

Journal of the Senate

WEDNESDAY, MAY 10, 2017

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Bill Referred

House bill of the following title was read the first time and referred:

H. 233.

An act relating to protecting working forests and habitat.

To the Committee on Rules.

Bill Passed in Concurrence with Proposal of Amendment

H. 143.

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to automobile insurance requirements and transportation network companies.

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 503.

Senator Sears, for the Committee of Conference, submitted the following report:

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:

An act relating to bail.

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:

* * * Release Prior to Trial * * *

Sec. 1. 13 V.S.A. § 7551 is amended to read:

§ 7551. APPEARANCE BONDS; GENERALLY

(a) A bond given by a person charged with a criminal offense or by a witness in a criminal prosecution under section 6605 of this title, conditioned for the appearance of the person or witness before the court in cases where the offense is punishable by fine or imprisonment, and in appealed cases, shall be taken to the ~~district or superior court~~ Criminal Division of the Superior Court where the prosecution is pending, and shall remain binding upon parties until discharged by the court or until sentencing. The person or witness shall appear at all required court proceedings.

(b) No bond may be imposed at the initial appearance of a person charged with a misdemeanor if the person was cited for the offense in accordance with Rule 3 of the Vermont Rules of Criminal Procedure. This subsection shall not be construed to restrict the court's ability to impose conditions on such persons to reasonably ensure his or her appearance at future proceedings or to reasonably protect the public in accordance with section 7554 of this title.

Sec. 2. 28 V.S.A. § 301 is amended to read:

§ 301. SUMMONS OR ARREST OF PROBATIONER

* * *

(2) Arrest or citation of person on probation. Any correctional officer may arrest a probationer without a warrant if, in the judgment of the correctional officer, the probationer has violated a condition or conditions of his or her probation other than a condition that the probationer pay restitution; or may deputize any other law enforcement officer to arrest a probationer without a warrant by giving him or her a written statement setting forth that the probationer has, in the judgment of the correctional officer, violated a condition or conditions of his or her probation other than a condition that the probationer pay restitution. The written statement delivered with the person by the arresting officer to the supervising officer of the correctional facility to which the person is brought for detention shall be sufficient warrant for detaining him or her. In lieu of arrest, a correctional officer may issue a probationer a citation to appear for arraignment. In deciding whether to arrest or issue a citation, an officer shall consider whether issuance of a citation will

reasonably ensure the probationer's appearance at future proceedings and reasonably protect the public.

* * *

(4) Detention pending hearing for probationer. Pending arraignment for any charge of violation, the probationer shall ~~continue~~ to be detained at a correctional facility unless issued a citation by a correctional officer. Thereafter, the court may release the probationer pursuant to 13 V.S.A. § 7554. There shall be no right to bail or release, unless the person is on probation for a nonviolent misdemeanor or nonviolent felony ~~and the probation violation did not constitute a new crime.~~

(5)(A) At arraignment, if the court finds that bail or conditions of release will reasonably ensure the probationer's appearance at future proceedings and conditions of release will reasonably protect the public, the court shall release a probationer who is on probation for a nonviolent misdemeanor or nonviolent felony pursuant to 13 V.S.A. § 7554.

(B) As used in this subdivision section:

~~(A)(i)~~ "Nonviolent felony" means a felony offense ~~which that~~ is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

~~(B)(ii)~~ "Nonviolent misdemeanor" means a misdemeanor offense ~~which that~~ is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64 or 13 V.S.A. § 1030.

Sec. 3. PRETRIAL COMMUNICATIONS RECOMMENDATIONS

The Court Administrator, the Department of State's Attorneys and Sheriffs, the Office of the Defender General, and the Vermont Chapter of the American Civil Liberties Union shall work together and with other interested parties to examine options for facilitating pretrial communication between the courts and defendants with a goal of reducing the risk of nonappearance by defendants. The parties jointly shall provide options and costs of such options to the Joint Committee on Justice Oversight on or before October 15, 2017.

* * * Regulated Drugs * * *

Sec. 4. 18 V.S.A. § 4233a is added to read:

§ 4233a. FENTANYL

(a) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing fentanyl shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling fentanyl shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of four milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of 20 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both.

(4) In lieu of a charge under this subsection, but in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any regulated drug containing a detectable amount of fentanyl shall be imprisoned not more than five years or fined not more than \$250,000.00, or both.

(b) Trafficking. A person knowingly and unlawfully possessing fentanyl in an amount consisting of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl with the intent to sell or dispense the fentanyl shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both. There shall be a permissive inference that a person who possesses fentanyl in an amount of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl intends to sell or dispense the fentanyl. The amount of possessed fentanyl under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.

(c) Transportation into the State. In addition to any other penalties provided by law, a person knowingly and unlawfully transporting more than 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the fentanyl shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

Sec. 5. 18 V.S.A. § 4234 is amended to read:

§ 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

* * *

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be

imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling a depressant, stimulant, or narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

Sec. 6. 13 V.S.A. § 1404 is amended to read:

§ 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

- (1) murder in the first or second degree;
- (2) arson under sections 501-504 and 506 of this title;
- (3) sexual exploitation of children under sections 2822, 2823, and 2824 of this title;
- (4) receiving stolen property under sections 2561-2564 of this title; or
- (5) an offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under:

-
- (A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana;
- (B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine;
- (C) 18 V.S.A. § 4233(c), relating to trafficking in heroin;
- (D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than fentanyl, heroin or cocaine; ~~or~~
- (E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine; or
- (F) 18 V.S.A. § 4233a(c), relating to trafficking in fentanyl.

Sec. 7. 18 V.S.A. § 4234b is amended to read:

§ 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

* * *

(c) Electronic registry system.

(1)(A) Retail establishments shall use an electronic registry system to record the sale of products made pursuant to subsection (b) of this section. The electronic registry system shall have the capacity to block a sale of nonprescription drug products containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base that would result in a purchaser exceeding the lawful daily or monthly amount. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm to his or her person or to another person if the transaction is not completed. The system shall create a record of each use of the override mechanism.

(B) The electronic registry system shall be available free of charge to the State of Vermont, retail establishments, and local law enforcement agencies.

(C) The electronic registry system shall operate in real time to enable communication among in-state users and users of similar systems in neighboring states.

(D) The State shall use the National Precursor Log Exchange (NPLEx) online portal or its equivalent to host Vermont's electronic registry system.

(2)(A) Prior to completing a sale under subsection (b) of this section, a retail establishment shall require the person purchasing the drug product to present a current, valid government-issued identification document. The retail establishment shall record in the electronic registry system:

-
- (i) the name and address of the purchaser;
 - (ii) the name of the drug product and quantity of ephedrine, pseudoephedrine, and phenylpropanolamine base sold in grams;
 - (iii) the date and time of purchase;
 - (iv) the form of identification presented, the issuing government entity, and the corresponding identification number; and
 - (v) the name of the person selling or furnishing the drug product.

(B)(i) If the retail establishment experiences an electronic or mechanical failure of the electronic registry system and is unable to comply with the electronic recording requirement, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until the retail establishment is able to comply fully with this subsection (c).

(ii) If the region of the State where the retail establishment is located does not have broadband Internet access, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until broadband Internet access becomes accessible in that region. At that time, the retail establishment shall come into compliance with this subsection (c).

(C) A retail establishment shall maintain all records of drug product purchases made pursuant to this subsection (c) for a minimum of two years.

(3) A retail establishment shall display a sign at the register provided by NPLEx or its equivalent to notify purchasers of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine base that:

(A) the purchase of the drug product or products shall result in the purchaser's identity being listed on a national database; and

(B) the purchaser has the right to request the transaction number for any purchase that was denied pursuant to this subsection (c).

(4) Except as provided in subdivision (5) of this subsection (c), a person or retail establishment that violates this subsection shall:

(A) for a first violation be assessed a civil penalty of not more than \$100.00; and

(B) for a second or subsequent violation be assessed a civil penalty of not more than \$500.00.

(d) This section shall not apply to a manufacturer ~~which~~ that has obtained an exemption from the Attorney General of the United States under Section 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

(e) As used in this section:

(1) “Distributor” means a person, other than a manufacturer or wholesaler, ~~who~~ that sells, delivers, transfers, or in any manner furnishes a drug product to any person ~~who~~ that is not the ultimate user or consumer of the product.

(2) “Knowingly” means having actual knowledge of the relevant facts.

(3) “Manufacturer” means a person ~~who~~ that produces, compounds, packages, or in any manner initially prepares a drug product for sale or use.

(4) “Wholesaler” means a person, other than a manufacturer, ~~who~~ that sells, transfers, or in any manner furnishes a drug product to any other person for the purpose of being resold.

Sec. 8. USE OF U.S. FOOD AND DRUG ADMINISTRATION- APPROVED DRUGS CONTAINING CANNABIDIOL

(a) Upon approval by the U.S. Food and Drug Administration (FDA) of one or more prescription drugs containing cannabidiol, the following activities shall be lawful in Vermont:

(1) the clinically appropriate prescription for a patient of an FDA-approved prescription drug containing cannabidiol by a health care provider licensed to prescribe medications in this State and acting within his or her authorized scope of practice;

(2) the dispensing, pursuant to a valid prescription, of an FDA-approved prescription drug containing cannabidiol to a patient or a patient’s authorized representative by a pharmacist or by another health care provider licensed to dispense medications in this State and acting within his or her authorized scope of practice;

(3) the possession and transportation of an FDA-approved prescription drug containing cannabidiol by a patient to whom a valid prescription was issued or by the patient’s authorized representative;

(4) the possession and transportation of an FDA-approved prescription drug containing cannabidiol by a licensed pharmacy or wholesaler in order to facilitate the appropriate dispensing and use of the drug; and

(5) the use of an FDA-approved prescription drug containing cannabidiol by a patient to whom a valid prescription was issued, provided the patient uses the drug only for legitimate medical purposes in conformity with instructions from the prescriber and dispenser.

(b) Upon approval by the U.S. Food and Drug Administration of one or more prescription drugs containing cannabidiol, the Department of Health

shall amend its rules to conform to the provisions of subsection (a) of this section.

* * * Impaired Driving * * *

Sec. 9. 23 V.S.A. § 1202 is amended to read:

§ 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
ALCOHOL CONTENT OR PRESENCE OF OTHER DRUG

(a)(1) Implied consent. Every person who operates, attempts to operate, or is in actual physical control of any vehicle on a highway in this State is deemed to have given consent to an evidentiary test of that person's breath for the purpose of determining the person's alcohol concentration or the presence of other drug in the blood. The test shall be administered at the direction of a law enforcement officer.

(2) Blood test. If breath testing equipment is not reasonably available or if the officer has reason to believe that the person is unable to give a sufficient sample of breath for testing or if the law enforcement officer has reasonable grounds to believe that the person is under the influence of a drug other than alcohol, the person is deemed to have given consent to the taking of an evidentiary sample of blood. If in the officer's opinion the person is incapable of decision or unconscious or dead, it is deemed that the person's consent is given and a sample of blood shall be taken. A blood test sought pursuant to this subdivision (2) shall be obtained pursuant to subsection (f) of this section.

(3) Evidentiary test. The evidentiary test shall be required of a person when a law enforcement officer has reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title.

(4) Fatal collision or incident resulting in serious bodily injury. The evidentiary test shall also be required if the person is the surviving operator of a motor vehicle involved in a fatal incident or collision or an incident or collision resulting in serious bodily injury and the law enforcement officer has reasonable grounds to believe that the person has any amount of alcohol or other drug in his or her system.

~~(b) If the person refuses to submit to an evidentiary test it shall not be given, except as provided in subsection (f) of this section, but the A refusal to take a breath test may be introduced as evidence in a criminal proceeding.~~

* * *

(f) If a blood test is sought from a person pursuant to subdivision (a)(2) of this section, or if a person who has been involved in an accident or collision resulting in serious bodily injury or death to another refuses an evidentiary

test, a law enforcement officer may apply for a search warrant pursuant to Rule 41 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an evidentiary test. If a blood sample is obtained by search warrant, the fact of the refusal may still be introduced in evidence, in addition to the results of the evidentiary test. Once a law enforcement official begins the application process for a search warrant, the law enforcement official is not obligated to discontinue the process even if the person later agrees to provide an evidentiary breath sample. The limitation created by Rule 41(g) of the Vermont Rules of Criminal Procedure regarding blood specimens shall not apply to search warrants authorized by this section.

* * *

* * * Humane and Proper Treatment of Animals * * *

Sec. 10. 13 V.S.A. chapter 8 is amended to read:

CHAPTER 8. HUMANE AND PROPER TREATMENT OF ANIMALS

Subchapter 1. Cruelty to Animals

§ 351. DEFINITIONS

As used in this chapter:

(1) “Animal” means all living sentient creatures, not human beings.

* * *

(19) “Sexual conduct” means:

(A) any act between a person and animal that involves contact between the mouth, sex organ, or anus of a person and the mouth, sex organ, or anus of an animal; or

(B) without a bona fide veterinary or animal husbandry purpose, the insertion, however slight, of any part of a person’s body or of any instrument, apparatus, or other object into the vaginal or anal opening of an animal.

* * *

§ 352. CRUELTY TO ANIMALS

A person commits the crime of cruelty to animals if the person:

(1) intentionally kills or attempts to kill any animal belonging to another person without first obtaining legal authority or consent of the owner;

(2) overworks, overloads, tortures, torments, abandons, administers poison to, cruelly beats or mutilates an animal, or exposes a poison with intent that it be taken by an animal;

* * *

(10) uses a live animal as bait or lure in a race, game, or contest, or in training animals in a manner inconsistent with 10 V.S.A. Part 4 of Title 10 or the rules adopted thereunder;

(11)(A) engages in sexual conduct with an animal;

(B) possesses, sells, transfers, purchases, or otherwise obtains an animal with the intent that it be used for sexual conduct;

(C) organizes, promotes, conducts, aids, abets, or participates in as an observer an act involving any sexual conduct with an animal;

(D) causes, aids, or abets another person to engage in sexual conduct with an animal;

(E) permits sexual conduct with an animal to be conducted on premises under his or her charge or control; or

(F) advertises, offers, or accepts the offer of an animal with the intent that it be subject to sexual conduct in this State.

§ 352a. AGGRAVATED CRUELTY TO ANIMALS

A person commits the crime of aggravated cruelty to animals if the person:

(1) kills an animal by intentionally causing the animal undue pain or suffering;

(2) intentionally, maliciously, and without just cause tortures, mutilates, or cruelly beats an animal; or

(3) intentionally injures or kills an animal that is in the performance of official duties while under the supervision of a law enforcement officer.

* * *

§ 353. DEGREE OF OFFENSE; SENTENCING UPON CONVICTION

(a) Penalties.

(1) Except as provided in subdivision (3) ~~or~~ (4), or (5) of this subsection, cruelty to animals under section 352 of this title shall be punishable by a sentence of imprisonment of not more than one year, or a fine of not more than \$2,000.00, or both. Second and subsequent convictions shall be punishable by a sentence of imprisonment of not more than two years or a fine of not more than \$5,000.00, or both.

(2) Aggravated cruelty under section 352a of this title shall be punishable by a sentence of imprisonment of not more than ~~three~~ five years or a fine of not more than \$5,000.00, or both. Second and subsequent offenses

shall be punishable by a sentence of imprisonment of not more than five ten years or a fine of not more than \$7,500.00, or both.

* * *

(5) A person who violates subdivision 352(1) of this title by intentionally killing or attempting to kill an animal belonging to another or subdivision 352(2) of this title by torturing, administering poison to, or cruelly beating or mutilating an animal shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

* * *

* * * Electronic Monitoring * * *

Sec. 11. 13 V.S.A. § 7554b is amended to read:

§ 7554b. HOME DETENTION PROGRAM

(a) Definition. As used in this section, “home detention” means a program of confinement and supervision that restricts a defendant to a preapproved residence continuously, except for authorized absences, and is enforced by appropriate means of surveillance and electronic monitoring by the Department of Corrections. The court may authorize scheduled absences such as work, school, or treatment. Any changes in the schedule shall be solely at the discretion of the Department of Corrections. A defendant who is on home detention shall remain in the custody of the Commissioner of Corrections with conditions set by the ~~Court~~ court.

(b) Procedure. ~~The~~ At the request of the court, the Department of Corrections, or the defendant, the status of a defendant who is detained pretrial for ~~more than seven days~~ in a correctional facility for lack of bail may be reviewed by the ~~Court~~ court to determine whether the defendant is appropriate for home detention. ~~The request for review may be made by either the Department of Corrections or the defendant. After~~ At arraignment or after a hearing, the court may order that the defendant be released to the Home Detention Program, providing that the ~~Court~~ court finds placing the defendant on home detention will reasonably assure his or her appearance in ~~Court~~ court when required and the proposed residence is appropriate for home detention. In making such a determination, the court shall consider:

* * *

(d) Credit for time served. A defendant shall receive credit for a sentence of imprisonment for time served in the Home Detention Program.

Sec. 12. ELECTRONIC MONITORING

(a) The Commissioner of Corrections shall establish an active electronic monitoring program with real-time enforcement. The Commissioner of Corrections, in consultation with the Department of State's Attorneys and Sheriffs, may contract with a third party to implement the program.

(b) The Electronic Monitoring Program described in subsection (a) of this section may be used to monitor, in lieu of incarcerating in a facility, the following populations:

(1) offenders in the custody of the Commissioner who are eligible for the Home Detention Program described in 13 V.S.A. § 7554b; and

(2) offenders in the custody of the Commissioner, including the following target populations:

(A) offenders who are eligible for home confinement furlough, as described in 28 V.S.A. § 808b;

(B) offenders who are past their minimum sentence and are deemed appropriate for the Program by the Commissioner of Corrections; or

(C) offenders who are eligible for reintegration furlough, as described in 28 V.S.A. § 808c.

(c) An offender shall only be eligible for the Electronic Monitoring Program described in subsection (a) of this section if electronic monitoring equipment is fully functional in the geographic area where the offender will be located.

Sec. 13. EFFECTIVE DATES

This section and Secs. 7 (ephedrine and pseudoephedrine), 9 (impaired driving), and 12 (electronic monitoring) shall take effect on passage. The remaining sections shall take effect on July 1, 2017.

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

An act relating to criminal justice.

*RICHARD W. SEARS
ALICE W. NITKA
JOSEPH C. BENNING*

Committee on the part of the Senate

*MARTIN J. LALONDE
CHARLES W. CONQUEST
CHARLES H. SHAW*

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

House Proposal of Amendment Concurred In

S. 131.

House proposal of amendment to Senate bill entitled:

An act relating to State's Attorneys and sheriffs.

Was taken up.

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:

* * * Retirement and Benefits * * *

Sec. 1. 3 V.S.A. § 455 is amended to read:

§ 455. DEFINITIONS

(a) As used in this subchapter:

* * *

(9) "Employee" shall mean:

(A) Any regular officer or employee of the Vermont Historical Society or in a department other than a person included under subdivision (B) of this subdivision (9), who is employed for not less than 40 calendar weeks in a year. "Employee" includes deputy State's Attorneys, victim advocates employed by a State's Attorney pursuant to 13 V.S.A. § 5306, secretaries employed by a State's Attorney pursuant to 32 V.S.A. § 1185, and other positions created within the State's Attorneys' offices that meet the eligibility requirements for membership in the Retirement System.

(B) Any regular officer or employee of the Department of Public Safety assigned to police and law enforcement duties, including the Commissioner of Public Safety appointed before July 1, 2001; but, irrespective of the member's classification, shall not include any member of the General Assembly as such, any person who is covered by the Vermont Teachers' Retirement System, any person engaged under retainer or special agreement or C beneficiary employed by the Department of Public Safety for not more than 208 hours per year, or any person whose principal source of income is other than State employment. In all cases of doubt, the Retirement Board shall determine whether any person is an employee as defined in this subchapter. Also included under this subdivision are employees of the Department of Liquor Control who exercise law enforcement powers, employees of the Department of Fish and Wildlife assigned to law enforcement duties, motor

vehicle inspectors, full-time deputy sheriffs compensated by the State of Vermont whose primary function is transports, full-time members of the Capitol Police force, investigators employed by the Criminal Division of the Office of the Attorney General, Department of State's Attorneys, Department of Health, or Office of the Secretary of State, who have attained Level III law enforcement officer certification from the Vermont Criminal Justice Training Council, who are required to perform law enforcement duties as the primary function of their employment, and who may be subject to mandatory retirement permissible under 29 U.S.C. § 623(j), who are first included in membership of the system on or after July 1, 2000. Also included under this subdivision are full-time firefighters employed by the State of Vermont and the Defender General.

* * *

Sec. 2. 3 V.S.A. § 631 is amended to read:

§ 631. GROUP INSURANCE FOR STATE EMPLOYEES; SALARY DEDUCTIONS FOR INSURANCE, SAVINGS PLANS, AND CREDIT UNIONS

(a)(1) The Secretary of Administration may contract on behalf of the State with any insurance company or nonprofit association doing business in this State to secure the benefits of franchise or group insurance. Beginning July 1, 1978, the terms of coverage under the policy shall be determined under section 904 of this title, but it may include:

* * *

(2)(A)(i) ~~The As used in this section, the term "employees" as used in this section shall include among others~~ includes any class or classes of elected or appointed officials, ~~but it~~ State's Attorneys, sheriffs, employees of State's Attorney's offices whose compensation is administered through the State of Vermont payroll system, except contractual and temporary employees, and deputy sheriffs paid by the State of Vermont pursuant to 24 V.S.A. § 290(b). ~~The term "employees" shall not include members of the General Assembly as such, nor shall it include~~ any person rendering service on a retainer or fee basis, members of boards or commissions, or persons other than employees of the Vermont Historical Society, the Vermont Film Corporation, the Vermont State Employees' Credit Union, Vermont State Employees' Association, and the Vermont Council on the Arts, whose compensation for service is not paid from the State Treasury, ~~nor shall it include~~ or any elected or appointed official unless the official is actively engaged in and devoting substantially full-time to the conduct of the business of his or her public office.

(ii) For purposes of group hospital-surgical-medical expense insurance, the term “employees” shall include employees as defined in subdivision (i) of this subdivision (2)(A) and former employees as defined in this subdivision who are retired and are receiving a retirement allowance from the Vermont State Retirement System or the State Teachers’ Retirement System of Vermont and, for the purposes of group life insurance only, are retired on or after July 1, 1961, and have completed 20 creditable years of service with the State before their retirement dates and are insured for group life insurance on their retirement dates.

(iii) For purposes of group hospital-surgical-medical expense insurance only, the term “employees” shall include employees as defined in subdivision (i) of this subdivision (2)(A) and employees who are receiving a retirement allowance based upon their employment with the Vermont State Employees’ Association, the Vermont State Employees’ Credit Union, the Vermont Council on the Arts, as long as they are covered as active employees on their retirement date, and:

(i)(I) they have at least 20 years of service with that employer; or

(ii)(II) have attained 62 years of age, and have at least 15 years of service with that employer.

* * *

* * * Collective Bargaining * * *

Sec. 3. 3 V.S.A. § 902 is amended to read:

§ 902. DEFINITIONS

As used in this chapter:

* * *

(2) “Collective bargaining,” or “bargaining collectively” means the process of negotiating terms, tenure, or conditions of employment between the State of Vermont, the Vermont State Colleges, ~~or the University of Vermont,~~ or the Department of State’s Attorneys and Sheriffs and representatives of employees with the intent to arrive at an agreement ~~which that~~, when reached, shall be reduced to writing.

* * *

(5) “State employee” means any individual employed on a permanent or limited status basis by the State of Vermont, the Vermont State Colleges, ~~or the University of Vermont,~~ or the State’s Attorneys’ offices, including permanent part-time employees, and an individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, but excluding an individual:

(A) exempt or excluded from the State classified service under the provisions of section 311 of this title, except that the State Police in the Department of Public Safety, ~~and~~; employees of the Defender General, excluding attorneys employed directly by the Defender General and attorneys contracted to provide legal services; deputy State's Attorneys; and employees of State's Attorneys' offices are included within the meaning of "State employee";

* * *

(7) "Employer" means the State of Vermont, excluding the Legislative and Judiciary Departments, represented by the Governor or ~~the Governor's~~ designee, the Office of the Defender General represented by the Defender General or ~~the Defender General's~~ designee, and Vermont State Colleges, represented by the Chancellor or ~~the Chancellor's~~ designee, and the University of Vermont, represented by the President or ~~the President's~~ designee. With respect to employees of State's Attorneys' offices, "employer" means the Department of State's Attorneys and Sheriffs represented by the Executive Director or designee.

* * *

(10) "Person," includes one or more individuals, the State of Vermont, Vermont State Colleges, University of Vermont, Department of State's Attorneys and Sheriffs, employee organizations, labor organizations, partnerships, corporations, legal representatives, trustees, or any other natural or legal entity whatsoever.

* * *

Sec. 4. 3 V.S.A. § 904 is amended to read:

§ 904. SUBJECTS FOR BARGAINING

(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters ~~which~~ that are prescribed or controlled by statute. ~~Such~~ The matters appropriate for collective bargaining to the extent they are not prescribed or controlled by statute include:

- (1) wages, salaries, benefits, and reimbursement practices relating to necessary expenses and the limits of reimbursable expenses;
- (2) minimum hours per week;
- (3) working conditions;
- (4) overtime compensation and related matters;

-
- (5) leave compensation and related matters;
 - (6) reduction-in-force procedures;
 - (7) grievance procedures, including whether an appeal to the Vermont Labor Relations Board or binding arbitration, or both, will constitute the final step in a grievance procedure;
 - (8) terms of coverage and amount of employee financial participation in insurance programs, except that the Department of State's Attorneys and Sheriffs and the deputy State's Attorneys and other employees of the State's Attorneys' offices shall not bargain in relation to terms of coverage;
 - (9) ~~rules and regulations~~ for personnel administration, except the following: ~~rules and regulations~~ relating to persons exempt from the classified service under section 311 of this title and ~~rules and regulations~~ relating to applicants for employment in State service and employees in an initial probationary status, including any extension or extensions thereof, provided such the rules and regulations are not discriminatory by reason of an applicant's race, color, creed, sex, or national origin, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition; and
 - (10) the manner in which to enforce an employee's obligation to pay the collective bargaining service fee.

(b) This chapter shall not be construed to be in derogation of, or contravene the spirit and intent of the merit system principles and the personnel laws.

Sec. 5. 3 V.S.A. § 905 is amended to read:

§ 905. MANAGEMENT RIGHTS

(a) ~~The Governor, or a person or persons designated by the Governor, designee for the State of Vermont, and the provost, Chancellor or a person or persons designated by the provost designee for Vermont State Colleges and, the President, or a person or persons designated by the President designee for the University of Vermont, and the Executive Director or designee for the Department of State's Attorneys and Sheriffs shall act as the employer representatives in collective bargaining negotiations and administration. The representative shall be responsible for insuring ensuring consistency in the terms and conditions in various agreements throughout the State service, insuring and ensuring compatibility with merit system statutes and principles, and shall not agree to any terms or conditions for which there are not adequate funds available.~~

* * *

Sec. 6. 3 V.S.A. § 906 is added to read:

§ 906. DESIGNATION OF MANAGERIAL, SUPERVISORY, AND
CONFIDENTIAL EMPLOYEES

(a) The Commissioner of Human Resources shall determine those positions in the classified service whose incumbents the Commissioner believes should be designated as managerial, supervisory, or confidential employees. Any disputes arising ~~therefrom~~ from the determination shall be finally resolved by the Board.

(b) The Executive Director of the Department of State's Attorneys and Sheriffs may determine positions in the State's Attorneys' offices whose incumbents the Executive Director believes should be designated as managerial, supervisory, or confidential employees. Any disputes arising from the determination shall be finally resolved by the Board.

Sec. 7. 3 V.S.A. § 908 is added to read:

§ 908. DESIGNATION OF STATE'S ATTORNEYS' EMPLOYEES;
STATEWIDE BARGAINING RIGHTS

Employees of the State's Attorney's offices shall be part of one or more statewide bargaining units, as determined to be appropriate by the Board pursuant to sections 927 and 941 of this title, for the purpose of bargaining collectively pursuant to this chapter.

Sec. 8. 3 V.S.A. § 925 is amended to read:

§ 925. MEDIATION; FACT FINDING

* * *

(k) In the case of the State of Vermont or the Department of State's Attorneys and Sheriffs, the decision of the Board shall be final, and the terms of the chosen agreement shall be binding on each party, subject to appropriations in accordance with subsection 982(d) of this title. In the case of the University of Vermont or the Vermont State Colleges, the decision of the Board shall be final and binding on each party.

* * *

Sec. 9. 3 V.S.A. § 982 is amended to read:

§ 982. AGREEMENTS; LIMITATIONS, RENEGOTIATION, AND
RENEWAL

* * *

(c)(1) Except in the case of the Vermont State Colleges or the University of Vermont, agreements between the State and certified bargaining units ~~which~~

that are not arrived at under the provisions of subsection 925(i) of this title shall, after ratification by the appropriate unit memberships, be submitted to the Governor who shall request sufficient funds from the General Assembly to implement the agreement. If the General Assembly appropriates sufficient funds, the agreement shall become effective at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly, and the agreement with the negotiated changes shall become effective at the beginning of the next fiscal year.

(2)(A) Agreements between the Department of State's Attorneys and Sheriffs and the certified bargaining units that are not arrived at under the provisions of subsection 925(i) of this title shall, after ratification by the appropriate unit memberships, be submitted to the Governor and the General Assembly.

(B) The Executive Director of the Department of State's Attorneys and Sheriffs shall request sufficient funds from the General Assembly to implement the agreement. If the General Assembly appropriates sufficient funds, the agreement shall become effective at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly, and the agreement with the negotiated changes shall become effective at the beginning of the next fiscal year.

* * *

(g) In the event the State of Vermont, the Department of State's Attorneys and Sheriffs, the University of Vermont, and the Vermont State Colleges as employer and the collective bargaining unit are unable to arrive at an agreement and there is not an existing agreement in effect, the existing contract shall remain in force until a new contract is ratified by the parties. However, nothing in this subsection shall prohibit the parties from agreeing to a modification of certain provisions of the existing contract which, as amended, shall remain in effect until a new contract is ratified by the parties.

* * *

Sec. 10. 13 V.S.A. § 5306 is amended to read:

§ 5306. VICTIM ADVOCATES

In order to carry out the provisions of the victims assistance program, ~~state's attorneys~~ State's Attorneys are authorized to hire victim advocates who shall serve at their pleasure unless otherwise modified by a collective

bargaining agreement entered into pursuant to 3 V.S.A. chapter 27. Nothing in this section shall be construed to limit the subjects for bargaining pursuant to 3 V.S.A. § 904.

Sec. 11. 32 V.S.A. § 1185 is amended to read:

§ 1185. OFFICE EXPENSES

* * *

(b)(1) Secretaries shall be hired by and shall serve at the pleasure of the State's Attorney unless otherwise modified by a collective bargaining agreement entered into pursuant to 3 V.S.A. chapter 27. Secretaries shall be State employees paid by the State, and shall receive those benefits available to other classified State employees who are similarly situated but they shall not be subject to the rules provided for under 3 V.S.A. chapter 13. The compensation of each Secretary shall be determined by the Commissioner of Human Resources with the approval of the Governor unless otherwise determined through collective bargaining pursuant to 3 V.S.A. chapter 27. In fixing compensation, there shall be taken into consideration, among other things, the volume of work requiring the services of the Secretary and whether the services are on a full- or part-time basis.

(2) Nothing in this subsection shall be construed to limit the subjects for bargaining pursuant to 3 V.S.A. § 904.

Sec. 12. 24 V.S.A. § 363 is amended to read:

§ 363. DEPUTY STATE'S ATTORNEYS

(a) A State's Attorney may appoint as many deputy State's Attorneys as necessary for the proper and efficient performance of his or her office, ~~and with the approval of the Governor, fix their pay not to exceed that of the State's Attorney making the appointment,~~ and may remove them at pleasure.

(b) The pay for deputy State's Attorneys shall be fixed by the Executive Director of the Department of State's Attorneys and Sheriffs or through collective bargaining pursuant to 3 V.S.A. chapter 27, but it shall not exceed the pay of the State's Attorney making the appointment. Deputy State's Attorneys shall be compensated only for periods of actual performance of the duties of such ~~the~~ office. Deputy State's Attorneys shall be reimbursed for their necessary expenses incurred in connection with their official duties when approved by the State's Attorneys and the Commissioner of Finance and Management.

(c) Deputy State's Attorneys shall exercise all the powers and duties of the State's Attorneys except the power to designate someone to act in the event of their own disqualification.

(d) Deputy State's Attorneys may not enter upon the duties of the office until they have taken the oath or affirmation of allegiance to the State and the oath of office required by the Constitution, and until ~~such~~ the oath together with their appointment is filed for record with the county clerk. If appointed and under oath, a deputy State's Attorney may prosecute cases in another county if the State's Attorney in the other county files the deputy's appointment in the other county clerk's office. In case of a vacancy in the office of State's Attorney, the appointment of the deputy shall expire upon the appointment of a new State's Attorney.

Sec. 13. 24 V.S.A. § 367 is amended to read:

§ 367. DEPARTMENT OF STATE'S ATTORNEYS AND SHERIFFS

* * *

(c)(1) The Executive Director shall prepare and submit all budgetary and financial materials and forms which are required of the head of a department of State government with respect to all State funds appropriated for all of the Vermont State's Attorneys and sheriffs. At the beginning of each fiscal year, the Executive Director, with the approval of the Executive Committee, shall establish allocations for each of the State's Attorneys' offices from the State's Attorneys' appropriation. Thereafter, the Executive Director shall exercise budgetary control over these allocations and the general appropriation for State's Attorneys. The Executive Director shall monitor the sheriff's transport budget and report to the sheriffs on a monthly basis the status of the budget. He or she shall provide centralized support services for the State's Attorneys and sheriffs with respect to budgetary planning, training, and office management, and perform such other duties as the Executive Committee directs. The Executive Director may employ clerical staff as needed to carry out the functions of the Department.

(2) The Executive Director shall prepare and submit a funding request to the Governor and the General Assembly for the purpose of securing General Fund appropriations for any increased costs related to a collective bargaining agreement and to the Department's contract bargaining and administration.

* * *

Sec. 14. ADJUSTMENT FOR INITIAL CONTRACT

For increased costs related to the initial collective bargaining agreement that the Department of State's Attorneys and Sheriffs enters into pursuant to this act, including the costs of bargaining, implementation, and contract administration, the Department may prepare and submit a funding request to the General Assembly during the budget adjustment process if the timing of the implementation of the agreement does not permit the Department to secure

sufficient funding during the regular budgetary process.

Sec. 15. EXISTING BARGAINING UNITS; DECERTIFICATION

On the effective date of this act, the existing bargaining units and the related certifications of an exclusive bargaining representative for the deputy State's Attorneys, victim advocates, and secretaries employed by the Chittenden County State's Attorney and Franklin County State's Attorney shall be dissolved and the members of those bargaining units shall be eligible to organize and bargain collectively under the provisions of the State Employees Labor Relations Act, 3 V.S.A. chapter 27.

* * * Effective Date * * *

Sec. 16. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

S. 9.

Senator Starr, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon Senate bill entitled:

An act relating to the preparation of poultry products.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposal of amendment with further amendment thereto as follows:

First: In Sec. 2, 6 V.S.A. § 3312, in subdivision (c)(2)(B), after "may use" and before "plastic sheeting" by striking out "food-grade" and inserting in lieu thereof "heavy duty"

Second: In Sec. 2, 6 V.S.A. § 3312, in subdivision (c)(2), by striking out subdivision (K) in its entirety and inserting in lieu thereof the following:

(K) clothing worn by persons who handle poultry products shall be of material that is cleanable or disposable, and garments shall be cleaned or changed as often as necessary to prevent adulteration of poultry products or the creation of insanitary conditions.

Third: In Sec. 2, 6 V.S.A. § 3312, by adding a subsection (h) to read as follows:

(h) Approved label. Prior to selling poultry products slaughtered pursuant to the exemption in subsection (c) or (d) of this section, a poultry producer shall submit to the Secretary for approval a copy of the label that the poultry producer proposes to use for compliance with the requirements of subsection (e) of this section.

*ROBERT A. STARR
FRANCIS K. BROOKS
CAROLYN WHITNEY BRANAGAN*

Committee on the part of the Senate

*SUSAN M. BUCKHOLZ
JOHN L. BARTHOLOMEW
TERRY E. NORRIS*

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

S. 16.

Senator Sears, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon Senate bill entitled:

An act relating to expanding patient access to the Medical Marijuana Registry.

Respectfully reports that it has met and considered the same and recommends that the House 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. 18 V.S.A. § 4472 is amended to read:

§ 4472. DEFINITIONS

As used in this subchapter:

(1)(A) “Bona fide health care professional-patient relationship” means a treating or consulting relationship of not less than three months’ duration, in the course of which a health care professional has completed a full assessment of the registered patient’s medical history and current medical condition, including a personal physical examination.

(B) The three-month requirement shall not apply if:

(i) a patient has been diagnosed with:

(I) a terminal illness;

(II) cancer; or

(III) acquired immune deficiency syndrome; ~~or~~

~~(IV) is currently under hospice care.~~

(ii) a patient is currently under hospice care;

~~(ii)(iii)~~ (iii) a patient had been diagnosed with a debilitating medical condition by a health care professional in another jurisdiction in which the patient had been formerly a resident and the patient, now a resident of Vermont, has the diagnosis confirmed by a health care professional in this State or a neighboring state as provided in subdivision (6) of this section, and the new health care professional has completed a full assessment of the patient’s medical history and current medical condition, including a personal physical examination;

~~(iii)(iv)~~ (iv) a patient who is already on the ~~registry~~ Registry changes health care professionals three months or less prior to the annual renewal of the patient’s registration, provided the patient’s new health care professional has completed a full assessment of the patient’s medical history and current medical condition, including a personal physical examination;

(v) a patient is referred by his or her health care professional to another health care professional who has completed advanced education and clinical training in specific debilitating medical conditions, and that health care professional conducts a full assessment of the patient’s medical history and current medical condition, including a personal physical examination; or

(vi) a patient’s debilitating medical condition is of recent or sudden onset.

* * *

~~(4) “Debilitating medical condition,” provided that, in the context of the specific disease or condition described in subdivision (A) or (B) of this subdivision (4), reasonable medical efforts have been made over a reasonable amount of time to relieve the symptoms, means:~~

~~(A) cancer, multiple sclerosis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, glaucoma, Crohn’s disease, Parkinson’s disease, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms; or~~

~~(B) post-traumatic stress disorder, provided the Department confirms the applicant is undergoing psychotherapy or counseling with a licensed mental health care provider; or~~

~~(C) a disease, or medical condition, or its treatment that is chronic, debilitating, and produces one or more of the following intractable symptoms: cachexia or wasting syndrome; chronic pain; severe nausea; or seizures.~~

~~(5) “Dispensary” means a nonprofit entity business organization registered under section 4474e of this title ~~which~~ that acquires, possesses, cultivates, manufactures, transfers, transports, supplies, sells, or dispenses marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her center and to his or her registered caregiver for the registered patient’s use for symptom relief. ~~A dispensary may provide marijuana for symptom relief to registered patients at only one facility or location, but may have a second location associated with the dispensary where the marijuana is cultivated or processed. Both locations are considered to be part of the same dispensary.~~ A dispensary may serve patients and caregivers at not more than two locations, as approved by the Department in consideration of factors provided in subsection 4474f(e) of this title, and may cultivate and process marijuana at a separate location from where patients and caregivers are served. All locations shall be considered part of the same dispensary operation under one registration.~~

~~(6) “Financier” means a person, other than a financial institution as defined in 8 V.S.A. § 11101, that makes an investment in, or a gift, loan, or other financing to, another person with the expectation of a financial return. If a financier is a business organization, as used in this chapter, the term “financier” includes each owner and principal of that organization.~~

~~(6)(7)(A) “Health care professional” means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33, an individual licensed as a naturopathic physician under 26 V.S.A. chapter 81, an individual certified as a~~

physician assistant under 26 V.S.A. chapter 31, or an individual licensed as an advanced practice registered nurse under 26 V.S.A. chapter 28.

(B) This definition includes individuals who are professionally licensed under substantially equivalent provisions in New Hampshire, Massachusetts, or New York.

~~(7)~~(8) “Immature marijuana plant” means a female marijuana plant that has not flowered and which does not have buds that may be observed by visual examination.

~~(8)~~(9) “Marijuana” shall have the same meaning as provided in subdivision 4201(15) of this title.

~~(9)~~(10) “Mature marijuana plant” means a female marijuana plant that has flowered and ~~which~~ that has buds that may be observed by visual examination.

(11) “Mental health care provider” means a person licensed to practice medicine who specializes in the practice of psychiatry; a psychologist, a psychologist-doctorate, or a psychologist-master as defined in 26 V.S.A. § 3001; a clinical social worker as defined in 26 V.S.A. § 3201; or a clinical mental health counselor as defined in 26 V.S.A. § 3261.

(12) “Ounce” means 28.35 grams.

(13) “Owner” means:

(A) a person that has a direct or beneficial ownership interest of ten percent or more in a business organization, including attribution of the ownership interests of a spouse or domestic partner, parent, spouse’s or domestic partner’s parent, sibling, and children; or

(B) a person that has the power to direct, or cause the direction of, the management and policies of a business organization, including through the ownership of voting securities, by contract, or otherwise.

~~(10)~~(14) “Possession limit” means the amount of marijuana collectively possessed between the registered patient and the patient’s registered caregiver ~~which~~ that is no more than two mature marijuana plants, seven immature plants, and two ounces of usable marijuana.

(15) “Principal” means a person that has the authority to conduct, manage, or supervise the operation of a business organization, and includes the president, vice president, secretary, treasurer, manager, or similar executive officer of a business organization; a director of a business corporation, nonprofit corporation, or mutual benefit enterprise; a member of a nonprofit corporation, cooperative, or member-managed limited liability company; a

manager of a manager-managed limited liability company; and a general partner of a partnership, limited partnership, or limited liability partnership.

(11)(16) “Registered caregiver” means a person who is at least 21 years of age, has met eligibility requirements as determined by the Department in accordance with this chapter, and who has agreed to undertake responsibility for managing the well-being of a registered patient with respect to the use of marijuana for symptom relief.

(12)(17) “Registered patient” means a resident of Vermont who has been issued a registration card by the Department of Public Safety, identifying the person as having a debilitating medical condition pursuant to the provisions of this subchapter. “Resident of Vermont” means a person whose domicile is Vermont.

(13)(18) “Secure indoor facility” means a building or room equipped with locks or other security devices that permit access only by a registered caregiver, or registered patient, or a principal officer or employee of a dispensary.

(14)(19) “Transport” means the movement of marijuana and marijuana-infused products from registered growing locations to their associated dispensaries, between dispensaries, to registered patients and registered caregivers in accordance with delivery protocols, or as otherwise allowed under this subchapter.

(15)(20) “Usable marijuana” means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, and does not include the seeds, stalks, and roots of the plant.

(16)(21) “Use for symptom relief” means the acquisition, possession, cultivation, use, transfer, or transportation of marijuana, or of paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a registered patient’s debilitating medical condition ~~which~~ that is in compliance with all the limitations and restrictions of this subchapter.

Sec. 2. 18 V.S.A. § 4473 is amended to read:

§ 4473. REGISTERED PATIENTS; QUALIFICATION STANDARDS AND PROCEDURES

* * *

(b) The Department of Public Safety shall review applications to become a registered patient using the following procedures:

(1) A patient with a debilitating medical condition shall submit a signed application for registration to the Department. ~~A patient’s initial application to~~

~~the registry shall be notarized, but subsequent renewals shall not require notarization.~~ If the patient is under 18 years of age, the application must be signed by both the patient and a parent or guardian. The application shall require identification and contact information for the patient and the patient's registered caregiver applying for authorization under section 4474 of this title, if any, and the patient's designated dispensary under section 4474e of this title, if any. The applicant shall attach to the application a medical verification form developed by the Department pursuant to subdivision (2) of this subsection.

(2) The Department of Public Safety shall develop a medical verification form to be completed by a health care professional and submitted by a patient applying for registration in the program. The form shall include:

(A) A cover sheet ~~which~~ that includes the following:

(i) A statement of the penalties for providing false information.

(ii) Definitions of the following statutory terms:

(I) "Bona fide health care professional-patient relationship" as defined in section 4472 of this title.

(II) "Debilitating medical condition" as defined in section 4472 of this title.

(III) "Health care professional" as defined in section 4472 of this title.

(iii) A statement that the medical verification form is not considered a prescription and that the only purpose of the medical verification form is to confirm that the applicant patient has a debilitating medical condition.

(B) A verification sheet ~~which~~ that includes the following:

(i) A statement that a bona fide health care professional-patient relationship exists under section 4472 of this title, ~~or that, under subdivision (3)(A) of this subsection (b), the debilitating medical condition is of recent or sudden onset, and the patient has not had a previous health care professional who is able to verify the nature of the disease and its symptoms.~~

~~(ii) A statement that reasonable medical efforts have been made over a reasonable amount of time without success to relieve the symptoms. [Repealed.]~~

(iii) A statement that the patient has a debilitating medical condition as defined in section 4472 of this title, including the specific disease or condition ~~which~~ that the patient has and whether the patient meets the criteria under section 4472.

(iv) A signature line ~~which~~ that provides in substantial part: “I certify that I meet the definition of ‘health care professional’ under 18 V.S.A. § 4472, that I am a health care professional in good standing in the State of , and that the facts stated above are accurate to the best of my knowledge and belief.”

(v) The health care professional’s contact information, license number, category of his or her health care profession as defined in subdivision 4472(6) of this title, and contact information for the out-of-state licensing agency, if applicable. The Department of ~~Public Safety~~ shall adopt rules for verifying the goodstanding of out-of-state health care professionals.

(vi) A statement that the medical verification form is not considered a prescription and that the only purpose of the medical verification form is to confirm that the applicant patient has a debilitating medical condition.

~~(3)(A) The Department of Public Safety shall transmit the completed medical verification form to the health care professional and contact him or her for purposes of confirming the accuracy of the information contained in the form. The Department may approve an application, notwithstanding the six-month requirement in section 4472 of this title, if the Department is satisfied that the medical verification form confirms that the debilitating medical condition is of recent or sudden onset, and that the patient has not had a previous health care professional who is able to verify the nature of the disease and its symptoms.~~

(B) If the health care professional is licensed in another state as provided section 4472 of this title, the Department shall verify that the health care professional is in good standing in that state.

* * *

Sec. 3. 18 V.S.A. § 4474(c)(1) is amended to read:

(c)(1) Except as provided in subdivision (2) of this subsection, a registered caregiver may serve only one registered patient at a time, and a registered patient may have only one registered caregiver at a time. A registered patient may serve as a registered caregiver for one other registered patient.

Sec. 4. 18 V.S.A. § 4474d is amended to read:

§ 4474d. LAW ENFORCEMENT VERIFICATION OF INFORMATION;
RULEMAKING

* * *

(b) In response to a person-specific or property-specific inquiry by a law enforcement officer or agency made in the course of a bona fide investigation or prosecution, the Department may verify the identities and registered property addresses of the registered patient and the patient's registered caregiver, a dispensary, ~~and the principal officer, the Board members, and an owner, a principal, a financier, and the employees of a dispensary.~~

(c) The Department shall maintain a separate secure electronic database accessible to law enforcement personnel 24 hours a day that uses a unique identifier system to allow law enforcement to verify that a person or entity is a registered patient, a registered caregiver, a dispensary, ~~or the principal officer, a board member~~ an owner, a principal, a financier, or an employee of a dispensary.

* * *

Sec. 5. 18 V.S.A. § 4474e is amended to read:

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

* * *

~~(b)(1) A dispensary shall be operated on a nonprofit basis for the mutual benefit of its patients but need not be recognized as a tax-exempt organization by the Internal Revenue Service.~~

(2) A dispensary shall have a sliding-scale fee system that takes into account a registered patient's ability to pay.

* * *

(d)(1) A dispensary shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana and shall ensure that each location has an operational security alarm system. All cultivation of marijuana shall take place in ~~an enclosed~~ a secure, locked facility which is either indoors or otherwise outdoors, but not visible to the public and which that can only be accessed by principal officers and the owners, principals, financiers, and employees of the dispensary who have valid registry identification cards. An outdoor facility is not required to have a roof, provided all other requirements are met. The Department of Public Safety shall perform an annual on-site assessment of each dispensary and may perform on-site assessments of a dispensary without limitation for the purpose of determining compliance with this subchapter and any rules adopted pursuant to this subchapter and may enter a dispensary at any time for such purpose. During an inspection, the Department may review the dispensary's confidential records, including its dispensing records, which shall track transactions according to registered patients' ~~registry~~ Registry identification numbers to protect their confidentiality.

* * *

(f) A person may be denied the right to serve as an owner, a principal officer, ~~board member~~, financier, or employee of a dispensary because of the person's criminal history record in accordance with section 4474g of this title and rules adopted by the Department of Public Safety pursuant to that section.

(g)(1) A dispensary shall notify the Department of ~~Public Safety~~ within 10 days of when a ~~principal officer, board member~~, an owner, principal, financier, or employee ceases to be associated with or work at the dispensary. His or her ~~registry~~ Registry identification card shall be deemed null and void, and the person shall be liable for any penalties that may apply.

(2) A dispensary shall notify the Department of ~~Public Safety~~ in writing of the name, address, and date of birth of any proposed new ~~principal officer, board member~~ owner, principal, financier, or employee and shall submit a fee for a new ~~registry~~ Registry identification card before a new ~~principal officer, board member~~ owner, principal, financier, or employee begins his or her official duties related to the dispensary and shall submit a complete set of fingerprints for ~~the~~ each prospective ~~principal officer, board member~~ owner, principal, financier, or employee who is a natural person.

* * *

(k)(1) No dispensary, ~~principal officer, board member~~ or owner, principal, or financier of a dispensary shall:

* * *

(B) acquire usable marijuana or marijuana plants from any source other than registered dispensary ~~principal officers, board members~~ owners, principals, financiers, or employees who cultivate marijuana in accordance with this subchapter;

(C) dispense more than two ounces of usable marijuana to a registered patient directly or through the qualifying patient's registered caregiver during a 30-day period;

(D) dispense an amount of usable marijuana to a qualifying patient or a designated caregiver that the ~~principal officer, board member~~ owner, principal, financier, or employee knows would cause the recipient to possess more marijuana than is permitted under this subchapter;

(E) dispense marijuana to a person other than a registered patient who has designated the dispensary to provide for his or her needs or other than the patient's registered caregiver.

(2) A person found to have violated subdivision (1) of this subsection may no longer serve as a ~~principal officer, board member~~ an owner, principal, financier, or employee of any dispensary, and such person's ~~registry~~ Registry identification card shall be immediately revoked by the Department of ~~Public Safety~~.

(1)(1) A registered dispensary shall not be subject to the following, provided that it is in compliance with this subchapter:

(A) prosecution for the acquisition, possession, cultivation, manufacture, transfer, transport, supply, sale, or dispensing of marijuana, marijuana-infused products, or marijuana-related supplies for symptom relief in accordance with the provisions of this subchapter and any rule adopted by the Department of ~~Public Safety~~ pursuant to this subchapter;

(B) inspection and search, except pursuant to this subchapter or upon a search warrant issued by a court or judicial officer;

(C) seizure of marijuana, marijuana-infused products, and marijuana-related supplies, except upon a valid order issued by a court;

(D) imposition of any penalty or ~~denied~~ denial of any right or privilege, including imposition of a civil penalty or disciplinary action by an occupational or professional licensing board or entity, solely for acting in accordance with this subchapter to assist registered patients or registered caregivers.

(2) No ~~principal officer, board member~~ owner, principal, financier, or employee of a dispensary shall be subject to arrest, prosecution, search, seizure, or penalty in any manner or ~~denied~~ denial of any right or privilege, including civil penalty or disciplinary action by an occupational or professional licensing board or entity, solely for working for or with a dispensary to engage in acts permitted by this subchapter.

* * *

Sec. 6. 18 V.S.A. § 4474f is amended to read:

§ 4474f. DISPENSARY APPLICATION, APPROVAL, AND
REGISTRATION

* * *

(b)(1) ~~Within 30 days of the adoption of rules, the Department shall begin accepting applications for the operation of dispensaries. Within 365 days of the effective date of this section, the Department shall grant registration certificates to four dispensaries, provided at least four applicants apply and meet the requirements of this section. No~~ Except as provided in subdivision

~~(2) of this subsection, no more than four~~ five dispensaries shall hold valid registration certificates at one time. Any time a dispensary registration certificate is revoked, is relinquished, or expires, the Department shall accept applications for a new dispensary. ~~If at any time after one year after the effective date of this section fewer than four dispensaries hold valid registration certificates in Vermont, the Department of Public Safety shall accept applications for a new dispensary.~~

(2) Once the Registry reaches 7,000 registered patients, the number of dispensary registrations shall expand to six and the Department shall begin accepting applications forthwith.

* * *

(c) Each application for a dispensary registration certificate shall include all of the following:

(1) a nonrefundable application fee in the amount of \$2,500.00 paid to the Department of ~~Public Safety~~;

(2) the legal name, articles of incorporation, and bylaws of the dispensary and the organizational documents that create the dispensary, govern its operation and internal affairs, and govern relations between and among its owners;

(3) the proposed physical address of the dispensary, if a precise address has been determined or, if not, the general location where it would be located;

(4) a description of the ~~enclosed~~ secure, locked facility where marijuana will be grown, cultivated, harvested, or otherwise prepared for distribution by the dispensary;

(5) the name, address, and date of birth of each ~~principal officer and board member~~ owner, principal, and financier of the dispensary who is a natural person and a complete set of fingerprints for each of them;

(6) proposed security and safety measures, which shall include at least one security alarm system for each location and planned measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana;

(7) proposed procedures to ensure accurate record-keeping.

(d) Any time one or more dispensary registration applications are being considered, the Department of ~~Public Safety~~ shall solicit input from registered patients and registered caregivers.

(e) Each time a dispensary certificate is granted, the decision shall be based on the overall health needs of qualified patients. The following factors shall weigh heavily in the consideration of an application:

(1) geographic convenience to patients from throughout the State of Vermont to a dispensary if the applicant were approved;

(2) the entity's ability to provide an adequate supply to the registered patients in the State;

(3) the entity's ability to demonstrate ~~its board members'~~ that its owners, principals, and financiers have sufficient experience running a ~~nonprofit organization or~~ business;

(4) the comments, if any, of registered patients and registered caregivers regarding which applicant should be granted a registration certificate;

(5) the sufficiency of the applicant's plans for record-keeping, which records shall be considered confidential health care information under Vermont law and are intended to be deemed protected health care information for purposes of the federal Health Insurance Portability and Accountability Act of 1996, as amended;

(6) the sufficiency of the applicant's plans for safety and security, including the proposed location and security devices employed.

(f) The Department of ~~Public Safety~~ may deny an application for a dispensary if it determines that an applicant's criminal history record indicates that the ~~person's~~ association of an owner, principal, or financier with a dispensary would pose a demonstrable threat to public safety.

(g) After a dispensary is approved but before it begins operations, it shall submit the following to the Department:

(1) the legal name ~~and articles of incorporation~~ of the dispensary and the organizational documents that create the dispensary, govern its operation and internal affairs, and govern relations between and among its owners;

(2) the physical address of the dispensary;

(3) the name, address, and date of birth of each ~~principal officer and board member~~ owner, principal, and financier of the dispensary along with a complete set of fingerprints for each;

(4) a registration fee of \$20,000.00 for the first year of operation, and an annual fee of \$25,000.00 in subsequent years.

Sec. 7. 18 V.S.A. § 4474g is amended to read:

§ 4474g. DISPENSARY REGISTRY IDENTIFICATION CARD;
CRIMINAL BACKGROUND CHECK

(a) Except as provided in subsection (b) of this section, the Department of ~~Public Safety~~ shall issue each ~~principal officer, Board member owner, principal, financier,~~ and employee of a dispensary a ~~registry~~ Registry identification card or renewal card within 30 days of receipt of the person's name, address, and date of birth and a fee of \$50.00. The fee shall be paid by the dispensary and the cost shall not be passed on to a ~~principal officer, Board member an owner, principal, financier,~~ or employee. A person shall not serve as ~~principal officer, Board member an owner, principal, financier,~~ or employee of a dispensary until that person has received a ~~registry~~ Registry identification card issued under this section. Each card shall specify whether the cardholder is a ~~principal officer, Board member an owner, principal, financier,~~ or employee of a dispensary and shall contain the following:

- (1) the name, address, and date of birth of the person;
- (2) the legal name of the dispensary with which the person is affiliated;
- (3) a random identification number that is unique to the person;
- (4) the date of issuance and the expiration date of the ~~registry~~ Registry identification card; and
- (5) a photograph of the person.

(b) Prior to acting on an application for a ~~registry~~ Registry identification card, the Department of ~~Public Safety~~ 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.

(c) When the Department of ~~Public Safety~~ obtains a criminal history record, the Department shall promptly provide a copy of the record to the applicant and to the ~~principal officer and Board~~ owner, principal, or financier of the dispensary if the applicant is to be an employee. The Department shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Department.

(d) The Department of ~~Public Safety~~ shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. No person shall confirm the existence or nonexistence of criminal history record information to any person who would not be eligible to receive the information pursuant to this subchapter.

(e) The Department of ~~Public Safety~~ shall not issue a ~~registry~~ Registry identification card to any applicant who has been convicted of a drug-related offense or a violent felony or who has a pending charge for such an offense. ~~For purposes of~~ As used in this subchapter, “violent felony” means a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

(f) The Department of ~~Public Safety~~ shall adopt rules for the issuance of a ~~registry~~ Registry identification card and shall set forth standards for determining whether an applicant should be denied a ~~registry~~ Registry identification card because his or her criminal history record indicates that the person’s association with a dispensary would pose a demonstrable threat to public safety. The rules shall consider whether a person who has a conviction for an offense not listed in subsection (e) of this section has been rehabilitated. A conviction for an offense not listed in subsection (e) of this section shall not automatically disqualify a person for a ~~registry~~ Registry identification card. A dispensary may deny a person the opportunity to serve as a ~~Board~~ board member or an employee based on his or her criminal history record. An applicant who is denied a ~~registry~~ Registry identification card may appeal the ~~Department of Public Safety’s~~ Department’s determination in Superior Court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

(g) A ~~registration~~ Registry identification card of a ~~principal officer, Board member~~ an owner, principal, or financier, or employee shall expire one year after its issuance or upon the expiration of the registered organization’s registration certificate, whichever occurs first.

Sec. 8. 18 V.S.A. § 4474h is amended to read:

§ 4474h. PATIENT DESIGNATION OF DISPENSARY

(a) A registered patient or his or her caregiver may obtain marijuana only from the patient’s designated dispensary and may designate only one dispensary. ~~If a registered patient designates a dispensary, the patient and his or her caregiver may not grow marijuana or obtain marijuana or marijuana-infused products for symptom relief from any source other than the designated dispensary.~~ A registered patient who wishes to change his or her dispensary shall notify the Department of ~~Public Safety~~ in writing on a form issued by the Department and shall submit with the form a fee of \$25.00. The Department shall issue a new identification card to the registered patient within 30 days of receiving the notification of change in dispensary. The registered patient’s previous identification card shall expire at the time the new identification card takes effect. A registered patient shall submit his or her expired identification card to the Department within 30 days of expiration. A registered patient shall

not change his or her designated dispensary more than once in any 30-day period.

* * *

Sec. 9. 6 V.S.A. chapter 5 is amended to read:

CHAPTER 5. CENTRAL TESTING LABORATORY

§ 121. CREATION AND PURPOSE

There is created within the Agency of Agriculture, Food and Markets a central testing laboratory for the purpose of providing agricultural ~~and~~ environmental, ~~and~~ other necessary testing services.

§ 122. FEES

Notwithstanding 32 V.S.A. § 603, the Agency shall establish fees for providing agricultural ~~and~~ environmental, ~~and~~ other necessary testing services at the request of private individuals and State agencies. The fees shall be reasonably related to the cost of providing the services. Fees collected under this chapter shall be credited to a special fund which shall be established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and which shall be available to the Agency to offset the cost of providing the services.

§ 123. REGULATED DRUGS

(a) Except as provided in subsection (b) of this section, the provisions of 18 V.S.A. chapter 84 shall not apply to the Secretary or designee in the otherwise lawful performance of his or her official duties requiring the possession or control of regulated drugs.

(b) The central testing laboratory shall obtain a certificate of approval from the Department of Health pursuant to 18 V.S.A. § 4207.

(c) As used in this section, "regulated drug" shall have the same meaning as in 18 V.S.A. § 4201.

Sec. 10. MARIJUANA-INFUSED PRODUCT TESTING; REPORT

The General Assembly recognizes the importance of independent testing of marijuana-infused products sold by dispensaries to determine proper labeling of products in compliance with 18 V.S.A. § 4474e. Therefore, the Agency of Agriculture, Food and Markets and the Department of Public Safety, in consultation with registered dispensaries, shall report their recommendations to the Joint Legislative Justice Oversight Committee and the General Assembly no later than October 15, 2017 on the following:

- (1) Who should be responsible for testing marijuana-infused products.
- (2) The approved methods and frequency of testing.

(3) Estimated costs associated with such testing and how these costs should be funded.

(4) If testing will be done through an independent testing entity, the process by which the State will certify such entities and oversee such testing.

(5) How to implement a weights and measures program for medical marijuana dispensaries.

Sec. 11. AUTHORITY FOR CURRENTLY REGISTERED DISPENSARY ORGANIZED AS A NONPROFIT CORPORATION TO CONVERT TO FOR-PROFIT ENTITY.

(a) Notwithstanding the provisions of Title 11B and any other rule to the contrary, a dispensary organized as a nonprofit corporation and registered pursuant to 18 V.S.A. chapter 86 may convert to any type of domestic organization pursuant to and in accordance with 11A V.S.A. chapter 11 as if the dispensary were a domestic organization, except that the dispensary shall approve a plan of conversion pursuant to 11A V.S.A. § 11.04 by a majority vote of its board of directors and may otherwise disregard any provision of 11A V.S.A. chapter 11 that relates to shareholders.

(b) Notwithstanding 18 V.S.A. § 4474e or any rule to the contrary, the converted domestic corporation may continue to operate on a for-profit basis in accordance with the terms of its registration, 18 V.S.A. chapter 86, and any rules adopted pursuant to that chapter.

Sec. 12. MEDICAL MARIJUANA REGISTRY; WEB PAGE

The Department of Public Safety and the Agency of Digital Services shall develop an independent web page for the Medical Marijuana Registry, separate from any other registry or program administered by the Department, that is up-to-date and user-friendly on or before September 30, 2017 and shall report to the General Assembly on activation of the web page at such time.

Sec. 13. DEPARTMENT OF PUBLIC SAFETY

The Department of Public Safety shall begin to accept applications for the additional dispensary on July 1, 2017.

Sec. 14. EFFECTIVE DATES

(a) Secs. 9–13 shall take effect on passage.

(b) The remaining sections of this act shall take effect on July 1, 2017.

*RICHARD W. SEARS
JOSEPH C. BENNING
JEANETTE K. WHITE*

Committee on the part of the Senate

*ANN D. PUGH
SANDY J. HAAS
FRANCIS M. MCFAUN*

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

S. 50.

Senator Ingram, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon Senate bill entitled:

An act relating to insurance coverage for telemedicine services delivered in or outside a health care facility.

Respectfully reports that it has met and considered the same and recommends that the House 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. 8 V.S.A. § 4100k is amended to read:

§ 4100k. COVERAGE OF HEALTH CARE SERVICES DELIVERED THROUGH TELEMEDICINE SERVICES

(a) All health insurance plans in this State shall provide coverage for telemedicine health care services delivered through telemedicine by a health care provider at a distant site to a patient in a health care facility at an originating site to the same extent that the services would be covered plan would cover the services if they were provided through in-person consultation.

(b) A health insurance plan may charge a deductible, co-payment, or coinsurance for a health care service provided through telemedicine so long as it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.

(c) A health insurance plan may limit coverage to health care providers in the plan's network ~~and may require originating site health care providers to document the reason the services are being provided by telemedicine rather than in person.~~ A health insurance plan shall not impose limitations on the

number of telemedicine consultations a covered person may receive that exceed limitations otherwise placed on in-person covered services.

(d) Nothing in this section shall be construed to prohibit a health insurance plan from providing coverage for only those services that are medically necessary and are clinically appropriate for delivery through telemedicine, subject to the terms and conditions of the covered person's policy.

(e) A health insurance plan may reimburse for teleophthalmology or teledermatology provided by store and forward means and may require the distant site health care provider to document the reason the services are being provided by store and forward means.

(f) Nothing in this section shall be construed to require a health insurance plan to reimburse the distant site health care provider if the distant site health care provider has insufficient information to render an opinion.

(g) In order to facilitate the use of telemedicine in treating substance use disorder, when the originating site is a health care facility, health insurers and the Department of Vermont Health Access shall ensure that ~~both the treating clinician and the hosting facility~~ the health care provider at the distant site and the health care facility at the originating site are both reimbursed for the services rendered, unless the health care providers at both the ~~host and service distant and originating~~ sites are employed by the same entity.

(h) As used in this subchapter:

(1) “Distant site” means the location of the health care provider delivering services through telemedicine at the time the services are provided.

(2) “Health insurance plan” means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid and any other public health care assistance program offered or administered by the State or by any subdivision or instrumentality of the State. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

~~(2)~~(3) “Health care facility” shall have the same meaning as in 18 V.S.A. § 9402.

~~(3)~~(4) “Health care provider” means a person, partnership, or corporation, other than a facility or institution, that is licensed, certified, or otherwise authorized by law to provide professional health care services in this State to an individual during that individual's medical care, treatment, or confinement.

(5) “Originating site” means the location of the patient, whether or not accompanied by a health care provider, at the time services are provided by a

health care provider through telemedicine, including a health care provider's office, a hospital, or a health care facility, or the patient's home or another nonmedical environment such as a school-based health center, a university-based health center, or the patient's workplace.

(6) "Store and forward" means an asynchronous transmission of medical information to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty and by which the health care provider at the distant site reviews the medical information without the patient present in real time.

(4)(7) "Telemedicine" means the delivery of health care services such as diagnosis, consultation, or treatment through the use of live interactive audio and video over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. Telemedicine does not include the use of audio-only telephone, e-mail, or facsimile.

Sec. 2. 18 V.S.A. § 9361 is amended to read:

§ 9361. HEALTH CARE PROVIDERS PROVIDING DELIVERING HEALTH CARE SERVICES THROUGH TELEMEDICINE OR BY STORE AND FORWARD SERVICES MEANS

(a) As used in this section, "distant site," "health care provider," "originating site," "store and forward," and "telemedicine" shall have the same meanings as in 8 V.S.A. § 4100k.

(b) Subject to the limitations of the license under which the individual is practicing, a health care provider licensed in this state State may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient ~~either in person, through telemedicine, or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically.~~ Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider-patient settings. ~~For purposes of this subchapter, "telemedicine" shall have the same meaning as in 8 V.S.A. § 4100k.~~

(c)(1) A health care provider delivering health care services through telemedicine shall obtain and document a patient's oral or written informed consent for the use of telemedicine technology prior to delivering services to the patient.

(A) The informed consent for telemedicine services shall be provided in accordance with Vermont and national policies and guidelines on the appropriate use of telemedicine within the provider's profession and shall include, in language that patients can easily understand:

(i) an explanation of the opportunities and limitations of delivering health care services through telemedicine;

(ii) informing the patient of the presence of any other individual who will be participating in or observing the patient's consultation with the provider at the distant site and obtaining the patient's permission for the participation or observation; and

(iii) assurance that all services the health care provider delivers to the patient through telemedicine will be delivered over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(B) For services delivered through telemedicine on an ongoing basis, the health care provider shall be required to obtain consent only at the first episode of care.

(2) The provider shall include the patient's written consent in the patient's medical record or document the patient's oral consent in the patient's medical record.

(3) A health care provider delivering telemedicine services through a contract with a third-party vendor shall comply with the provisions of this subsection (c) to the extent permissible under the terms of the contract. If the contract requires the health care provider to use the vendor's own informed consent provisions instead of those set forth in this subsection (c), the health care provider shall be deemed to be in compliance with the requirements of this subsection (c) if he or she adheres to the terms of the vendor's informed consent policies.

(4) Notwithstanding any provision of this subsection (c) to the contrary, a health care provider shall not be required to obtain a patient's informed consent for the use of telemedicine in the following circumstances:

(A) in the case of a medical emergency;

(B) for the second certification of an emergency examination determining whether an individual is a person in need of treatment pursuant to section 7508 of this title; or

(C) for a psychiatrist's examination to determine whether an individual is in need of inpatient hospitalization pursuant to 13 V.S.A. § 4815(g)(3).

(d) Neither a health care provider nor a patient shall create or cause to be created a recording of a provider's telemedicine consultation with a patient.

~~(b)~~(e) A patient receiving teleophthalmology or teledermatology by store and forward means shall be informed of the right to receive a consultation with the distant site health care provider and shall receive a consultation with the distant site health care provider upon request. If requested, the consultation with the distant site health care provider may occur either at the time of the initial consultation or within a reasonable period of time of following the patient's notification of the results of the initial consultation. Receiving teledermatology or teleophthalmology by store and forward means shall not preclude a patient from receiving real time telemedicine or face-to-face services with the distant site health care provider at a future date. Originating site health care providers involved in the store and forward process shall ensure obtain informed consent from the patient as described in subsection (c) of this section. ~~For purposes of this subchapter, "store and forward" shall have the same meaning as in 8 V.S.A. § 4100k.~~

Sec. 3. REPEAL

33 V.S.A. § 1901i (Medicaid coverage for primary care telemedicine) is repealed.

Sec. 4. EFFECTIVE DATES

(a) Sec. 1 (health insurance coverage) shall take effect on October 1, 2017 and shall apply to Medicaid on that date and to all other health insurance plans on or after October 1, 2017 on the date a health insurer issues, offers, or renews the health insurance plan, but in no event later than October 1, 2018.

(b) Secs. 2 (health care providers providing telemedicine), 3 (repeal) and this section shall take effect on October 1, 2017.

*CLAIRE D. AYER
VIRGINIA V. LYONS
DEBORAH J. INGRAM*

Committee on the part of the Senate

*TIMOTHY C. BRIGLIN
SARAH L. COPELAND-HANZAS
ANNMARIE CHRISTENSEN*

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Report of Committee of Conference Accepted and Adopted on the Part of the Senate**S. 134.**

Senator Benning, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon Senate bill entitled:

An act relating to court diversion and pretrial services.

Respectfully report that they have met and considered the same and recommend that the House recede from its proposals 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. FINDINGS; INTENT

(a) The General Assembly finds:

(1) According to numerous studies over many years, pretrial diversion programs result in outcomes for participants that are better than incarceration, including reducing the likelihood that participants commit future crimes and improving substance abuse and mental health outcomes. For example, according to a study of the New York City Jail Diversion Project, 12 months after their offense, offenders who go through a diversion program are less likely to reoffend, spend less time in prison, have received more treatment, and are less likely to suffer drug relapses. In addition, a study in the *Journal of the American Academy of Psychiatry and the Law* indicates that diversion programs reduce the amount of time participants spend in jail for future offenses from an average of 173 days to an average of 40 days during the year after the offense. Research also demonstrates that offenders who have participated in diversion programs are better able to find employment.

(2) Diversion programs benefit the criminal justice system by reducing costs and allowing resources to be allocated more efficiently for more serious offenders. According to studies by the Urban Institute and the National Alliance on Mental Illness, diversion programs reduce costs and improve outcomes by allowing offenders with mental illness to receive more appropriate treatment outside the criminal justice system. As reported in the *Psychiatric Rehabilitation Journal*, diversion programs reduce costs by decreasing the need for and use of hospitalization and crisis services by offenders.

(b) It is the intent of the General Assembly that:

(1) Sec. 2 of this act result in an increased use of the diversion program throughout the State and a more consistent use of the program between different regions of the State;

(2) the Office of the Attorney General collect data pursuant to 3 V.S.A. § 164(d) on diversion program use, including the effect of this act on use of the program statewide and in particular regions of the State; and

(3) consideration be given to further amending the diversion program statutes before Sec. 2 of this act sunsets on July 1, 2020, if it is determined that Sec. 2 of this act did not produce the intended increases in diversion program usage.

Sec. 2. 3 V.S.A. § 164 is amended to read:

§ 164. ADULT COURT DIVERSION PROJECT PROGRAM

(a) The Attorney General shall develop and administer an adult court diversion ~~project program~~ in all counties. The ~~project program~~ shall be operated through the juvenile diversion project and ~~shall be designed to assist adults who have been charged with a first or second misdemeanor or a first nonviolent felony.~~ The Attorney General shall adopt only such rules as are necessary to establish an adult court diversion ~~project program~~ for adults, in compliance with this section.

(b) The program shall be designed for two purposes:

(1) To assist adults who have been charged with a first or a second misdemeanor or a first nonviolent felony.

(2) To assist adults with substance abuse or mental health treatment needs regardless of the person's prior criminal history record. Programming for these persons is intended to support access to appropriate treatment or other resources with the aim of improving the person's health and reducing future adverse involvement in the justice system. A person charged with a felony offense that is a listed crime pursuant to 13 V.S.A. § 5301 shall not be eligible under this section.

(c) ~~The adult court diversion project administered by the Attorney General program~~ shall encourage the development of diversion ~~projects programs~~ in local communities through grants of financial assistance to municipalities, private groups or other local organizations. The Attorney General may require local financial contributions as a condition of receipt of ~~project program~~ grants.

(d) The Office of the Attorney General shall develop program outcomes following the designated State of Vermont performance accountability framework and, in consultation with the Department of State's Attorneys and Sheriffs, the Office of the Defender General, the Center for Crime Victim Services, and the Judiciary, report annually on or before December 1 to the General Assembly on services provided and outcome indicators.

~~(e)~~(e) All adult court diversion projects programs receiving financial assistance from the Attorney General shall adhere to the following provisions:

(1) The diversion ~~project~~ 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. If a person is charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A), 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 declines to accept the case;

(B) the person declines to participate in diversion;

(C) the Board accepts the case, but the person does not successfully complete diversion; or

(D) the prosecuting attorney recalls the referral to diversion.

(2) Alleged offenders shall be informed of their right to the advice and assistance of private counsel or the public defender at all stages of the diversion process, including the initial decision to participate, and the decision to accept the adult diversion contract, so that the candidate may give informed consent.

(3) The participant shall be informed that his or her selection of the adult diversion contract is voluntary.

(4) Each State's Attorney, in cooperation with the Office of the Attorney General and the adult court diversion project program, shall develop clear criteria for deciding what types of offenses and offenders will be eligible for diversion; however, the State's Attorney shall retain final discretion over the referral of each case for 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).

(6) Information related to the present offense that is divulged during the adult diversion program shall not be used ~~in the prosecutor's case against the person in the person's criminal or juvenile case for any purpose, including impeachment or cross-examination.~~ However, the fact of participation and success, or reasons for failure, may become part of the prosecutor's records.

(7)(A) The adult court diversion ~~project 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 ~~projects programs~~.

(8) Adult court diversion ~~projects programs~~ shall be set up to respect the rights of participants.

(9) Each participant shall pay a fee to the local adult court diversion ~~project program~~. The amount of the fee shall be determined by ~~project program~~ officers or employees based upon the financial capabilities of the participant. The fee shall not exceed \$300.00. The fee shall be a debt due from the participant, and payment of such shall be required for successful completion of the program. Notwithstanding 32 V.S.A. § 502(a), fees collected under this subdivision shall be retained and used solely for the purpose of the court diversion program.

~~(d)~~(f) The Attorney General is authorized to accept grants and gifts for the purposes of this section, such acceptance being pursuant to 32 V.S.A. § 5.

~~(e)~~(g) Within 30 days of 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 of all court files and records, law enforcement records other than entries in the adult court diversion project's 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 of the records. The court shall seal the records if it finds:

(1) 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; and

(2) 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) rehabilitation of the participant has been attained to the satisfaction of the court.

~~(f)~~(h) Upon the entry of an order sealing such 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.

~~(g)~~(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.

~~(h)~~(j) The process of automatically sealing 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. Sealing shall occur if the requirements of subsection ~~(e)~~(g) of this section are met.

~~(i)~~(k) Subject to the approval of the Attorney General, 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.

Sec. 3. 13 V.S.A. § 7554c is amended to read:

§ 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

(a)(1) The objective of a pretrial risk assessment is to provide information to the ~~Court~~ court for the purpose of determining whether a person presents a risk of nonappearance ~~or a threat to public safety~~ or a risk of re-offense so the ~~Court~~ court can make an appropriate order concerning bail and conditions of pretrial release. The assessment shall not assess victim safety or risk of lethality in domestic assaults.

(2) The objective of a pretrial needs screening is to obtain a preliminary indication of whether a person has a substantial substance abuse or mental health issue that would warrant a subsequent court order for a more detailed clinical assessment.

(3) Participation in a risk assessment or needs screening pursuant to this section does not create any entitlement for the assessed or screened person.

(b)(1) ~~A~~ Except as provided in subdivision (2) of this subsection, a person whose offense or status falls into any of the following categories shall be offered a risk assessment and, if deemed appropriate by the pretrial monitor, a needs screening prior to arraignment:

(A) ~~misdemeanors and felonies, excluding listed crimes and drug trafficking, cited into court; and~~

(B) ~~persons who are arrested and lodged and unable to post bail within 24 hours of lodging, excluding persons who are charged with an offense for which registration as a sex offender is required upon conviction pursuant to subchapter 3 of chapter 167 of this title or an offense punishable by up to life imprisonment~~ who is arrested, lodged, and unable to post bail within 24 hours of lodging shall be offered a risk assessment and, if deemed appropriate by the pretrial services coordinator, a needs screening prior to arraignment.

(2) ~~As used in this section, “listed crime” shall have the same meaning as provided in section 5301 of this title and “drug trafficking” means offenses listed as such in Title 18~~ A person charged with an offense for which registration as a sex offender is required pursuant to subchapter 3 of chapter 167 of this title or an offense punishable by a term of life imprisonment shall not be eligible under this section.

(3) ~~Unless ordered as a condition of release under section 7554 of this title, participation~~ Participation in risk assessment or needs screening shall be voluntary and a person’s refusal to participate shall not result in any criminal legal liability to the person.

(4) In the event an assessment or screening cannot be obtained prior to arraignment, the risk assessment and needs screening shall be conducted as soon as practicable.

(5) A person who qualifies pursuant to ~~subdivisions (1)(A)-(D)~~ subdivision (1) of this subsection and who has an additional pending charge or a violation of probation shall not be excluded from being offered a risk assessment or needs screening unless the other charge is a listed crime.

~~(6)(A) The Administrative Judge and Court Administrator, in consultation with the Secretary of Human Services and the Commissioner of Corrections, shall develop a statewide plan for the phased, consistent rollout of the categories identified in subdivisions (1)(A) through (D) of this subsection, in the order in which they appear in this subsection. The Administrative Judge and Court Administrator shall present the plan to the Joint Legislative Corrections Oversight Committee on or before October 15, 2014. Any person charged with a criminal offense, except those persons identified in subdivision (b)(2) of this section, may choose to engage with a pretrial services coordinator.~~

~~(B) All persons whose offense or status falls into one of the categories shall be eligible for a risk assessment or needs screening on or after October 15, 2015. Prior to that date, a person shall not be guaranteed the offer of a risk assessment or needs screening solely because the person's offense or status falls into one of the categories. Criminal justice professionals charged with implementation shall adhere to the plan.~~

(c) The results of the risk assessment and needs screening shall be provided to the person and his or her attorney, the prosecutor, and the Court court. Pretrial services coordinators may share information only within the limitations of subsection (e) of this section.

(d)(1) At arraignment, ~~in consideration of the risk assessment and needs screening,~~ the Court court may order the a person to ~~comply with~~ do the following conditions:

(A) meet with a pretrial ~~monitor~~ services coordinator on a schedule set by the Court court; and

(B) participate in a needs screening with a pretrial services coordinator; and

(C) participate in a clinical assessment by a substance abuse or mental health treatment provider and follow the recommendations of the provider.

(2) The Court court may order the person to follow the recommendation of the pretrial monitor if the person has completed a risk assessment or needs screening engage in pretrial services. Pretrial services may include the pretrial services coordinator:

(A) supporting the person in meeting conditions of release imposed by the court, including the condition to appear for judicial proceedings; and

(B) connecting the person with community-based treatment programs, rehabilitative services, recovery supports, and restorative justice programs.

(3) If possible, the Court court shall set the date and time for the clinical assessment at arraignment. In the alternative, the pretrial monitor services coordinator shall coordinate the date, time, and location of the clinical assessment and advise the Court court, the person and his or her attorney, and the prosecutor.

(4) The conditions An order authorized in subdivision (1) or (2) of this subsection shall be in addition to any other conditions of release permitted by law and shall not limit the Court court in any way. Failure to comply with a court order authorized by subdivision (1) or (2) of this subsection shall not constitute a violation of section 7559 of this title.

(5) This section shall not be construed to limit a court's authority to impose conditions pursuant to section 7554 of this title.

(e)(1) Information obtained from the person during the risk assessment or needs screening shall be exempt from public inspection and copying under the Public Records Act and, except as provided in subdivision (2) of this subsection, only may be used for determining bail, conditions of release, and appropriate programming for the person in the pending case. The information a pretrial services coordinator may report is limited to whether a risk assessment indicates risk of nonappearance, whether further substance use assessment or treatment is indicated, whether mental health assessment or treatment is indicated, whether a person participated in a clinical assessment, and whether further engagement with pretrial services is recommended, unless the person provides written permission to release additional information. Information related to the present offense directly or indirectly derived from the risk assessment, needs screening, or other conversation with the pretrial services coordinator shall not be used against the person in the person's criminal or juvenile case for any purpose, including impeachment or cross-examination. However, the fact of participation or nonparticipation in risk assessment or needs screening may be used in subsequent proceedings. The immunity provisions of this subsection apply only to the use and derivative use

of information gained as a proximate result of the risk assessment or, needs screening, or other conversation with the pretrial services coordinator.

(2) The person shall retain all of his or her due process rights throughout the risk assessment and needs screening process and may release his or her records at his or her discretion.

(3) The Vermont Supreme Court in accordance with judicial rulemaking as provided in 12 V.S.A. § 1 shall promulgate and the Department of Corrections in accordance with the Vermont Administrative Procedure Act pursuant to 3 V.S.A. chapter 25 shall adopt rules related to the custody, control, and preservation of information consistent with the confidentiality requirements of this section. Emergency rules adopted prior to January 1, 2015 pursuant to this section shall be considered to meet the “imminent peril” standard under 3 V.S.A. § 844(a). All records of information obtained during risk assessment or needs screening shall be stored in a manner making them accessible only to the Director of Pretrial Services and Pretrial Service Coordinators for a period of three years, after which the records shall be maintained as required by sections 117 and 218 of this title and any other State law. The Director of Pretrial Services shall be responsible for the destruction of records when ordered by the court.

(f) The Attorney General’s Office shall:

(1) contract for or otherwise provide the pretrial services described in this section, including performance of risk assessments, needs screenings, and pretrial monitoring services, and

(2) develop pretrial services outcomes following the designated State of Vermont performance accountability framework and, in consultation with the Department of State’s Attorneys and Sheriffs, the Office of the Defender General, the Center for Crime Victim Services, and the Judiciary, report annually on or before December 1 to the General Assembly on services provided and outcome indicators.

Sec. 4. MISDEMEANOR POSSESSION OF DRUGS; PRETRIAL SERVICES; REPORT

(a) It is the intent of the General Assembly to encourage persons cited or arrested for a misdemeanor drug possession charge the opportunity to engage with pretrial services, and, if appropriate, enter treatment, and that, in turn, a person who complies with such conditions be eligible for dismissal of the charge.

(b) The Attorney General, the Defender General, and the Executive Director of the Department of State’s Attorneys and Sheriffs shall work collaboratively to develop a specific legislative proposal to accomplish this

intent with an implementation date of July 1, 2018 and report to the Senate and House Committees on Judiciary and on Appropriations, the Senate Committee on Health and Welfare, and the House Committee on Human Services on or before November 1, 2017.

Sec. 5. LEGISLATIVE FINDINGS

The General Assembly finds that:

(1) According to Michael Botticelli, former Director of the Office of National Drug Control Policy, the National Drug Control Strategy recommends treating “addiction as a public health issue, not a crime.” Further, the strategy “rejects the notion that we can arrest and incarcerate our way out of the nation’s drug problem.”

(2) Vermont Chief Justice Paul Reiber has declared that “the classic approach of ‘tough on crime’ is not working in [the] area of drug policy” and that treatment-based models are proving to be a more effective approach for dealing with crime associated with substance abuse.

(3) A felony conviction record is a significant impediment to gaining and maintaining employment and housing, yet we know that stable employment and housing are an essential element to recovery from substance abuse and desistance of criminal activity that often accompanies addiction.

(4) In a 2014 study by the PEW Research Center, 67 percent of people polled said government should focus more on providing treatment to people who use illicit drugs and less on punishment. The Center later reported that states are leading the way in reforming drug laws to reflect this opinion: State-level actions have included lowering penalties for possession and use of illegal drugs, shortening mandatory minimums or curbing their applicability, removing automatic sentence enhancements, and establishing or extending the jurisdiction of drug courts and other alternatives to the regular criminal justice system.

(5) Vermont must look at alternative approaches to the traditional criminal justice model for addressing low-level illicit drug use if it is going to reduce the effects of addiction and addiction-related crime in this State.

Sec. 6. STUDY

(a) The Office of Legislative Council shall examine the issue of a public health approach to low-level possession and use of illicit drugs in Vermont as an alternative to the traditional criminal justice model, looking to trends both nationally and internationally, with a goal of providing policymakers a range of approaches to consider during the 2018 legislative session.

(b) The Office of Legislative Council shall report its findings to the General Assembly on or before December 15, 2017.

Sec. 7. SUNSET

Sec. 2 of this act shall be repealed on July 1, 2020.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

*JEANETTE K. WHITE
JOSEPH C. BENNING
ALICE W. NITKA*

Committee on the part of the Senate

*CHARLES W. CONQUEST
THOMAS B. BURDITT
SELENE COLBURN*

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Rules Suspended; Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 22.

Pending entry on the Calendar for notice, on motion of Senator White, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to the professional regulation of law enforcement officers by the Vermont Criminal Justice Training Council.

Was taken up for immediate consideration.

Senator White, for the Committee of Conference, submitted the following report:

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. 22. An act relating to the professional regulation of law enforcement officers by the Vermont Criminal Justice Training Council.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposals of amendment and

that the bill be further amended in Sec. 1, 20 V.S.A. chapter 151 (Vermont Criminal Justice Training Council), in section 2406 (permitted Council sanctions), in subsection (b) (intended revocation; temporary voluntary surrender), in subdivision (1)(C), in the last sentence, following “the Council may modify its findings and decision on the basis of additional evidence” by inserting , but shall not be bound by any outcome of the labor proceeding

*JEANETTE K. WHITE
BRIAN P. COLLAMORE
CHRISTOPHER A. PEARSON*

Committee on the part of the Senate

*MAIDA F. TOWNSEND
ROBERT B. LACLAIR
MARCIA L. GARDNER*

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Rules Suspended; Bills Messaged

On motion of Senator Mazza, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 9, S. 16, S. 50, S. 131, S. 134, H. 22, H. 143, H. 503.

Adjournment

On motion of Senator Mazza, the Senate adjourned until two o'clock in the afternoon.

Called to Order

The Senate was called to order by the President.

House Proposal of Amendment Concurred In with Amendment

S. 8.

House proposal of amendment to Senate bill entitled:

An act relating to establishing the State Ethics Commission and standards of governmental ethical conduct.

Was taken up.

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:

*** Former Legislators and Executive Officers; Lobbying Restriction ***

Sec. 1. 2 V.S.A. § 266 is amended to read:

§ 266. PROHIBITED CONDUCT

(b)(1) A legislator or an Executive officer, for one year after leaving office, shall not be a lobbyist in this State.

(2) The prohibition set forth in subdivision (1) of this subsection shall not apply to a lobbyist exempted under section 262 of this chapter.

(c) As used in this section, “candidate’s:

(1) “Candidate’s committee,” “contribution,” and “legislative leadership political committee” shall have the same meanings as in 17 V.S.A. § 2901 chapter 61 (campaign finance).

(2) “Executive officer” means:

(A) the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, or Attorney General; or

(B) under the Office of the Governor, an agency secretary or deputy or a department commissioner or deputy.

*** Former Executive Officers; Postemployment Restrictions ***

Sec. 2. 3 V.S.A. § 267 is added to read:

§ 267. EXECUTIVE OFFICERS; POSTEMPLOYMENT RESTRICTIONS

(a) Prior participation while in State employ.

(1) An Executive officer, for one year after leaving office, shall not, for pecuniary gain, be an advocate for any private entity before any public body or the General Assembly or its committees regarding any particular matter in which:

(A) the State is a party or has a direct and substantial interest; and

(B) the Executive officer had participated personally and substantively while in State employ.

(2) The prohibition set forth in subdivision (1) of this subsection applies to any matter the Executive officer directly handled, supervised, or managed, or gave substantial input, advice, or comment, or benefited from, either through discussing, attending meetings on, or reviewing materials prepared regarding the matter.

(b) Prior official responsibility. An Executive officer, for one year after leaving office, shall not, for pecuniary gain, be an advocate for any private entity before any public body or the General Assembly or its committees regarding any particular matter in which the officer had exercised any official responsibility.

(c) Exemption. The prohibitions set forth in subsections (a) and (b) of this section shall not apply if the former Executive officer's only role as an advocate would exempt that former officer from registration and reporting under 2 V.S.A. § 262.

(d) Public body enforcement. A public body shall disqualify a former Executive officer from his or her appearance or participation in a particular matter if the officer's appearance or participation is prohibited under this section.

(e) Definitions. As used in this section:

(1) "Advocate" means a person who assists, defends, or pleads.

(2) "Executive officer" means:

(A) the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, or Attorney General; or

(B) under the Office of the Governor, an agency secretary or deputy or a department commissioner or deputy.

(3) "Private entity" means any person, corporation, partnership, joint venture, or association, whether organized for profit or not for profit, except one specifically chartered by the State of Vermont or that relies upon taxes for at least 50 percent of its revenues.

(4) "Public body" means any agency, department, division, or office and any board or commission of any such entity, or any independent board or commission, in the Executive Branch of the State.

* * * State Office and Legislative Candidates; Disclosure Form * * *

Sec. 3. 17 V.S.A. § 2414 is added to read:

§ 2414. CANDIDATES FOR STATE AND LEGISLATIVE OFFICE;
DISCLOSURE FORM

(a) Each candidate for State office, State Senator, or State Representative shall file with the officer with whom consent of candidate forms are filed, along with his or her consent, a disclosure form prepared by the State Ethics Commission that contains the following information in regard to the previous calendar year:

(1) Each source, but not amount, of personal income of the candidate or of his or her spouse or domestic partner, or the candidate together with his or her spouse or domestic partner, that totals more than \$5,000.00, ranked in order from highest to lowest income, including any of the sources meeting that total described as follows:

(A) employment, including the employer or business name and address and, if self-employed, a description of the nature of the self-employment without needing to disclose any individual clients; and

(B) investments, described generally as “investment income.”

(2) Any board, commission, or other entity that is regulated by law or that receives funding from the State on which the candidate served and the candidate’s position on that entity.

(3) Any company of which the candidate or his or her spouse or domestic partner, or the candidate together with his or her spouse or domestic partner, owned more than 10 percent.

(4) Any lease or contract with the State held or entered into by:

(A) the candidate or his or her spouse or domestic partner; or

(B) a company of which the candidate or his or her spouse or domestic partner, or the candidate together with his or her spouse or domestic partner, owned more than 10 percent.

(b) In addition, if a candidate’s spouse or domestic partner is a lobbyist, the candidate shall disclose that fact and provide the name of his or her spouse or domestic partner and, if applicable, the name of his or her lobbying firm.

(c)(1) A senatorial district clerk or representative district clerk who receives a disclosure form under this section shall forward a copy of the disclosure to the Secretary of State within three business days of receiving it.

(2) The Secretary of State shall post a copy of any disclosure forms he or she receives under this section on his or her official State website.

(d) As used in this section:

(1) “Domestic partner” means an individual with whom the candidate has an enduring domestic relationship of a spousal nature, as long as the candidate and the domestic partner:

(A) have shared a residence for at least six consecutive months;

(B) are at least 18 years of age;

(C) are not married to or considered a domestic partner of another individual;

(D) are not related by blood closer than would bar marriage under State law; and

(E) have agreed between themselves to be responsible for each other's welfare.

(2) "Lobbyist" and "lobbying firm" shall have the same meanings as in 2 V.S.A. § 261.

* * * Campaign Finance; Contractor Contribution Restrictions * * *

Sec. 4. 17 V.S.A. § 2950 is added to read:

§ 2950. STATE OFFICERS AND STATE OFFICE CANDIDATES;
CONTRACTOR CONTRIBUTION RESTRICTIONS

(a) Contributor restrictions on contracting.

(1) If a person makes a contribution to a State officer or a candidate for a State office, or if his, her, or its principal or spouse makes such a contribution, that person shall not negotiate or enter into a sole source contract valued at \$50,000.00 or more or multiple sole source contracts valued in the aggregate at \$100,000.00 or more with that State office or with the State on behalf of that office within one year following:

(A) that contribution, if the contribution was made to the incumbent State officer; or

(B) the beginning of the term of the office, if the contribution was made to a candidate for the State office who is not the incumbent.

(2) The prohibition set forth in subdivision (1) of this subsection shall end after the applicable one-year period described in subdivision (1) or upon the State officer vacating the office, whichever occurs first.

(b) Contractor restrictions on contributions.

(1)(A) A person who enters into a sole source contract valued at \$50,000.00 or more or multiple sole source contracts valued in the aggregate at \$100,000.00 or more with the office of a State officer or with the State on behalf of that office, or that person's principal or spouse, shall not make a contribution to a candidate for that State office or to that State officer.

(B) The candidate for State office or his or her candidate's committee or the State officer shall not solicit or accept a contribution from a person if that candidate, candidate's committee, or State officer knows the person is prohibited from making that contribution under this subdivision (1).

(2) The prohibitions set forth in subdivision (1) of this subsection shall be limited to a period beginning from the date of execution of the contract and ending with the completion of the contract.

(c) As used in this section:

(1) "Contract" means a "contract for services," as that term is defined in 3 V.S.A. § 341.

(2) "Person's principal" means an individual who:

(A) has a controlling interest in the person, if the person is a business entity;

(B) is the president, chair of the board, or chief executive officer of a business entity or is any other individual that fulfills equivalent duties as a president, chair of the board, or chief executive officer of a business entity;

(C) is an employee of the person and has direct, extensive, and substantive responsibilities with respect to the negotiation of the contract; or

(D) is an employee of a business entity whose compensation is determined directly, in whole or in part, by the award or payment of contracts by the State to the entity employing the employee. A regular salary that is paid irrespective of the award or payment of a contract with the State shall not constitute "compensation" under this subdivision (D).

Sec. 4a. 3 V.S.A. § 347 is added to read:

§ 347. CONTRACTOR CONTRIBUTION RESTRICTIONS

The Secretary of Administration shall include in the terms and conditions of sole source contracts a self-certification of compliance with the contractor contribution restrictions set forth in 17 V.S.A. § 2950.

* * * Campaign Finance Investigations; Reports to Ethics Commission * * *

Sec. 5. 17 V.S.A. § 2904 is amended to read:

§ 2904. CIVIL INVESTIGATION

(a)(1) The Attorney General or a State's Attorney, whenever he or she has reason to believe any person to be or to have been in violation of this chapter or of any rule ~~or regulation~~ made pursuant to this chapter, may examine or cause to be examined by any agent or representative designated by him or her for that purpose any books, records, papers, memoranda, or physical objects of any nature bearing upon each alleged violation and may demand written responses under oath to questions bearing upon each alleged violation.

* * *

(5) Nothing in this subsection is intended to prevent the Attorney General or a State's Attorney from disclosing the results of an investigation conducted under this section, including the grounds for his or her decision as to whether to bring an enforcement action alleging a violation of this chapter or of any rule ~~or regulation~~ made pursuant to this chapter.

* * *

Sec. 6. 17 V.S.A. § 2904a is added to read:

§ 2904a. REPORTS TO STATE ETHICS COMMISSION

Upon receipt of a complaint made in regard to a violation of this chapter or of any rule made pursuant to this chapter, the Attorney General or a State's Attorney shall:

(1) Forward a copy of the complaint to the State Ethics Commission established in 3 V.S.A. chapter 31. The Attorney General or State's Attorney shall provide this information to the Commission within 10 days of his or her receipt of the complaint.

(2) File a report with the Commission regarding his or her decision as to whether to bring an enforcement action as a result of that complaint. The Attorney General or State's Attorney shall make this report within 10 days of that decision.

Sec. 7. 3 V.S.A. Part 1, chapter 31 is added to read:

CHAPTER 31. GOVERNMENTAL ETHICS

Subchapter 1. General Provisions

§ 1201. DEFINITIONS

As used in this chapter:

(1) "Candidate" and "candidate's committee" shall have the same meanings as in 17 V.S.A. § 2901.

(2) "Commission" means the State Ethics Commission established under subchapter 3 of this chapter.

(3) "Executive officer" means:

(A) a State officer; or

(B) under the Office of the Governor, an agency secretary or deputy or a department commissioner or deputy.

(4)(A) "Gift" means anything of value, tangible or intangible, that is bestowed for less than adequate consideration.

(B) “Gift” does not mean printed educational material such as books, reports, pamphlets, or periodicals.

(5) “Governmental conduct regulated by law” means conduct by an individual in regard to the operation of State government that is restricted or prohibited by law and includes:

(A) bribery pursuant to 13 V.S.A. § 1102;

(B) neglect of duty by public officers pursuant to 13 V.S.A. § 3006 and by members of boards and commissions pursuant to 13 V.S.A. § 3007;

(C) taking illegal fees pursuant to 13 V.S.A. § 3010;

(D) false claims against government pursuant to 13 V.S.A. § 3016;

(E) owning or being financially interested in an entity subject to a department’s supervision pursuant to section 204 of this title;

(F) failing to devote time to duties of office pursuant to section 205 of this title;

(G) engaging in retaliatory action due to a State employee’s involvement in a protected activity pursuant to subchapter 4A of chapter 27 of this title;

(H) a former legislator or former Executive officer serving as a lobbyist pursuant to 2 V.S.A. § 266(b); and

(I) a former Executive officer serving as an advocate pursuant to section 267 of this title.

(6) “Lobbyist” shall have the same meaning as in 2 V.S.A. § 261.

(7) “Political committee” and “political party” shall have the same meanings as in 17 V.S.A. § 2901.

(8) “State officer” means the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

§ 1202. STATE CODE OF ETHICS

The Ethics Commission, in consultation with the Department of Human Resources, shall adopt by rule a State Code of Ethics that sets forth general principles of governmental ethical conduct.

Subchapter 2. Disclosures

§ 1211. EXECUTIVE OFFICERS; BIENNIAL DISCLOSURE

(a) Biennially, each Executive officer shall file with the State Ethics Commission a disclosure form that contains the following information in regard to the previous calendar year:

(1) Each source, but not amount, of personal income of the officer or of his or her spouse or domestic partner, or the officer together with his or her spouse or domestic partner, that totals more than \$5,000.00, ranked in order from highest to lowest income, including any of the sources meeting that total described as follows:

(A) employment, including the employer or business name and address and, if self-employed, a description of the nature of the self-employment without needing to disclose any individual clients; and

(B) investments, described generally as “investment income.”

(2) Any board, commission, or other entity that is regulated by law or that receives funding from the State on which the officer served and the officer’s position on that entity.

(3) Any company of which the officer or his or her spouse or domestic partner, or the officer together with his or her spouse or domestic partner, owned more than 10 percent.

(4) Any lease or contract with the State held or entered into by:

(A) the officer or his or her spouse or domestic partner; or

(B) a company of which the officer or his or her spouse or domestic partner, or the officer together with his or her spouse or domestic partner, owned more than 10 percent.

(b) In addition, if an Executive officer’s spouse or domestic partner is a lobbyist, the officer shall disclose that fact and provide the name of his or her spouse or domestic partner and, if applicable, the name of his or her lobbying firm.

(c)(1) An officer shall file his or her disclosure on or before January 15 of the odd-numbered year or, if he or she is appointed after January 15, within 10 days after that appointment.

(2) An officer who filed this disclosure form as a candidate in accordance with 17 V.S.A. § 2414 in the preceding year and whose disclosure information has not changed since that filing may update that filing to indicate that there has been no change.

(d) As used in this section:

(1) “Domestic partner” means an individual with whom the Executive officer has an enduring domestic relationship, as long as the officer and the domestic partner:

(A) have shared a residence for at least six consecutive months;

(B) are at least 18 years of age;

(C) are not married to or considered a domestic partner of another individual;

(D) are not related by blood closer than would bar marriage under State law; and

(E) have agreed between themselves to be responsible for each other's welfare.

(2) "Lobbyist" and "lobbying firm" shall have the same meanings as in 2 V.S.A. § 261.

§ 1212. COMMISSION MEMBERS AND EXECUTIVE DIRECTOR;
BIENNIAL DISCLOSURE

(a) Biennially, each member of the Commission and the Executive Director of the Commission shall file with the Executive Director a disclosure form that contains the information that Executive officers are required to disclose under section 1211 of this subchapter.

(b) A member and the Executive Director shall file their disclosures on or before January 15 of the first year of their appointments or, if the member or Executive Director is appointed after January 15, within 10 days after that appointment, and shall file subsequent disclosures biennially thereafter.

§ 1213. DISCLOSURES; GENERALLY

(a) The Executive Director of the Commission shall prepare on behalf of the Commission any disclosure form required to be filed with it and the candidate disclosure form described in 17 V.S.A. § 2414, and shall make those forms available on the Commission's website.

(b) The Executive Director shall post a copy of any disclosure form the Commission receives on the Commission's website.

Subchapter 3. State Ethics Commission

§ 1221. STATE ETHICS COMMISSION

(a) Creation. There is created within the Executive Branch an independent commission named the State Ethics Commission to accept, review, make referrals regarding, and track complaints of alleged violations of governmental conduct regulated by law, of the Department of Human Resources Code of Ethics, and of the State's campaign finance law set forth in 17 V.S.A. chapter 61; to provide ethics training; and to issue guidance and advisory opinions regarding ethical conduct.

(b) Membership.

(1) The Commission shall be composed of the following five members:

(A) a chair of the Commission, who shall be appointed by the Chief Justice of the Supreme Court and who shall have a background or expertise in ethics;

(B) one member appointed by the League of Women Voters of Vermont, who shall be a member of the League;

(C) one member appointed by the Board of Directors of the Vermont Society of Certified Public Accountants, who shall be a member of the Society;

(D) one member appointed by the Board of Managers of the Vermont Bar Association, who shall be a member of the Association; and

(E) one member appointed by the Board of Directors of the Vermont Human Resource Association, who shall be a member of the Association.

(2) A member shall not:

(A) hold any office in the Legislative, Executive, or Judicial Branch of State government or otherwise be employed by the State;

(B) hold or enter into any lease or contract with the State, or have a controlling interest in a company that holds or enters into a lease or contract with the State;

(C) be a lobbyist;

(D) be a candidate for State or legislative office; or

(E) hold any office in a State or legislative office candidate's committee, a political committee, or a political party.

(3) A member may be removed for cause by the remaining members of the Commission in accordance with the Vermont Administrative Procedure Act.

(4)(A) A member shall serve a term of three years and until a successor is appointed. A term shall begin on January 1 of the year of appointment and run through December 31 of the last year of the term. Terms of members shall be staggered so that not all terms expire at the same time.

(B) A vacancy created before the expiration of a term shall be filled in the same manner as the original appointment for the unexpired portion of the term.

(C) A member shall not serve more than two consecutive terms. A member appointed to fill a vacancy created before the expiration of a term shall not be deemed to have served a term for the purpose of this subdivision (C).

(c) Executive Director.

(1) The Commission shall be staffed by an Executive Director who shall be appointed by and serve at the pleasure of the Commission and who shall be a part-time exempt State employee.

(2) The Executive Director shall maintain the records of the Commission and shall provide administrative support as requested by the Commission, in addition to any other duties required by this chapter.

(d) Confidentiality. The Commission and the Executive Director shall maintain the confidentiality required by this chapter.

(e) Meetings. Meetings of the Commission:

(1) shall be held at least quarterly for the purpose of the Executive Director updating the Commission on his or her work;

(2) may be called by the Chair and shall be called upon the request of any other two Commission members; and

(3) shall be conducted in accordance with 1 V.S.A. § 172.

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

§ 1222. COMMISSION MEMBER DUTIES AND PROHIBITED CONDUCT

(a) Conflicts of interest.

(1) Prohibition; recusal.

(A) A Commission member shall not participate in any Commission matter in which he or she has a conflict of interest and shall recuse himself or herself from participation in that matter.

(B) The failure of a Commission member to recuse himself or herself as described in subdivision (A) of this subdivision (1) may be grounds for the Commission to discipline or remove that member.

(2) Disclosure of conflict of interest.

(A) A Commission member who has reason to believe he or she has a conflict of interest in a Commission matter shall disclose that he or she has that

belief and disclose the nature of the conflict of interest. Alternatively, a Commission member may request that another Commission member recuse himself or herself from a Commission matter due to a conflict of interest.

(B) Once there has been a disclosure of a member's conflict of interest, members of the Commission shall be afforded the opportunity to ask questions or make comments about the situation to address the conflict.

(C) A Commission member may be prohibited from participating in a Commission matter by at least three other members of the Commission.

(3) Postrecusal or -prohibition procedure. A Commission member who has recused himself or herself or was prohibited from participating in a Commission matter shall not sit or deliberate with the Commission or otherwise act as a Commission member on that matter.

(4) Definition. As used in this subsection, "conflict of interest" means an interest of a member that is in conflict with the proper discharge of his or her official duties due to a significant personal or financial interest of the member, of a person within the member's immediate family, or of the member's business associate. "Conflict of interest" does not include any interest that is not greater than that of any other persons generally affected by the outcome of a matter.

(b) Gifts. A Commission member shall not accept a gift given by virtue of his or her membership on the Commission.

§ 1223. PROCEDURE FOR HANDLING COMPLAINTS

(a) Accepting complaints.

(1) On behalf of the Commission, the Executive Director shall accept complaints from any source regarding governmental ethics in any of the three branches of State government or of the State's campaign finance law set forth in 17 V.S.A. chapter 61.

(2) Complaints shall be in writing and shall include the identity of the complainant.

(b) Preliminary review by Executive Director. The Executive Director shall conduct a preliminary review of complaints made to the Commission in order to take action as set forth in this subsection, which shall include referring complaints to all relevant entities.

(1) Governmental conduct regulated by law.

(A) If the complaint alleges a violation of governmental conduct regulated by law, the Executive Director shall refer the complaint to the Attorney General or to the State's Attorney of jurisdiction, as appropriate.

(B) The Attorney General or State's Attorney shall file a report with the Executive Director regarding his or her decision as to whether to bring an enforcement action as a result of a complaint referred under subdivision (A) of this subdivision (1) within 10 days of that decision.

(2) Department of Human Resources Code of Ethics.

(A) If the complaint alleges a violation of the Department of Human Resources Code of Ethics, the Executive Director shall refer the complaint to the Commissioner of Human Resources.

(B) The Commissioner shall report back to the Executive Director regarding the final disposition of a complaint referred under subdivision (A) of this subdivision (2) within 10 days of that final disposition.

(3) Campaign finance.

(A) If the complaint alleges a violation of campaign finance law, the Executive Director shall refer the complaint to the Attorney General or to the State's Attorney of jurisdiction, as appropriate.

(B) The Attorney General or State's Attorney shall file a report with the Executive Director regarding his or her decision as to whether to bring an enforcement action as a result of a complaint referred under subdivision (A) of this subdivision (3) as set forth in 17 V.S.A. § 2904a.

(4) Legislative and Judicial Branches; attorneys.

(A) If the complaint is in regard to conduct committed by a State Senator, the Executive Director shall refer the complaint to the Senate Ethics Panel and shall request a report back from the Panel regarding the final disposition of the complaint.

(B) If the complaint is in regard to conduct committed by a State Representative, the Executive Director shall refer the complaint to the House Ethics Panel and shall request a report back from the Panel regarding the final disposition of the complaint.

(C) If the complaint is in regard to conduct committed by a judicial officer, the Executive Director shall refer the complaint to the Judicial Conduct Board and shall request a report back from the Board regarding the final disposition of the complaint.

(D) If the complaint is in regard to an attorney employed by the State, the Executive Director shall refer the complaint to the Professional Responsibility Board and shall request a report back from the Board regarding the final disposition of the complaint.

(E) If any of the complaints described in subdivisions (A)–(D) of this subdivision (4) also allege that a crime has been committed, the Executive Director shall also refer the complaint to the Attorney General and the State’s Attorney of jurisdiction.

(5) Closures. The Executive Director shall close any complaint that he or she does not refer as set forth in subdivisions (1)–(4) of this subsection.

(c) Confidentiality. Complaints and related documents in the custody of the Commission shall be exempt from public inspection and copying under the Public Records Act and kept confidential.

§ 1224. COMMISSION ETHICS TRAINING

At least annually, in collaboration with the Department of Human Resources, the Commission shall make available to State officers and State employees training on issues related to governmental ethics. The training shall include topics related to those covered in any guidance or advisory opinion issued under section 1225 of this subchapter.

§ 1225. EXECUTIVE DIRECTOR GUIDANCE AND ADVISORY OPINIONS

(a) Guidance.

(1) The Executive Director may issue to an Executive officer or other State employee, upon his or her request, guidance regarding any provision of this chapter or any issue related to governmental ethics.

(2) The Executive Director may consult with members of the Commission and the Department of Human Resources in preparing this guidance.

(3) Guidance issued under this subsection shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential unless the receiving entity has publicly disclosed it.

(b) Advisory opinions.

(1) The Executive Director may issue advisory opinions that provide general advice or interpretation regarding this chapter or any issue related to governmental ethics.

(2) The Executive Director may consult with members of the Commission and the Department of Human Resources in preparing these advisory opinions.

(3) The Executive Director shall post on the Commission’s website any advisory opinions that he or she issues.

§ 1226. COMMISSION REPORTS

Annually, on or before January 15, the Commission shall report to the General Assembly regarding the following issues:

(1) Complaints. The number and a summary of the complaints made to it, separating the complaints by topic, and the disposition of those complaints, including any prosecution, enforcement action, or dismissal. This summary of complaints shall not include any personal identifying information.

(2) Guidance. The number and a summary of the guidance documents the Executive Director issued, separating the guidance by topic. This summary of guidance shall not include any personal identifying information.

(3) Recommendations. Any recommendations for legislative action to address State governmental ethics or provisions of campaign finance law.

* * * Implementation * * *

Sec. 8. APPLICABILITY OF EMPLOYMENT RESTRICTIONS

The provisions of Secs. 1 and 2 of this act that restrict employment shall not apply to any such employment in effect on the effective date of those sections.

Sec. 9. STATE ETHICS COMMISSION; STATE CODE OF ETHICS;
RULE-MAKING PROCEDURE REQUIREMENTS

On or before July 1, 2018 and prior to pre-filing of a rule under 3 V.S.A. § 837, the Ethics Commission shall submit to the House and Senate Committees on Government Operations the draft rule creating the State Code of Ethics described in 3 V.S.A. § 1202 in Sec. 7 of this act.

Sec. 10. IMPLEMENTATION OF THE STATE ETHICS COMMISSION

(a) The State Ethics Commission, created in Sec. 7 of this act, is established on January 1, 2018.

(b) Members of the Commission shall be appointed on or before October 15, 2017 in order to prepare as they deem necessary for the establishment of the Commission, including the hiring of the Commission's Executive Director. Terms of members shall officially begin on January 1, 2018.

(c)(1) In order to stagger the terms of the members of the State Ethics Commission as described in 3 V.S.A. § 1221(b)(4)(A) in Sec. 7 of this act, the initial terms of those members shall be as follows:

(A) the Chief Justice of the Supreme Court shall appoint the Chair for a three-year term;

(B) the League of Women Voters of Vermont shall appoint a member for a two-year term;

(C) the Board of Directors of the Vermont Society of Certified Public Accountants shall appoint a member for a one-year term;

(D) the Vermont Bar Association shall appoint a member for a three-year term; and

(E) the Board of Directors of the Vermont Human Resource Association shall appoint a member for a two-year term.

(2) After the expiration of the initial terms set forth in subdivision (1) of this subsection, Commission member terms shall be as set forth in 3 V.S.A. § 1221(b)(4)(A) in Sec. 7 of this act.

Sec. 11. CREATION OF STAFF POSITION FOR STATE ETHICS COMMISSION

One part-time exempt Executive Director position is created in the State Ethics Commission set forth in Sec. 7 of this act by using an existing position in the position pool.

Sec. 12. BUILDINGS AND GENERAL SERVICES; SPACE ALLOCATION

The Commissioner of Buildings and General Services shall allocate space for the State Ethics Commission established in Sec. 7 of this act. This space shall be allocated on or before October 15, 2017.

Sec. 13. STATE ETHICS COMMISSION FUNDING SOURCE SURCHARGE; REPEAL

(a) Surcharge.

(1) Notwithstanding the provisions of 3 V.S.A. § 2283(c) setting forth the purpose and rate of charges collected in the Human Resource Services Internal Service Fund, in fiscal year 2018 and thereafter, a surcharge of up to 2.3 percent, but no greater than the cost of the activities of the State Ethics Commission set forth in Sec. 7 of this act, on the per-position portion of the charges authorized in 3 V.S.A. § 2283(c)(2) shall be assessed to all Executive Branch agencies, departments, and offices and shall be paid by all assessed entities solely with State funds.

(2) The amount collected shall be accounted for within the Human Resource Services Internal Service Fund and used solely for the purposes of funding the activities of the State Ethics Commission set forth in Sec. 7 of this act.

(b) Repeal. This section shall be repealed on June 30, 2020.

* * * Municipal Ethics and Conflicts of Interest * * *

Sec. 14. 24 V.S.A. § 1984 is amended to read:

§ 1984. CONFLICT OF INTEREST PROHIBITION

(a)(1) A Each town, city, ~~or~~ and incorporated village, by majority vote of those present and voting at an annual or special meeting warned for that purpose, ~~may~~ shall adopt a conflict of interest prohibition for its elected and appointed officials, which shall contain:

~~(1)~~(A) A definition of “conflict of interest.”

~~(2)~~(B) A list of the elected and appointed officials covered by such prohibition.

~~(3)~~(C) A method to determine whether a conflict of interest exists.

~~(4)~~(D) Actions that must be taken if a conflict of interest is determined to exist.

~~(5)~~(E) A method of enforcement against individuals violating such prohibition.

(2) The requirement set forth in subdivision (1) of this subsection shall not apply if, pursuant to the provisions of subdivision 2291(20) of this title, the municipality has established a conflict of interest policy that is in substantial compliance with subdivision (1).

(b)(1) Unless the prohibition adopted pursuant to subsection (a) of this section contains a different definition of “conflict of interest,” for the purposes of a prohibition adopted under this section, “conflict of interest” means a direct personal or pecuniary interest of a public official, or the official’s spouse, household member, business associate, employer, or employee, in the outcome of a cause, proceeding, application, or any other matter pending before the official or before the agency or public body in which the official holds office or is employed.

(2) “Conflict of interest” does not arise in the case of votes or decisions on matters in which the public official has a personal or pecuniary interest in the outcome, such as in the establishment of a tax rate, that is no greater than that of other persons generally affected by the decision.

Sec. 15. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(20) To establish a conflict-of-interest policy to apply to all elected and appointed officials of the town, city, or incorporated village or ethical conduct policies to apply to all elected and appointed officials and employees of the municipality, or both.

* * *

Sec. 16. GENERAL ASSEMBLY; RECOMMENDATION REGARDING MUNICIPAL ETHICS

The General Assembly recommends that each town, city, and incorporated village adopt ethical conduct policies for its elected and appointed officials and employees.

Sec. 17. TRANSITIONAL PROVISION; MUNICIPAL ETHICS COMPLAINTS; SECRETARY OF STATE; ETHICS COMMISSION; REPORTS

(a) Until December 15, 2020, the Secretary of State shall accept complaints in writing regarding municipal governmental ethical conduct and:

(1) forward those complaints to the applicable municipality; and

(2) report those complaints annually on or before December 15 to the Executive Director of the State Ethics Commission in the form requested by the Executive Director.

(b) The State Ethics Commission shall include a summary of these municipal complaints and any recommendations for legislative action in regard to municipal ethics along with its report of complaints and recommendations described in Sec. 7 of this act in 3 V.S.A. § 1226(1) and (3) (Commission reports; complaints; recommendations).

* * * Effective Dates * * *

Sec. 18. EFFECTIVE DATES

This act shall take effect as follows:

(1) The following sections shall take effect on July 1, 2017:

(A) Sec. 1, 2 V.S.A. § 266 (former legislators and Executive officers; lobbying; prohibited employment); and

(B) Sec. 2, 3 V.S.A. § 267 (former Executive officers; prohibited employment).

(2) The following sections shall take effect on January 1, 2018:

(A) Sec. 3, 17 V.S.A. § 2414 (candidates for State and legislative office; disclosure form);

(B) Sec. 6, 17 V.S.A. § 2904a (Attorney General or State's Attorney; campaign finance; reports to State Ethics Commission); and

(C) Sec. 7, 3 V.S.A. Part 1, chapter 31 (governmental ethics).

(3) Secs. 4, 17 V.S.A. § 2950 (State officers and State office candidates; contractor contribution restrictions) and 4a, 3 V.S.A. § 347 (contractor contribution restrictions) shall take effect on December 16, 2018.

(4) Sec. 14, 24 V.S.A. § 1984 (municipalities; conflict of interest prohibition) shall take effect on July 1, 2019.

(5) This section and all other sections shall take effect on passage.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator White moved that the Senate concur in the House proposal of amendment with further proposals of amendment thereto as follows:

First: In Sec. 3, 17 V.S.A. § 2414 (candidates for State and legislative office; disclosure form), in subsection (a), by striking out subdivision (1) in its entirety and inserting in lieu thereof a new subdivision (1) to read as follows:

(1) Each source, but not amount, of personal income of the candidate and of his or her spouse or domestic partner, and of the candidate together with his or her spouse or domestic partner, that totals more than \$5,000.00, including any of the sources meeting that total described as follows:

Second: In Sec. 3, 17 V.S.A. § 2414 (candidates for State and legislative office; disclosure form), by adding a new subsection to be subsection (c) to read as follows:

(c) In addition, each candidate for State office shall attach to the disclosure form described in subsection (a) of this section a copy of his or her most recent U.S. Individual Income Tax Return Form 1040; provided, however, that the candidate may redact from that form the following information:

(1) the candidate's Social Security Number and that of his or her spouse, if applicable;

(2) the names of any dependent and the dependent's Social Security Number; and

(3) the signature of the candidate and that of his or her spouse, if applicable.

And by relettering the remaining subsections to be alphabetically correct.

Third: In Sec. 3, 17 V.S.A. § 2414 (candidates for State and legislative office; disclosure form), in subsection (c) (relettered subsection (d)), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2)(A) The Secretary of State shall post a copy of any disclosure forms and tax returns he or she receives under this section on his or her official State website.

(B) Prior to posting, the Secretary shall redact from a tax return the information permitted to be redacted under subsection (c) of this section, if the candidate fails to do so.

Fourth: In Sec. 7, 3 V.S.A. chapter 31, by striking out section 1202 (State Code of Ethics) in its entirety and inserting in lieu thereof a new section 1202 to read as follows:

§ 1202. STATE CODE OF ETHICS

The Ethics Commission, in consultation with the Department of Human Resources, shall create and maintain a State Code of Ethics that sets forth general principles of governmental ethical conduct.

Fifth: In Sec. 7, 3 V.S.A. chapter 31, in section 1211 (Executive officers; biennial disclosure), in subsection (a), by striking out subdivision (1) in its entirety and inserting in lieu thereof a new subdivision (1) to read as follows:

(1) Each source, but not amount, of personal income of the officer and of his or her spouse or domestic partner, and of the officer together with his or her spouse or domestic partner, that totals more than \$5,000.00, including any of the sources meeting that total described as follows:

Sixth: In Sec. 7, 3 V.S.A. chapter 31, in section 1211 (Executive officers; biennial disclosure), in subdivision (d)(1) (“domestic partner” definition), following “an enduring domestic relationship” by inserting the following: of a spousal nature

Seventh: In Sec. 7, 3 V.S.A. chapter 31, in section 1221 (State Ethics Commission), in subsection (b) (membership), in subdivision (1), by striking out subparagraph (A) in its entirety and inserting in lieu thereof a new subparagraph (A) to read as follows:

(A) one member appointed by the Chief Justice of the Supreme Court;

Eighth: In Sec. 7, 3 V.S.A. chapter 31, in section 1221 (State Ethics Commission), in subsection (b) (membership), by inserting a new subdivision (2) to read as follows:

(2) The Commission shall elect the Chair of the Commission from among its membership.

And by renumbering the remaining subdivisions to be numerically correct.

Ninth: In Sec. 7, 3 V.S.A. chapter 31, in section 1224 (Commission ethics training), in the first sentence, following “the Commission shall make available to” by striking out “State officers” and inserting in lieu thereof the following: legislators, State officers.

Tenth: By striking out Sec. 9 (State Ethics Commission; State Code of Ethics; rule-making procedure requirements) in its entirety and inserting in lieu thereof a new Sec. 9 to read:

Sec. 9. STATE ETHICS COMMISSION; STATE CODE OF ETHICS;
PROCEDURE FOR CREATION

(a) The State Ethics Commission shall create a draft of the State Code of Ethics in consultation with the Department of Human Resources as described in 3 V.S.A. § 1202 in Sec. 7 of this act and submit that draft to the House and Senate Committees on Government Operations for their review on or before March 15, 2018.

(b) After considering any recommendations by those Committees, the Commission shall create its final version of the State Code of Ethics on or before July 1, 2018.

Eleventh: In Sec. 10 (implementation of the State Ethics Commission), in subsection (b), in the first sentence, following “including the hiring of the Commission’s Executive Director” by inserting the following: and electing the Chair of the Commission

Twelfth: In Sec. 10 (implementation of the State Ethics Commission), in subsection (c), in subdivisions (1) and (2), by striking out “3 V.S.A. § 1221(b)(4)(A)” and inserting in lieu thereof the following: 3 V.S.A. § 1221(b)(5)(A)

Thirteenth: In Sec. 10 (implementation of the State Ethics Commission), in subdivision (c)(1)(A), following “the Chief Justice of the Supreme Court shall appoint” by striking out “the Chair” and inserting in lieu thereof the following: a member

Fourteenth: In Sec. 17 (transitional provision; municipal ethics complaints; Secretary of State; Ethics Commission; reports), by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) The State Ethics Commission shall include a summary of these municipal complaints along with its report of complaints described in 3 V.S.A. § 1226(1) (Commission reports; complaints) in Sec. 7 of this act.

Which was agreed to.

Appointment Confirmed

Under suspension of the rules (and particularly, Senate Rule 93), as moved by Senator White, the following Gubernatorial appointments were confirmed together as a group by the Senate, without reports given by the Committees to which they were referred and without debate:

The nomination of

Harrison, Wendy of Brattleboro - Member, Transportation Board - December 12, 2016, to February 28, 2019.

Was confirmed by the Senate.

The nomination of

Heald, Francis of Island Pond - Member, Travel Information Council - July 1, 2016, to February 28, 2018.

Was confirmed by the Senate.

The nomination of

Kennett, Elizabeth of Rochester - Member, Travel Information Council - June 14, 2016, to February 28, 2018.

Was confirmed by the Senate.

The nomination of

Kittell, Vanessa of East Fairfield - Chair, Transportation Board - December 12, 2016, to February 28, 2019.

Was confirmed by the Senate.

The nomination of

Lauzon, Thomas of Barre - Member, Travel Information Council - July 1, 2016, to February 28, 2018.

Was confirmed by the Senate.

The nomination of

Gallagher, Thomas of St. Albans - Member, Vermont Economic Development Authority - July 1, 2016, to June 30, 2022.

Was confirmed by the Senate.

The nomination of

Gibbons, Kenneth of Hyde Park - Member, Vermont Educational and Health Buildings Financing Agency - July 1, 2016, to January 31, 2022.

Was confirmed by the Senate.

The nomination of

Graves, Leon of Fairfield - Member, Vermont Economic Development Authority - July 1, 2016, to June 30, 2022.

Was confirmed by the Senate.

The nomination of

Kurtzman, Daniel of Canaan - Member, Vermont Economic Development Authority - July 1, 2016, to June 30, 2022.

Was confirmed by the Senate.

The nomination of

Tuttle, Michael of South Burlington - Member, Vermont Economic Development Authority - September 12, 2016, to June 30, 2020.

Was confirmed by the Senate.

The nomination of

Wisloski, Stephen of South Burlington - Member, Vermont Educational and Health Buildings Financing Agency - June 14, 2016, to February 28, 2019.

Was confirmed by the Senate.

The nomination of

Terry, Faith of Middlebury - Member, Transportation Board - September 12, 2016, to February 28, 2019.

Was confirmed by the Senate.

The nomination of

Weinstein, Heather of Montpelier - Member, Community High School of Vermont Board - December 12, 2016, to February 28, 2017.

Was confirmed by the Senate.

Rules Suspended; Bill Messaged

On motion of Senator Mazza, the rules were suspended, and the following bill was ordered messaged to the House forthwith:

S. 8.

Recess

On motion of Senator Mazza the Senate recessed until 4:00 P.M.

Called to Order

The Senate was called to order by the President.

Adjournment

On motion of Senator Ashe, the Senate adjourned until ten o'clock in the morning.