commence a proceeding within two years after the effective date of the acknowledgment unless the person did not know and could not reasonably have known of the person's potential parentage due to a material misrepresentation or concealment, in which case the proceeding shall be commenced within two years after the discovery of the person's potential parentage.

(c) Burden of proof. A person challenging an acknowledgment of parentage or denial of parentage pursuant to this section has the burden of proof by clear and convincing evidence.

(d) Consolidation. A court proceeding in which the validity of an acknowledgment of parentage is challenged shall be consolidated with any other pending court actions regarding the child.

§ 309. PROCEDURE FOR RESCISSION OR CHALLENGE

(a) Every signatory party. Every signatory to an acknowledgment of parentage and any related denial of parentage shall be made a party to a proceeding under section 307 or 308 of this title to rescind or challenge the acknowledgment or denial.

(b) Submission to personal jurisdiction. For the purpose of rescission of or challenge to an acknowledgment of parentage or denial of parentage, a signatory submits to personal jurisdiction of this State by signing the acknowledgment or denial, effective upon the filing of the document with the Department of Health pursuant to section 304 of this title.

(c) Suspension of legal responsibilities. Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of parentage or denial of parentage, the court shall not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

(d) Proceeding to rescind or challenge. A proceeding to rescind or challenge an acknowledgment of parentage or denial of parentage shall be conducted as a proceeding to adjudicate parentage pursuant to chapter 1 of this title.

(e) Amendment to birth record. At the conclusion of a proceeding to rescind or challenge an acknowledgment of parentage or denial of parentage, the court shall order the Department of Health to amend the birth record of the child, if appropriate.

#### § 310. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PARENTAGE

(a) The Department of Health shall develop an acknowledgment of parentage form and denial of parentage form for execution of parentage under this chapter.

(b) The acknowledgment of parentage form shall provide notice of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the acknowledgment and shall state that:

(1) there is no other presumed parent of the child or, if there is another presumed parent, shall state that parent's full name;

(2) there is no other acknowledged parent, adjudicated parent, or person who is an intended parent under chapter 7 or 8 of this title other than the person who gave birth to the child; and

(3) the signatories understand that the acknowledgment is the equivalent of a court determination of parentage of the child and that a challenge to the acknowledgment is permitted only under limited circumstances.

(c) A valid acknowledgment of parentage or denial of parentage is not affected by a later modification of the prescribed form.

#### § 311. RELEASE OF INFORMATION

The Department of Health may release information relating to an acknowledgment of parentage under section 301 of this title as provided in 18 V.S.A. § 5002.

#### § 312. ADOPTION OF RULES

The Department of Health may adopt rules to implement this chapter.

## CHAPTER 4. PRESUMED PARENTAGE

### § 401. PRESUMPTION OF PARENTAGE

(a) Except as otherwise provided in this title, a person is presumed to be a parent of a child if:

(1) the person and the person who gave birth to the child are married to each other and the child is born during the marriage; or

(2) the person and the person who gave birth to the child were married to each other and the child is born not later than 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution; or

(3) the person and the person who gave birth to the child married each other after the birth of the child and the person at any time asserted parentage of the child and the person agreed to be and is named as a parent of the child on the birth certificate of the child; or

(4) the person resided in the same household with the child for the first two years of the life of the child, including periods of temporary absence, and the person and another parent of the child openly held out the child as the person's child.

(b) A presumption of parentage shall be rebuttable and may be overcome and competing claims to parentage resolved only by court order or a valid denial of parentage pursuant to chapter 3 of this title.

### § 402. CHALLENGE TO PRESUMED PARENT

(a) Except as provided in subsection (b) of this section, a proceeding to challenge the parentage of a person whose parentage is presumed under section 401 of this title shall be commenced within two years after the birth of the child.

(b) A proceeding to challenge the parentage of a person whose parentage is presumed under section 401 of this title may be commenced two years or more after the birth of the child in the following circumstances:

(1) A presumed parent who is not the genetic parent of a child and who could not reasonably have known about the birth of the child may commence a proceeding under this section within two years after learning of the child's birth.

(2) An alleged genetic parent who did not know of the potential genetic parentage of a child and who could not reasonably have known on account of material misrepresentation or concealment may commence a proceeding under this section within two years after discovering the potential genetic parentage.

If the person is adjudicated to be the genetic parent of the child, the court may not disestablish a presumed parent.

(3) Regarding a presumption under subdivision 401(a)(4) of this title, another parent of the child may challenge a presumption of parentage if that parent openly held out the child as the presumptive parent's child due to duress, coercion, or threat of harm. Evidence of duress, coercion, or threat of harm may include whether within the prior ten years, the person presumed to be a parent pursuant to subdivision 401(a)(4) of this title has been convicted of domestic assault, sexual assault, or sexual exploitation of the child or another parent of the child, was subject to a final abuse protection order pursuant to 15 V.S.A. chapter 21 because the person was found to have committed abuse against the child or another parent of the child, or was substantiated for abuse against the child or another parent of the child pursuant to 33 V.S.A. chapter 49 or 33 V.S.A. chapter 69.

#### § 403. MULTIPLE PRESUMPTIONS

If two or more conflicting presumptions arise under this chapter, the court shall adjudicate parentage pursuant to section 206 of this title.

### CHAPTER 5. DE FACTO PARENTAGE

#### § 501. STANDARD; ADJUDICATION

(a)(1) In a proceeding to adjudicate the parentage of a person who claims to be a de facto parent of the child, if there is only one other person who is a parent or has a claim to parentage of the child, the court shall adjudicate the person who claims to be a de facto parent to be a parent of the child if the person demonstrates by clear and convincing evidence that:

(A) the person resided with the child as a regular member of the child's household for a significant period of time;

(B) the person engaged in consistent caretaking of the child;

(C) the person undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;

(D) the person held out the child as the person's child;

(E) the person established a bonded and dependent relationship with the child which is parental in nature;

(F) the person and another parent of the child fostered or supported the bonded and dependent relationship required under subdivision (E) of this subdivision (1); and

(G) continuing the relationship between the person and the child is in the best interests of the child.

(2) A parent of the child may use evidence of duress, coercion, or threat of harm to contest an allegation that the parent fostered or supported a bonded and dependent relationship as provided in subdivision (1)(F) of this subsection. Such evidence may include whether within the prior ten years, the person seeking to be adjudicated a de facto parent has been convicted of domestic assault, sexual assault, or sexual exploitation of the child or another parent of the child, was subject to a final abuse protection order pursuant to 15 V.S.A. chapter 21 because the person was found to have committed abuse against the child or another parent of the child, or was substantiated for abuse against the child or another parent of the child pursuant to 33 V.S.A. chapter 49 or 33 V.S.A. chapter 69.

(b) In a proceeding to adjudicate the parentage of a person who claims to be a de facto parent of the child, if there is more than one other person who is a parent or has a claim to parentage of the child and the court determines that the requirements of subsection (a) of this section are met by clear and convincing evidence, the court shall adjudicate parentage under section 206 of this title, subject to other applicable limitations in this title.

(c) The adjudication of a person as a de facto parent under this chapter does not disestablish the parentage of any other parent.

#### § 502. STANDING; PETITION

(a) A person seeking to be adjudicated a de facto parent of a child shall file a petition with the Family Division of the Superior Court before the child reaches 18 years of age. Both the person seeking to be adjudicated a de facto parent and the child must be alive at the time of the filing. The petition shall include a verified affidavit alleging facts to support the existence of a de facto parent relationship with the child. The petition and affidavit shall be served on all parents and legal guardians of the child and any other party to the proceeding.

(b) An adverse party, parent, or legal guardian may file a pleading and verified affidavit in response to the petition that shall be served on all parties to the proceeding.

(c) The court shall determine on the basis of the pleadings and affidavits whether the person seeking to be adjudicated a de facto parent has presented prima facie evidence of the criteria for de facto parentage as provided in subsection 501(a) of this title and, therefore, has standing to proceed with a parentage action. The court, in its sole discretion, may hold a hearing to determine disputed facts that are necessary and material to the issue of standing.

(d) The court may enter an interim order concerning contact between the



child and a person with standing seeking adjudication under this chapter as a de facto parent of the child.

## CHAPTER 6. GENETIC PARENTAGE

### § 601. SCOPE

This chapter governs procedures and requirements of genetic testing and genetic testing results of a person to determine parentage and adjudication of parentage based on genetic testing, whether the person voluntarily submits to testing or is tested pursuant to an order of the court. Genetic testing shall not be used to challenge the parentage of a person who is a parent by operation of law under chapter 7 or 8 of this title or to establish the parentage of a person who is a donor.

### § 602. REQUIREMENTS FOR GENETIC TESTING

Genetic testing shall be of a type reasonably relied upon by scientific and medical experts in the field of genetic testing and performed in a testing laboratory accredited by a national association of blood banks or an accrediting body designated by the Secretary of the U.S. Department of Health and Human Services. As used in this chapter, “genetic testing” shall have the same meaning as provided in 18 V.S.A. § 9331.

### § 603. COURT ORDER FOR TESTING

(a) Order to submit to genetic testing. Except as provided in section 615 of this title or as otherwise provided in this chapter, upon motion the court may order a child and other persons to submit to genetic testing.

(b) Presumption of genetic parentage. Genetic testing of the person who gave birth to a child shall not be ordered to prove that such person is the genetic parent unless there is a reasonable, good faith basis to dispute genetic parentage.

(c) In utero testing. A court shall not order in utero genetic testing.

(d) Concurrent or sequential testing. If two or more persons are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

### § 604. GENETIC TESTING RESULTS

(a) A person shall be identified as a genetic parent of a child if the genetic testing of the person complies with this chapter and the results of testing disclose that the individual has at least a 99 percent probability of parentage as determined by the testing laboratory.

(b) Identification of a genetic parent through genetic testing does not establish parentage absent adjudication under this chapter and a court may rely

on nongenetic evidence to determine parentage, including parentage by acknowledgment pursuant to chapter 3 of this title or by admission pursuant to section 112 of this title, presumed parentage under chapter 4 of this title, de facto parentage under chapter 5 of this title, and parentage by intended parents under chapter 7 or 8 of this title.

(c) A person identified under subsection (a) of this section as a genetic parent of a child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this chapter that:

(1) excludes the person as a genetic parent of the child; or

(2) identifies a person other than the person who gave birth to the child as a possible genetic parent of the child.

#### § 605. REPORT OF GENETIC TESTING

(a) A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this chapter is self-authenticating.

(b) A party in possession of results of genetic testing shall provide such results to all other parties to the parentage action upon receipt of the results and not later than 15 days before any hearing at which the results may be admitted into evidence.

#### § 606. ADMISSIBILITY OF RESULTS OF GENETIC TESTING

(a) Production of results; notice. Unless waived by the parties, a party intending to rely on the results of genetic testing shall do all of the following:

(1) make the test results available to the other parties to the parentage action at least 15 days prior to any hearing at which the results may be admitted into evidence;

(2) give notice to the court and other parties to the proceeding of the intent to use the test results at the hearing; and

(3) give the other parties notice of this statutory section, including the need to object in a timely fashion.

(b) Objection. Any motion objecting to genetic test results shall be made in writing to the court and to the party intending to introduce the evidence at least seven days prior to any hearing at which the results may be introduced into evidence. If no timely objection is made, the written results shall be admissible as evidence without the need for foundation testimony or other proof of authenticity or accuracy.

(c) Results inadmissible; exceptions. If a child has a presumed parent, acknowledged parent, or adjudicated parent, the results of genetic testing shall be admissible to adjudicate parentage only:

(1) with the consent of each person who is a parent of the child under this title, unless the court finds that admission of the testing is in the best interests of the child as provided in subsection 615(b) of this title; or

(2) pursuant to an order of the court under section 603 of this title.

#### § 607. ADDITIONAL GENETIC TESTING

The court shall order additional genetic testing upon the request of a party who contests the result of the initial testing. If the initial genetic testing identified a person as a genetic parent of the child under section 604 of this title, the court shall not order additional testing unless the party provides advance payment for the testing.

#### § 608. CONSEQUENCES OF DECLINING GENETIC TESTING

(a) If a person whose parentage is being determined under this chapter declines to submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage contrary to the position of that person.

(b) Genetic testing of the person who gave birth to a child is not a condition precedent to testing the child and an individual whose parentage is being determined under this chapter. If the person who gave birth is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every person whose genetic parentage is being adjudicated.

#### § 609. ADJUDICATION OF PARENTAGE BASED ON GENETIC TESTING

(a)(1) If genetic testing results pursuant to section 604 of this title exclude a person as the genetic parent of a child, the court shall find that person is not a genetic parent of the child and may not adjudicate the person as the child's parent on the basis of genetic testing.

(2) If genetic testing results pursuant to section 604 of this title identify a person as the genetic parent of a child, the court shall find that person to be the genetic parent and may adjudicate the person as the child's parent, unless otherwise provided by this title.

(3) Subdivisions (1) and (2) of this subsection do not apply if the results of genetic testing are admitted for the purpose of rebutting results of other genetic testing.

(b) If the court finds that genetic testing pursuant to section 604 of this title neither identifies nor excludes a person as the genetic parent of a child, the court shall not dismiss the proceeding. In that event, the results of genetic testing and other evidence are admissible to adjudicate the issue of parentage, including testimony relating to the sexual conduct of the person who gave

birth to the child but only if it is alleged to have occurred during a time when conception of the child was probable.

§ 610. COSTS OF GENETIC TESTING

(a) The costs of initial genetic testing shall be paid:

(1) by the Office of Child Support in a proceeding in which the Office is providing services, if the Office requests such testing;

(2) as agreed by the parties or, if the parties cannot agree, by the person who made the request for genetic testing; or

(3) as ordered by the court.

(b) Notwithstanding subsection (a) of this section, a person who challenges a presumption, acknowledgment, or admission of parentage shall bear the cost for any genetic testing requested by such person.

(c) In cases in which the payment for the costs of initial genetic testing is advanced pursuant to subsection (a) of this section, the Office of Child Support may seek reimbursement from the genetic parent whose parent-child relationship is established.

§ 611. GENETIC TESTING WHEN SPECIMENS NOT AVAILABLE

(a) If a genetic testing specimen is not available from an alleged genetic parent of a child, for good cause the court may order the following persons to submit specimens for genetic testing:

(1) the parents of the alleged genetic parent;

(2) a sibling of the alleged genetic parent;

(3) another child of the alleged genetic parent and the person who gave birth to that other child; and

(4) another relative of the alleged genetic parent necessary to complete genetic testing.

(b) Prior to issuing an order under subsection (a) of this section, the court shall provide notice and opportunity to be heard to the person from whom a genetic sample is requested. If the court does order a person to be tested pursuant to subsection (a) of this section, it shall make a written finding that the need for genetic testing outweighs the legitimate interests, including the privacy and bodily integrity interests, of the person sought to be tested.

(c) A genetic specimen taken pursuant to this section shall be destroyed after final determination of the parentage case.

§ 612. DECEASED PERSON

For good cause shown, the court may order genetic testing of a deceased person.

§ 613. IDENTICAL SIBLING

(a) The court may order genetic testing of a person who is believed to have an identical sibling if evidence suggests the sibling may be the genetic parent of the child.

(b) If more than one sibling is identified as a genetic parent of the child, the court may rely on nongenetic evidence to adjudicate which sibling is a genetic parent of the child.

§ 614. CONFIDENTIALITY OF GENETIC TESTING

(a) A report of genetic testing for parentage is exempt from public inspection and copying under the Public Records Act and shall be kept confidential and released only as provided in this title.

(b) A person shall not intentionally release a report of genetic testing or the genetic material of another person for a purpose not relevant to a parentage proceeding without the written permission of the person who furnished the genetic material. A person who violates this section shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

§ 615. AUTHORITY TO DENY REQUESTED ORDER FOR GENETIC TESTING OR ADMISSION OF TEST RESULTS

(a) Grounds for denial. In a proceeding to adjudicate parentage, the court may deny a motion seeking an order for genetic testing or deny admissibility of the test results at trial if it determines that:

(1) the conduct of the parties estops a party from denying parentage; or

(2) it would be an inequitable interference with the relationship between the child and an acknowledged, adjudicated, de facto, presumed, or intended parent, or would otherwise be contrary to the best interests of the child as provided in subsection (b) of this section.

(b) Factors. In determining whether to deny a motion seeking an order for genetic testing under this title or a request for admission of such test results at trial, the court shall consider the best interests of the child, including the following factors, if relevant:

(1) the length of time between the proceeding to adjudicate parentage and the time that a parent was placed on notice that genetic parentage is at issue;

(2) the length of time during which the parent has assumed a parental role for the child;

(3) the facts surrounding discovery that genetic parentage is at issue;

(4) the nature of the relationship between the child and the parent;

(5) the age of the child;

(6) any adverse effect on the child that may result if parentage is successfully disproved;

(7) the nature of the relationship between the child and any alleged parent;

(8) the extent to which the passage of time reduces the chances of establishing the parentage of another person and a child support obligation in favor of the child; and

(9) any additional factors that may affect the equities arising from the disruption of the relationship between the child and the parent or the chance of an adverse effect on the child.

(c) Order. In cases involving an acknowledged or presumed parent, if the court denies a motion seeking an order for genetic testing, the court shall issue an order adjudicating the acknowledged or presumed parent to be the parent of the child.

#### § 616. PRECLUDING ESTABLISHMENT OF PARENTAGE BY PERPETRATOR OF SEXUAL ASSAULT

(a) In a proceeding in which a person is alleged to have committed a sexual assault that resulted in the birth of a child, the person giving birth may seek to preclude the establishment of the other person's parentage.

(b) This section shall not apply if the person alleged to have committed a sexual assault has previously been adjudicated to be a parent of the child.

(c) In a parentage proceeding, the person giving birth may file a pleading making an allegation under subsection (a) of this section at any time.

(d) The standard of proof that a child was conceived as a result of the person sexually assaulting the person who gave birth to the child may be proven by the petitioner by either of the following:

(1) clear and convincing evidence that the person was convicted of a sexual assault against the person giving birth and that the child was conceived as a result of the sexual assault; or

(2) clear and convincing evidence that the person sexually assaulted or sexually exploited the person who gave birth to the child and that the child was

conceived as a result of the sexual assault or sexual exploitation, regardless of whether criminal charges were brought against the person.

(e) If the court finds that the burden of proof under subsection (d) of this section is met, the court shall enter an order:

(1) adjudicating that the person alleged to have committed a sexual assault is not a parent of the child;

(2) requiring that the Department of Health amend the birth certificate to delete the name of the person precluded as a parent; and

(3) requiring that the person alleged to have committed a sexual assault to pay child support or birth-related costs, or both, unless the person giving birth requests otherwise.

#### CHAPTER 7. PARENTAGE BY ASSISTED REPRODUCTION

##### § 701. SCOPE

This chapter does not apply to the birth of a child conceived by sexual intercourse or assisted reproduction under a surrogacy agreement under chapter 8 of this title.

##### § 702. PARENTAL STATUS OF DONOR

(a) A donor is not a parent of a child conceived through assisted reproduction.

(b) Notwithstanding subsection (a) of this section:

(1) a person who provides a gamete or gametes or an embryo or embryos to be used for assisted reproduction for the person's spouse is a parent of the resulting child; and

(2) a person who provides a gamete or an embryo for assisted reproduction is a parent of the resulting child if the person has a written agreement or agreements with the person giving birth that the person providing the gamete or the embryo is intended to be a parent.

##### § 703. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION

A person who consents under section 704 of this title to assisted reproduction by another person with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

##### § 704. CONSENT TO ASSISTED REPRODUCTION

(a)(1) A person who intends to be a parent of a child born through assisted reproduction shall consent to such in a signed record that is executed by each intended parent and provides that the signatories consent to the use of assisted reproduction to conceive a child with the intent to parent the child.

(2) Consent pursuant to subdivision (1) of this subsection, executed via a form made available by the Department of Health, shall be accepted and relied upon for purposes of issuing a birth record.

(b) In the absence of a record pursuant to subsection (a) of this section, a court may adjudicate a person as the parent of a child if it finds by a preponderance of the evidence that:

(1) prior to conception or birth of the child, the parties entered into an agreement that they both intended to be the parents of the child; or

(2) the person resided with the child after birth and undertook to develop a parental relationship with the child.

#### § 705. LIMITATION ON SPOUSE'S DISPUTE OF PARENTAGE

(a) Except as otherwise provided in subsection (b) of this section, a spouse may commence a proceeding to challenge his or her parentage of a child born by assisted reproduction during the marriage within two years after the birth of the child if the court finds that the spouse did not consent to the assisted reproduction before, on, or after the birth of the child or that the spouse withdrew consent pursuant to section 706 of this title.

(b) A spouse or the person who gave birth to the child may commence a proceeding to challenge the spouse's parentage of a child born by assisted reproduction at any time if the court determines:

(1) the spouse neither provided a gamete for, nor consented to, the assisted reproduction;

(2) the spouse and the person who gave birth to the child have not cohabited since the probable time of assisted reproduction; and

(3) the spouse never openly held out the child as the spouse's child.

(c) This section shall apply to a spouse's dispute of parentage even if the spouse's marriage is declared invalid after assisted reproduction occurs.

#### § 706. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL OF CONSENT

(a) If a marriage is dissolved before transfer or implantation of gametes or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a signed record with notice to the other spouse and the person giving birth that, if assisted reproduction were to occur after a divorce, the former spouse would be a parent of the child.

(b) Consent of a person to assisted reproduction pursuant to section 704 of this title may be withdrawn by that person in a signed record with notice to the person giving birth and any other intended parent before transfer or



implantation of gametes or embryos. A person who withdraws consent under this subsection is not a parent of the resulting child.

#### § 707. PARENTAL STATUS OF DECEASED PERSON

(a) If a person who intends to be a parent of a child conceived by assisted reproduction dies during the period between the transfer of a gamete or embryo and the birth of the child, the person's death does not preclude the establishment of the person's parentage of the child if the person otherwise would be a parent of the child under this chapter.

(b)(1) If a person who consented in a record to assisted reproduction by the person giving birth to the child dies before transfer or implantation of gametes or embryos, the deceased person is not a parent of a child conceived by assisted reproduction unless:

(A) the deceased person consented in a record that if assisted reproduction were to occur after the death of the deceased person, the deceased person would be a parent of the child; or

(B) the deceased person's intent to be a parent of a child conceived by assisted reproduction after the person's death is established by a preponderance of the evidence.

(2) A person is a parent of a child conceived by assisted reproduction under subdivision (1) of this subsection only if:

(A) the embryo is in utero not later than 36 months after the person's death; or

(B) the child is born not later than 45 months after the person's death.

#### § 708. BIRTH ORDERS

(a) A party consenting to assisted reproduction, a person who is a parent pursuant to sections 702-704 of this title, an intended parent or parents, or the person giving birth may commence a proceeding in the Probate Division of the Superior Court to obtain an order:

(1) declaring that the intended parent or parents are the parent or parents of the resulting child and ordering that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the child;

(2) sealing the record from the public to protect the privacy of the child and the parties;

(3) designating the contents of the birth certificate and directing the Department of Health to designate the intended parent or parents as the parent or parents of the child; or

(4) for any relief that the court determines necessary and proper.

(b) A proceeding under this section may be commenced before or after the birth of the child.

(c) Neither the State nor the Department of Health is a necessary party to a proceeding under this section.

(d) The intended parent or parents and any resulting child shall have access to the court records relating to the proceeding at any time.

#### § 709. LABORATORY ERROR

If due to a laboratory error the child is not genetically related to either of the intended parents, the intended parents are the parents of the child unless otherwise determined by the court.

### CHAPTER 8. PARENTAGE BY GESTATIONAL CARRIER AGREEMENT

#### § 801. ELIGIBILITY TO ENTER GESTATIONAL CARRIER AGREEMENT

(a) In order to execute an agreement to act as a gestational carrier, a person shall:

(1) be at least 21 years of age;

(2) have completed a medical evaluation that includes a mental health consultation;

(3) have had independent legal representation of the person's own choosing and paid for by the intended parent or parents regarding the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement; and

(4) not have contributed gametes that will ultimately result in an embryo that the gestational carrier will attempt to carry to term, unless the gestational carrier is entering into an agreement with a family member.

(b) Prior to executing a gestational carrier agreement, a person or persons intending to become a parent or parents, whether genetically related to the child or not, shall:

(1) be at least 21 years of age;

(2) have completed a medical evaluation and mental health consultation; and

(3) have retained independent legal representation regarding the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement.

#### § 802. GESTATIONAL CARRIER AGREEMENT

(a) Written agreement. A prospective gestational carrier, that person's spouse, and the intended parent or parents may enter into a written agreement that that:

(1) the prospective gestational carrier agrees to pregnancy by means of assisted reproduction;

(2) the prospective gestational carrier and that person's spouse have no rights and duties as the parents of a child conceived through assisted reproduction; and

(3) the intended parent or parents will be the parents of any resulting child.

(b) Enforceability. A gestational carrier agreement is enforceable only if it meets the following requirements:

(1) The agreement shall be in writing and signed by all parties.

(2) The agreement shall not require more than a one-year term to achieve pregnancy.

(3) At least one of the parties shall be a resident of this State.

(4) The agreement shall be executed before the commencement of any medical procedures other than the medical evaluations required by section 801 of this title and, in every instance, before transfer of embryos.

(5) The gestational carrier and the intended parent or parents shall meet the eligibility requirements of section 801 of this title.

(6) If any party is married, the party's spouse shall be a party to the agreement.

(7) The gestational carrier and the intended parent or parents shall be represented by independent legal counsel in all matters concerning the agreement and each counsel shall affirmatively so state in a written declaration attached to the agreement. The declarations shall state that the agreement meets the requirements of this title and shall be solely relied upon by health care providers and staff at the time of birth and by the Department of Health for birth registration and certification purposes.

(8) The parties to the agreement shall sign a written acknowledgment of having received a copy of the agreement.

(9) The signing of the agreement shall be witnessed and signed by at least one other person.

(10) The agreement shall expressly provide that the gestational carrier:

(A) shall undergo assisted reproduction and attempt to carry and give birth to any resulting child;

(B) has no claim to parentage of all resulting children to the intended parent or parents immediately upon the birth of the child or children regardless of whether a court order has been issued at the time of birth; and

(C) shall acknowledge the exclusive parentage of the intended parent or parents of all resulting children.

(11) If the gestational carrier is married, the carrier's spouse:

(A) shall acknowledge and agree to abide by the obligations imposed on the gestational carrier by the terms of the gestational carrier agreement;

(B) has no claim to parentage of any resulting children to the intended parent or parents immediately upon the birth of the children regardless of whether a court order has been issued at the time of birth; and

(C) shall acknowledge the exclusive parentage of the intended parent or parents of all resulting children.

(12) The gestational carrier shall have the right to use the services of a health care provider or providers of the gestational carrier's choosing to provide care during the pregnancy.

(13) The intended parent or parents shall:

(A) be the exclusive parent or parents and accept parental rights and responsibilities of all resulting children immediately upon birth regardless of the number, gender, or mental or physical condition of the child or children; and

(B) assume responsibility for the financial support of all resulting children immediately upon the birth of the children.

(c) Medical evaluations. If requested by a party or the court, a party shall provide records to the court and other parties related to the medical evaluations conducted pursuant to section 801 of this title.

(d) Reasonable consideration and expenses. Except as provided in section 809 of this title, a gestational carrier agreement may include provisions for payment of consideration and reasonable expenses to a prospective gestational carrier, provided they are negotiated in good faith between the parties.

(e) Decision of gestational carrier. A gestational agreement shall permit the gestational carrier to make all health and welfare decisions regarding the gestational carrier's health and pregnancy, and shall not enlarge or diminish the gestational carrier's right to terminate the pregnancy.

#### § 803. PARENTAGE; PARENTAL RIGHTS AND RESPONSIBILITIES

(a)(1) If a gestational carrier agreement satisfies the requirements of this chapter, the intended parent or parents are the parent or parents of the resulting child immediately upon the birth of the child, and the resulting child is considered the child of the intended parent or parents immediately upon the birth of the child. Neither the gestational carrier nor the gestational carrier's spouse, if any, is the parent of the resulting child.

(2) A person who is determined to be a parent of the resulting child is obligated to support the child. The breach of the gestational carrier agreement by the intended parent or parents does not relieve the intended parent or parents of the obligation to support the resulting child.

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

(b) Parental rights and responsibilities shall vest exclusively in the intended parent or parents immediately upon the birth of the resulting child.

(c) If due to a laboratory error, the resulting child is not genetically related to either the intended parent or parents or any donor who donated to the intended parent or parents, the intended parent or parents are considered the parent or parents of the child.

#### § 804. BIRTH ORDERS

(a) Before or after the birth of a resulting child, a party to a gestational carrier agreement may commence a proceeding in the Probate Division of the Superior Court to obtain an order doing any of the following:

(1) Declaring that the intended parent or parents are the parent or parents of the resulting child and ordering that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the child.

(2) Designating the contents of the birth certificate and directing the Department of Health to designate the intended parent or parents as the parent or parents of the child. The Department of Health may charge a reasonable fee for the issuance of a birth certificate.

(3) Sealing the record from the public to protect the privacy of the child and the parties.

(4) Providing any relief the court determines necessary and proper.

(b) Neither the State nor the Department of Health is a necessary party to a proceeding under subsection (a) of this section.

(c) The intended parent or parents and any resulting child shall have access to their court records at any time.

#### § 805. EXCLUSIVE, CONTINUING JURISDICTION

Subject to the jurisdictional standards of 15 V.S.A. § 1071, the court conducting a proceeding under this chapter has exclusive, continuing jurisdiction of all matters arising out of the gestational carrier agreement until a child born to the gestational carrier during the period governed by the agreement attains the age of 180 days.

#### § 806. TERMINATION OF GESTATIONAL CARRIER AGREEMENT

(a) A party to a gestational carrier agreement may withdraw consent to any medical procedure and may terminate the gestational carrier agreement at any time prior to any embryo transfer or implantation by giving written notice of termination to all other parties.

(b) Upon termination of the gestational carrier agreement under subsection (a) of this section, the parties are released from all obligations recited in the agreement except that the intended parent or parents remain responsible for all expenses that are reimbursable under the agreement incurred by the gestational carrier through the date of termination. The gestational carrier is entitled to keep all payments received and obtain all payments to which the gestational carrier is entitled. Neither a prospective gestational carrier nor the gestational carrier's spouse, if any, is liable to the intended parent or parents for terminating a gestational carrier agreement.

#### § 807. GESTATIONAL CARRIER AGREEMENT; EFFECT OF SUBSEQUENT CHANGE OF MARITAL STATUS

Unless a gestational carrier agreement expressly provides otherwise:

(1) the marriage of a gestational carrier or of an intended parent after the agreement has been signed by all parties does not affect the validity of the agreement, the gestational carrier's spouse's consent or intended parent's spouse's consent to the agreement is not required, and the gestational carrier's spouse or intended parent's spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement; and

(2) the divorce, dissolution, annulment, or legal separation of the gestational carrier or of an intended parent after the agreement has been signed by all parties does not affect the validity of the agreement.

§ 808. EFFECT OF NONCOMPLIANCE; STANDARD OF REVIEW;  
REMEDIES

(a) Not enforceable. A gestational carrier agreement that does not meet the requirements of this chapter is not enforceable.

(b) Standard of review. In the event of noncompliance with the requirements of this chapter or with a gestational carrier agreement, the Family Division of the Superior Court shall determine the respective rights and obligations of the parties to the gestational carrier agreement, including evidence of the intent of the parties at the time of execution.

(c) Remedies. Except as expressly provided in a gestational carrier agreement and in subsection (d) of this section, in the event of a breach of the gestational carrier agreement by the gestational carrier or the intended parent or parents, the gestational carrier or the intended parent or parents are entitled to all remedies available at law or in equity.

(d) Genetic testing. If a person alleges that the parentage of a child born to a gestational carrier is not the result of assisted reproduction, and this question is relevant to the determination of parentage, the court may order genetic testing.

(e) Specific performance. Specific performance is not an available remedy for a breach by the gestational carrier of any term in a gestational carrier agreement that requires the gestational carrier to be impregnated or to terminate a pregnancy. Specific performance is an available remedy for a breach by the gestational carrier of any term that prevents the intended parent or parents from exercising the full rights of parentage immediately upon the birth of the child.

§ 809. LIABILITY FOR PAYMENT OF GESTATIONAL CARRIER  
HEALTH CARE COSTS

(a) The intended parent or parents are liable for the health care costs of the gestational carrier that are not paid by insurance. As used in this section, “health care costs” means the expenses of all health care provided for assisted reproduction, prenatal care, labor, and delivery.

(b) A gestational carrier agreement shall explicitly detail how the health care costs of the gestational carrier are paid. The breach of a gestational carrier agreement by a party to the agreement does not relieve the intended parent or parents of the liability for health care costs imposed by subsection (a) of this section.

(c) This section is not intended to supplant any health insurance coverage that is otherwise available to the gestational carrier or an intended parent for the coverage of health care costs. This section does not change the health insurance coverage of the gestational carrier or the responsibility of the insurance company to pay benefits under a policy that covers a gestational carrier.

Sec. 2. REPEAL

15 V.S.A. chapter 5, subchapter 3A (parentage proceedings) is repealed.

Sec. 3. 33 V.S.A. § 4921(e)(1) is amended to read:

(e)(1) Upon request, relevant Department records or information created under this subchapter shall be disclosed to:

\* \* \*

(F) a Family Division of the Superior Court involved in any proceeding in which:

(i) custody of a child or parent-child contact is at issue pursuant to 15 V.S.A. chapter 11, subchapter 3A;

(ii) a parent of a child challenges a presumption of parentage under 15C V.S.A. § 402(b)(3); or

(iii) a parent of a child contests an allegation that he or she fostered or supported a bonded and dependent relationship between the child and a person seeking to be adjudicated a de facto parent under 15C V.S.A. § 501(a)(2);

\* \* \*

Sec. 4. 33 V.S.A. § 6911 is amended to read:

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

(a)(1) Information obtained through reports and investigations, including the identity of the reporter, shall remain confidential and shall not be released absent a court order, except as follows:

\* \* \*

(C) Relevant information may be disclosed to a Family Division of the Superior Court, upon the request of that court, in any proceeding in which:

(i) a parent of a child challenges a presumption of parentage under 15C V.S.A. § 402(b)(3); or

(ii) a parent of a child contests an allegation that he or she fostered or supported a bonded and dependent relationship between the child and a



person seeking to be adjudicated a de facto parent under 15C V.S.A. § 501(a)(2).

\* \* \*

(c) The Commissioner or designee may disclose Registry information only to:

\* \* \*

(11) A Family Division of the Superior Court upon request of that court if it is involved in any proceeding in which:

(A) a parent of a child challenges a presumption of parentage under 15C V.S.A. § 402(b)(3); or

(B) a parent of a child contests an allegation that he or she fostered or supported a bonded and dependent relationship between the child and a person seeking to be adjudicated a de facto parent under 15C V.S.A. § 501(a)(2).

\* \* \*

#### Sec. 5. TRANSITIONAL PROVISION

This title applies to a pending proceeding to adjudicate parentage commenced before the effective date of this act for an issue on which a judgment has not been rendered.

#### Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

*ALICE W. NITKA  
RICHARD W. SEARS  
JOSEPH C. BENNING*

*Committee on the part of the  
Senate*

*MARTIN J. LALONDE  
MAXINE JO GRAD  
EILEEN G. DICKINSON*

*Committee on the part of the House*

## **NEW BUSINESS**

### **Third Reading**

#### **H. 571.**

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

#### **H. 663.**

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

#### **H. 707.**

An act relating to the prevention of sexual harassment.

#### **H. 728.**

An act relating to bail reform.

#### **H. 731.**

An act relating to miscellaneous workers' compensation and occupational safety amendments.

#### **H. 764.**

An act relating to data brokers and consumer protection.

#### **H. 777.**

An act relating to the Clean Water State Revolving Loan Fund.

#### **H. 907.**

An act relating to improving rental housing safety.

#### **H. 916.**

An act relating to increasing the moral obligation authority of the Vermont Economic Development Authority.

**NOTICE CALENDAR**  
**Second Reading**  
**Favorable with Proposal of Amendment**

**H. 739.**

An act relating to energy productivity investments under the self-managed energy efficiency program.

**Reported favorably with recommendation of proposal of amendment by Senator Lyons for the Committee on Finance.**

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. 30 V.S.A. § 209 is amended to read:

§ 209. JURISDICTION; GENERAL SCOPE

\* \* \*

(j) Self-managed energy efficiency programs.

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

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

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

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

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

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

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

(B) A cost-based fee to be determined by the Commission shall be charged to the applicant to cover the administrative costs, including savings verification, incurred by the Commission and Department. The Commission shall determine procedures for savings verification. Such procedures shall be consistent with savings verification procedures established for entities appointed under subdivision (d)(2) of this section and, when determined to be cost-effective under subdivision (L) of this subdivision (4), with the requirements of ISO-New England for the forward capacity market (FCM) program.

(C) An applicant shall demonstrate to the Commission that it has a comprehensive energy management program with annual objectives. Achievement of certification of ISO standard 14001 shall be eligible to satisfy the requirements of having a comprehensive program.

(D) An applicant eligible pursuant to subdivision (A)(i) of this subdivision (j)(4) shall commit to an annual average energy efficiency investment in energy efficiency and energy productivity programs and measures during each three-year period that the applicant participates in the program of not less than \$1 million. An applicant eligible pursuant to subdivision (A)(ii) of this subdivision (j)(4) shall commit to an annual average investment in energy efficiency and energy productivity programs and measures during each three-year period that the applicant participates in the program of not less than \$500,000.00. To achieve the exemption from energy efficiency charges related to natural gas under subdivision (3) of this subsection (j), the an applicant shall make an additional annual energy efficiency investment in an amount not less than \$55,000.00. As used in this subsection (j), “energy productivity programs and measures” means investments that reduce the amount of energy required to produce a unit of product below baseline energy use. Baseline energy use shall be calculated as the average amount of energy required to make one unit of the same product in the two years preceding implementation of the program or measure.

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

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

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

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

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

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

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

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

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

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

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

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

(L) A participant in the self-managed program class ~~may~~ shall work with the Department of Public Service to determine whether it is cost-effective to submit projects to the independent system operator of ISO-New England, including through recognized independent aggregators, for payments under that operator's forward capacity market the FCM program, and shall invest such payments in electric or fuel efficiency.

(i) As used in this subdivision (L), "cost-effective" requires that the estimated payments from the FCM program exceed the incremental cost of savings verification necessary for submission to that program.

(ii) If the Department determines the submission to be cost-effective, then an entity appointed to deliver electric energy efficiency services under subdivision (d)(2) of this section shall submit the project to the FCM program for payment and any resulting payments shall be remitted to the Electric Efficiency Fund for use in accordance with subdivision (e)(1)(A) of this section.

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

\* \* \*

## Sec. 2. ENERGY SAVINGS ACCOUNT PARTNERSHIP PILOT

(a) Definitions. As used in this section:

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

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

(3) "Customer" means a commercial or industrial electric customer that is located in a service territory in which Efficiency Vermont delivers energy efficiency programs and measures and that does not qualify for SMEEP.

(4) "Customer EEC Funds" means a customer's EEC payments during the period of the ESA partnership project.

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

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

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

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

(9) “Energy productivity measures” means investments that reduce the amount of energy required to produce a unit of product below baseline energy use. Baseline energy use shall be calculated as the average amount of energy required to make one unit of the same product in the two years preceding implementation of the program or measure.

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

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

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

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

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

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

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

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

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

(3) Notwithstanding any contrary provision of 30 V.S.A. § 209, the Customer EEC Funds may be used for one or more of the following: electric energy efficiency, thermal energy and process-fuel efficiency for unregulated fuels, energy productivity measures, demand management, and energy storage that provides benefits to the customer and its interconnecting utility. In addition, for a customer who is a manufacturer and whose purchases of regulated fuel exceeded 600,000 thousand cubic feet (MCF) in 2017, the Funds may be used for thermal energy and process-fuel efficiency for regulated fuels, and any regulated fuel savings attributable to investment of Customer EEC Funds through the pilot program shall be counted towards EVT's performance indicators. EVT may allocate the cost of the pilot across regulated and unregulated fuel funding sources in a manner that avoids or reduces the need to adjust savings goals approved by the Commission.

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

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

(2) EVT and the Department shall evaluate and verify the electricity savings of each project funded under the ESA Partnership Pilot with no less rigor than is required by ISO-New England for its Forward Capacity Market (FCM) program.

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

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



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

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

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

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

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

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

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

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

(h) Annual reports. On or before each November 1 from 2020 through 2022, the EVT and the selected customers jointly shall submit written progress reports to the Commission, the Department, and the standing committees of jurisdiction that include projects under the ESA Partnership Pilot and their associated energy and cost savings. A customer's projects under the pilot and the associated data and results shall be made public through this report. However, a customer may request that the Commission order customer-specific data to be used in preparing a report under this subsection be kept confidential if the data would qualify for exemption from disclosure under 1 V.S.A. § 317. If the Commission issues such an order, the data subject to the order shall be disclosed only in accordance with a protective agreement

approved by the Commission and signed by the recipient of the data, unless a court directs otherwise.

(i) Evaluation; recommendation. On completion of the ESA Partnership Pilot, the Commission shall conduct or shall have a third party conduct an independent evaluation of the ESA Partnership Pilot.

(1) The evaluation shall analyze and compare, among pilot participants and companies of similar size outside the pilot: job creation and retention, energy savings, total energy cost reductions, energy productivity measures, amount of capital applied and leveraged, greenhouse gas reductions, and other criteria as defined by the Commission. The evaluation shall also study the effects of the pilot on other ratepayers.

(2) The evaluation shall provide electric system results for the ESA Pilot Program and compare them to the electric system results that would have been obtained had the Customer EEC Funds been expended pursuant to the electric energy efficiency programs otherwise authorized under 30 V.S.A. § 209(d). In this subdivision (2), “electric system results” means: total electric energy savings, total avoided cost of purchasing power, total avoided costs of transmission and distribution improvements, and resulting FCM program revenues.

(3) After considering the results of that evaluation, the Commission shall submit a written recommendation to the standing committees of jurisdiction on whether to continue the program conducted under this section and, if so, under what recommended conditions and revisions, if any. The Commission shall submit this recommendation to the General Assembly on or before January 15, 2023.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(Committee vote: 5-1-1)

(For House amendments, see House Journal for March 13, 2018, page 597)

**Reported favorably by Senator Ashe for the Committee on Appropriations.**

The Committee recommends that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Finance.

(Committee vote: 6-0-1)

## House Proposal of Amendment

### S. 197

An act relating to liability for toxic substance exposures or releases.

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 219 is added to read:

#### CHAPTER 219. MEDICAL MONITORING DAMAGES

##### § 7201. DEFINITIONS

As used in this chapter:

(1) “Disease” means any disease, ailment, or adverse physiological or chemical change linked with exposure to a toxic substance.

(2) “Exposure” means ingestion, inhalation, contact with the skin or eyes, or any other physical contact.

(3) “Facility” means all contiguous land, structures, other appurtenances, and improvements on the land where toxic substances are manufactured, processed, used, or stored. A facility may consist of several treatment, storage, or disposal operational units. A facility shall not include land, structures, other appurtenances, and improvements on the land owned by a municipality.

(4) “Farming” shall have the same meaning as in 10 V.S.A. § 6001.

(5) “Large user of toxic substances” means, at the time of the release, the owner or operator of a facility that employs 10 or more employees, has a Standard Industrial Classification (SIC) Code, and manufactures, processes, or otherwise uses, exclusive of sales or distribution, more than 1,000 pounds of one or more, or a combination of, toxic substances per year.

(6) “Medical monitoring damages” means the cost of medical tests or procedures and related expenses incurred for the purpose of detecting latent disease resulting from exposure.

(7) “Pesticide” shall have the same meaning as in 6 V.S.A. § 1101.

(8) “Release” means any intentional or unintentional, permitted or unpermitted, act or omission that allows a toxic substance to enter the air, land, surface water, or groundwater.

(9) “Sport shooting range” shall have the same meaning as in section 5227 of this title.

(10)(A) “Toxic substance” means any substance, mixture, or compound that has the capacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption through any body surface and that satisfies one or more of the following:

(i) the substance, mixture, or compound is listed on the U.S. Environmental Protection Agency Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act, Comprehensive Environmental Response, Compensation and Liability Act, and Section 112(r) of the Clean Air Act;

(ii) the substance, mixture, or compound is defined as a “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under 10 V.S.A. chapter 159;

(iii) testing has produced evidence, recognized by the National Institute for Occupational Safety and Health or the U.S. Environmental Protection Agency, that the substance, mixture, or compound poses acute or chronic health hazards;

(iv) the Department of Health has issued a public health advisory for the substance, mixture, or compound; or

(v) the Secretary of Natural Resources has designated the substance, mixture, or compound as a hazardous waste under 10 V.S.A. chapter 159; or

(vi) the substance, when released, can be shown by expert testimony to pose a potential threat to human health or the environment.

(B) “Toxic substance” shall not mean:

(i) a pesticide when applied consistent with good practice conducted in conformity with federal, State, and local laws, rules, and regulations and according to manufacturer’s instructions;

(ii) manure or nutrients applied to land by a person engaged in farming according to the requirements of 6 V.S.A. chapter 215; or

(iii) lead ammunition or components thereof discharged, used, or stored at a sport shooting range implementing a lead management plan approved by the Agency of Natural Resources.

#### § 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO TOXIC SUBSTANCES

(a) A person with or without a present injury or disease shall have a cause of action for medical monitoring damages against a large user of toxic substances who released a substance, mixture, or compound that meets the

definition of toxic substance under section 7201 of this title and all of the following are demonstrated by a preponderance of the evidence:

(1) The person was exposed to the toxic substance at greater than normal background concentration levels;

(2) The exposure was the result of tortious conduct by the large user of toxic substances who released the toxic substance, including conduct that constitutes negligence, battery, strict liability, trespass, or nuisance;

(3) As a proximate result of the exposure, the person has a greater risk than the general public of contracting a latent disease. A person does not need to prove that the latent disease is certain or likely to develop as a result of the exposure.

(4) Diagnostic testing is reasonably necessary. Testing is reasonably necessary if a physician would prescribe testing for the purpose of detecting or monitoring the latent disease.

(5) Medical tests or procedures exist to detect the latent disease.

(b) A court shall place the award of medical monitoring damages into a court-supervised program administered by a medical professional.

(c) If a court places an award of medical monitoring damages into a court-supervised program pursuant to subsection (b) of this section, the court shall also award to the plaintiff reasonable attorney's fees and other litigation costs reasonably incurred.

(d) Nothing in this chapter shall be deemed to preclude the pursuit of any other civil or injunctive remedy available under statute or common law, including the right of any person to recover for damages related to the manifestation of a latent disease. The remedies in this chapter are in addition to those provided by existing statutory or common law.

(e) This section does not preclude a court from certifying a class action for medical monitoring damages.

## Sec. 2. WEBSITE; LINKS TO LIST OF TOXIC SUBSTANCES

The Commissioner of Health shall maintain on the Department of Health website a link to each of the lists of substances, mixtures, or compounds referenced in the definition of "toxic substance" under 12 V.S.A. § 7201.

\* \* \* Effective Date \* \* \*

## Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 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.

Alicia Sacerio Humbert of Northfield – Family Division Magistrate – By Senator Benning for the Committee on Judiciary. (5/3/18)

Megan J. Shafritz of South Burlington – Superior Judge – By Senator Nitka for the Committee on Judiciary. (5/3/18)

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)