

# Journal of the Senate

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WEDNESDAY, APRIL 25, 2018

The Senate was called to order by the President.

## Devotional Exercises

Devotional exercises were conducted by the Reverend Julian Asucan of Montpelier.

## Message from the House No. 52

A message was received from the House of Representatives by Ms. Rebecca Silbernagel, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

**H. 927.** An act relating to approval of amendments to the charter of the City of Montpelier.

In the passage of which the concurrence of the Senate is requested.

The Governor has informed the House that on April 20, 2018, he approved and signed a bill originating in the House of the following title:

**H. 589.** An act relating to the reasonable and prudent parent standard.

## Bills Referred to Committee on Finance

House bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

**H. 559.** An act relating to miscellaneous environmental subjects.

**H. 764.** An act relating to data brokers and consumer protection.

## Bill Referred to Committee on Appropriations

### H. 675.

House bill of the following title, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule, was referred to the Committee on Appropriations:

An act relating to conditions of release prior to trial.

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**Bill Referred**

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

**H. 927.** An act relating to approval of amendments to the charter of the City of Montpelier.

and pursuant to Temporary Rule 44A was referred to the Committee on Rules.

**Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment**

**H. 624.**

House bill entitled:

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

Was taken up.

Thereupon, pending third reading of the bill, Senator White moved to amend the Senate proposal of amendment by striking out Sec. 1, 17 V.S.A. § 2154 (statewide voter checklist) in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

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

§ 2154. STATEWIDE VOTER CHECKLIST

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

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

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

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

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

(5) ensure the compatibility and comparability of information on the checklist with information contained in the Department of Motor Vehicles' computer systems.

(b)(1) A registered voter's month and day of birth, driver's license or nondriver identification number, telephone number, e-mail address, and the last four digits of his or her Social Security number shall be kept confidential and are exempt from public ~~copying and inspection and copying~~ under the Public Records Act.

(2) A public agency as defined in 1 V.S.A. § 317 and any officer, employee, agent, or independent contractor of a public agency shall not knowingly disclose a copy of all of the statewide voter checklist or a municipality's portion of the statewide voter checklist to any foreign government or to a federal agency or commission or to a person acting on behalf of a foreign government or of such a federal entity for the purpose of:

(A) registration of a voter based on his or her information maintained in the checklist;

(B) publicly disclosing a voter's information maintained in the checklist; or

(C) comparing a voter's information maintained in the checklist to personally identifying information contained in other federal or state databases.

(c)(1) Any person wishing to obtain a copy of all of the statewide voter checklist must swear or affirm, under penalty of perjury pursuant to 13 V.S.A. chapter 65, that the person will not:

(A) use the checklist for commercial purposes; or

(B) knowingly disclose the checklist to any foreign government or to a federal agency or commission or to a person acting on behalf of a foreign government or of such a federal entity in circumvention of the prohibited purposes for using the checklist set forth in subdivision (b)(2) of this section.

(2) The affirmation shall be filed with the Secretary of State.

(d) An elections official shall not access the portion of the statewide voter checklist that is exempt from public inspection pursuant to 1 V.S.A. § 317(c)(31), except for elections purposes.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

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**House Proposal of Amendment Concurred In with Amendment****S. 101.**

House proposal of amendment to Senate bill entitled:

An act relating to the conduct of forestry operations.

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:

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

CHAPTER 196. VERMONT RIGHT TO CONDUCT FORESTRY  
OPERATIONS

§ 5755. FINDINGS

The General Assembly finds that:

(1) Private and public forestlands:

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

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

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

(D) mitigate the effects of climate change; and

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

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

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

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

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

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

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

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

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

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

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

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

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

#### § 5756. DEFINITIONS

As used in this chapter:

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

(2) "Conventional forestry practices" means:

(A) forestry operations;

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

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

(D) enrollment in governmental forestry or conservation programs;

(E) adoption of new forestry technology;

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

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

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

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

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

(4) “Forestry operation” means activities related to the management of forests, including timber harvests; removal, storage, or stockpiling of vegetation or timber; pruning; planting; lumber processing with portable sawmills; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. “Forestry operation” includes one or both of the following:

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

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

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

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

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

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

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

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

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

§ 5757. FORESTRY OPERATIONS; PROTECTION FROM NUISANCE  
LAWSUITS

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

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

(2) other applicable law.

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

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

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

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

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Branagan moved that the Senate concur in the House proposal of amendment with the following amendment thereto:

In Sec. 1, by striking out 12 V.S.A. § 5757 in its entirety and inserting in lieu thereof a new 12 V.S.A. § 5757 to read as follows:

§ 5757. FORESTRY OPERATIONS; PROTECTION FROM NUISANCE  
LAWSUITS

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

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

(2) other applicable law.

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

(1) a nuisance resulted from the negligent operation of the conventional forestry practice;

(2) a nuisance resulted from a violation of State, federal, or other applicable law during the conduct of the conventional forestry practice; or

(3) clear and convincing evidence that the conventional forestry practice has a substantial adverse effect on the health, safety, or welfare of the complaining party.

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

Which was agreed to.

### **Proposals of Amendment; Third Reading Ordered**

#### **H. 593.**

Senator Soucy, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to miscellaneous consumer protection provisions.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 4, in 9 V.S.A. § 2480a, by striking out subdivision (12) in its entirety and inserting in lieu thereof a new subdivision (12) to read as follows:

(12) “Protected consumer” means a natural person who, at the time a request for a security freeze is made, is:

(A) under 16 years of age;

(B) an incapacitated person; or

(C) a protected person.

Second: In Sec. 4, in 9 V.S.A. § 2480a, by striking out subdivision (18) in its entirety and inserting in lieu thereof a new subdivision (18) to read as follows:

(18) “Sufficient proof of authority” means documentation that shows that a person has authority to act on behalf of a protected consumer, including:

(A) a birth certificate;



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(B) a court order;

(C) a lawfully executed power of attorney; or

(D) a written, notarized statement signed by the person that expressly describes the person's authority to act on behalf of the protected consumer.

Third: In Sec. 5, in 9 V.S.A. § 2483a, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) A consumer reporting agency shall place a security freeze for a protected consumer if the protected consumer's representative submits a request, including proper authority, to the address and in the manner specified by the consumer reporting agency.

Fourth: In Sec. 5, in 9 V.S.A. § 2483a, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d)(1) A credit reporting agency shall lift temporarily a protected consumer security freeze to allow access by a specific party or parties or for a specific period of time, upon a request from the protected consumer's representative.

(2) The protected consumer's representative shall submit the request to the address and in the manner specified by the consumer reporting agency.

(3) The request shall include:

(A) proper authority; and

(B) the unique personal identification number, password, or other method of authentication provided by the credit reporting agency pursuant to subsection (c) of this section.

Fifth: In Sec. 5, in 9 V.S.A. § 2483a, by striking out subsection (j) in its entirety and inserting in lieu thereof a new subsection (j) to read as follows:

(j)(1) A protected consumer security freeze shall remain in place until the credit reporting agency receives a request to remove the freeze from:

(A) the protected consumer's representative; or

(B) the consumer who is subject to the protected consumer security freeze.

(2) A credit reporting agency shall remove a protected consumer security freeze within three business days after receiving a proper request for removal.

(3) The party requesting the removal of a protected consumer security freeze pursuant to subdivision (1) of this subsection shall submit the request to the address and in the manner specified by the consumer reporting agency.

(4) The request shall include:

(A) proper authority; and

(B) the unique personal identification number, password, or other method of authentication provided by the credit reporting agency pursuant to subsection (c) of this section.

Sixth: By adding a Sec. 6a to read as follows:

Sec. 6a. ONE-STOP FREEZE NOTIFICATION

(a) The Attorney General, in consultation with industry stakeholders, shall consider one or more methods to ease the burden on consumers when placing or lifting a credit security freeze, including the right to place a freeze with a single nationwide credit reporting agency and require that agency to initiate a freeze with other agencies.

(b) On or before January 15, 2019, the Attorney General shall report his or her findings and recommendations to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

Seventh: In Sec. 7, effective dates, in subsection (a), after the word “section” by inserting the following: and 6a

And that the bill ought to pass in concurrence with such proposals of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

**Bill Passed in Concurrence with Proposal of Amendment; Rules Suspended; Bill Messaged**

**H. 25.**

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

An act relating to sexual assault survivors’ rights.

Thereupon, on motion of Senator Sears, the rules were suspended, and the bill was ordered messaged to the House forthwith.

**Proposal of Amendment; Bill Passed in Concurrence with Proposals of Amendment**

**H. 378.**

House bill entitled:

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An act relating to the creation of the Artificial Intelligence Task Force.

Was taken up.

Thereupon, pending third reading of the bill, Senator Ashe moved to amend the Senate proposal of amendment in Sec. 1, by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(c) Membership. The Task Force shall be composed of the following 14 members:

(1) the Secretary of Commerce and Community Development or designee;

(2) the Secretary of Digital Services or designee;

(3) the Commissioner of Public Safety or designee;

(4) the Secretary of Transportation or designee;

(5) one member to represent the interests of workers appointed by the President of the Vermont State Labor Council, AFL-CIO;

(6) the Executive Director of the American Civil Liberties Union of Vermont or designee;

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

(8) two members who are academics at a postsecondary institute, with one appointed by the Speaker and one appointed by the Committee on Committees;

(9) one member with experience in the field of ethics and human rights, appointed by the Vermont chapter of the National Association of Social Workers;

(10) one member appointed by the Vermont Society of Engineers;

(11) one member appointed by the Vermont Academy of Science and Engineering;

(12) one member who is a secondary or postsecondary student in Vermont, appointed by the Governor; and

(13) one member appointed by the Vermont Medical Society.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

**Bill Passed in Concurrence with Proposal of Amendment**

House bill of the following title:

**H. 404.** An act relating to Medicaid reimbursement for long-acting reversible contraceptives.

Was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 29, Nays 0.

Senator Balint having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Balint, Baruth, Benning, Branagan, Brock, Brooks, Campion, Clarkson, Collamore, Cummings, Flory, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Pearson, Pollina, Rodgers, Sears, Sirotkin, Soucy, Starr, Westman, White.

**Those Senators who voted in the negative were:** None.

**The Senator absent and not voting was:** Bray.

**Bills Passed in Concurrence with Proposal of Amendment**

House bills of the following titles were severally read the third time and passed in concurrence with proposal of amendment:

**H. 710.** An act relating to beer franchises.

**H. 718.** An act relating to creation of the Restorative Justice Study Committee.

**Bill Passed in Concurrence with Proposals of Amendment****H. 719.**

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

An act relating to insurance companies and trust companies.

**Proposal of Amendment; Third Reading Ordered****H. 676.**

Senator Lyons, for the Committee on Finance, to which was referred House bill entitled:

An act relating to miscellaneous energy subjects.

Reported recommending that the Senate propose to the House to amend the bill by striking out Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. 30 V.S.A. § 248(s) is amended to read:

(s) This subsection sets minimum setback requirements that shall apply to in-state ground-mounted solar electric generation facilities approved under this section, unless the facility is installed on a canopy constructed on an area primarily used for parking vehicles that is in existence or permitted on the date the application for the facility is filed.

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(3) On review of an application, the Commission may:

(A) require a larger setback than this subsection requires; ~~or~~

(B) approve an agreement to a smaller setback among the applicant, the municipal legislative body, and each owner of property adjoining the smaller setback; or

(C) require a setback for a facility constructed on an area primarily used for parking vehicles, if the application concerns such a facility.

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And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered.

### **Proposal of Amendment; Third Reading Ordered**

#### **H. 892.**

Senator Campion, for the Committee on Finance, to which was referred House bill entitled:

An act relating to regulation of short-term, limited-duration health insurance coverage and association health plans.

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

Sec. 1. 8 V.S.A. § 4062(h)(1) is amended to read:

(h)(1) The authority of the Board under this section shall apply only to the rate review process for policies for major medical insurance coverage and shall

not apply to the policy forms for major medical insurance coverage or to the rate and policy form review process for policies for specific disease, accident, injury, hospital indemnity, dental care, vision care, disability income, long-term care, student health insurance coverage, Medicare supplemental coverage, or other limited benefit coverage; to short-term, limited-duration health insurance coverage; or to benefit plans that are paid directly to an individual insured or to his or her assigns and for which the amount of the benefit is not based on potential medical costs or actual costs incurred. Premium rates and rules for the classification of risk for Medicare supplemental insurance policies shall be governed by sections 4062b and 4080e of this title.

Sec. 2. 8 V.S.A. § 4079a is added to read:

§ 4079a. ASSOCIATION HEALTH PLANS

(a) As used in this section, “association health plan” means a policy issued to an association; to a trust; or to one or more trustees of a fund established, created, or maintained for the benefit of the members of one or more associations or a contract or plan issued by an association or trust or by a multiple employer welfare arrangement as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.

(b) The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 regulating association health plans in order to protect Vermont consumers and promote the stability of Vermont’s health insurance markets, to the extent permitted under federal law, including rules regarding licensure, solvency and reserve requirements, and rating requirements.

(c) The provisions of section 3661 of this title shall apply to association health plans.

Sec. 3. 8 V.S.A. § 4084a is added to read:

§ 4084a. SHORT-TERM, LIMITED-DURATION HEALTH INSURANCE

(a) As used in this section, “short-term, limited-duration health insurance” means health insurance that provides medical, hospital, or major medical expense benefits coverage pursuant to a policy or contract with an insurer and that has an expiration date specified in the policy or contract that is three months or less after the original effective date of the policy or contract.

(b) An insurer shall not provide short-term, limited-duration health insurance coverage unless the insurer has a certificate of authority from the Commissioner to offer health insurance as defined in subdivision 3301(a)(2) of this title or is licensed or registered with the Commissioner as a nonprofit hospital or medical service corporation, health maintenance organization, or managed care organization, unless the insurer is exempted by subdivision 3368(a)(4) of this title.

(c) A short-term, limited-duration health insurance policy or contract shall be nonrenewable, and an insurer shall not issue a short-term, limited-duration health insurance policy or contract to any person if the issuance would result in the person being covered by short-term, limited-duration health insurance coverage for more than three months in any 12-month period.

(d) A policy or contract for short-term, limited-duration health insurance coverage shall display prominently in the policy or contract and in any application materials provided in connection with enrollment in that coverage, in at least 14-point type, certain disclosures regarding the scope of short-term, limited-duration health insurance coverage, including the types of benefits and consumer protections that are and are not included. The Commissioner shall determine the specific disclosure language that shall be used in all short-term, limited-duration health insurance policies, contracts, and application materials and shall provide the language to the insurers offering that coverage.

(e) The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25:

(1) establishing the minimum financial, marketing, service, and other requirements for registration of an insurer to provide short-term, limited-duration health insurance coverage to individuals in this State;

(2) requiring an insurer seeking to provide short-term, limited-duration health insurance coverage to individuals in this State to file its rates and forms with the Commissioner for his or her approval;

(3) requiring an insurer seeking to provide short-term, limited-duration health insurance coverage to individuals in this State to file its advertising materials with the Commissioner for his or her approval; and

(4) establishing such other requirements as the Commissioner deems necessary to protect Vermont consumers and promote the stability of Vermont's health insurance markets.

(f) The provisions of section 4089f of this title, and any rules adopted under that section, shall apply to short-term, limited-duration health insurance coverage.

Sec. 4. 32 V.S.A. § 10401 is amended to read:

§ 10401. DEFINITIONS

As used in this section:

(1) "Health insurance" means any group or individual health care benefit policy, contract, or other health benefit plan offered, issued, renewed, or administered by any health insurer, including any health care benefit plan offered, issued, renewed, or administered by any health insurance company,

any nonprofit hospital and medical service corporation, any dental service corporation, or any managed care organization as defined in 18 V.S.A. § 9402. The term includes comprehensive major medical policies, contracts, or plans; short-term, limited-duration health insurance policies and contracts as defined in 8 V.S.A. § 4084a; student health insurance policies; and Medicare supplemental policies, contracts, or plans, but does not include Medicaid or any other State health care assistance program in which claims are financed in whole or in part through a federal program unless authorized by federal law and approved by the General Assembly. The term does not include policies issued for specified disease, accident, injury, hospital indemnity, long-term care, disability income, or other limited benefit health insurance policies, except that any policy providing coverage for dental services shall be included.

\* \* \*

Sec. 5. 33 V.S.A. § 1802 is amended to read:

§ 1802. DEFINITIONS

As used in this subchapter:

\* \* \*

(3) “Health benefit plan” means a policy, contract, certificate, or agreement offered or issued by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health services. This term does not include coverage only for accident or disability income insurance, liability insurance, coverage issued as a supplement to liability insurance, workers’ compensation or similar insurance, automobile medical payment insurance, credit-only insurance, coverage for on-site medical clinics, or other similar insurance coverage where benefits for health services are secondary or incidental to other insurance benefits as provided under the Affordable Care Act. The term also does not include stand-alone dental or vision benefits; long-term care insurance; short-term, limited-duration health insurance; specific disease or other limited benefit coverage, Medicare supplemental health benefits, Medicare Advantage plans, and other similar benefits excluded under the Affordable Care Act.

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Sec. 6. 33 V.S.A. § 1811 is amended to read:

§ 1811. HEALTH BENEFIT PLANS FOR INDIVIDUALS AND SMALL EMPLOYERS

(a) As used in this section:



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(1) "Health benefit plan" means a health insurance policy, a nonprofit hospital or medical service corporation service contract, or a health maintenance organization health benefit plan offered through the Vermont Health Benefit Exchange or a reflective silver plan offered in accordance with section 1813 of this title that is issued to an individual or to an employee of a small employer. The term does not include coverage only for accident or disability income insurance, liability insurance, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, automobile medical payment insurance, credit-only insurance, coverage for on-site medical clinics, or other similar insurance coverage in which benefits for health services are secondary or incidental to other insurance benefits as provided under the Affordable Care Act. The term also does not include stand-alone dental or vision benefits; long-term care insurance; short-term, limited-duration health insurance; specific disease or other limited benefit coverage, Medicare supplemental health benefits, Medicare Advantage plans, and other similar benefits excluded under the Affordable Care Act.

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#### Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered.

#### **House Proposal of Amendment Concurred In**

##### **S. 173.**

House proposal of amendment to Senate bill entitled:

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

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:

Sec. 1. 13 V.S.A. § 7602 is amended to read:

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

\* \* \*

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

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

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

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

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

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

\* \* \*

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

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

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

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

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

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

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

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

(B) ~~with prejudice.~~

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

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

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

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

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

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

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

~~(1) not more than 45 days after:~~

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

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

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

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

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

~~(h) The court may expunge any records that were sealed pursuant to this section prior to July 1, 2018 unless the State's Attorney's office that~~

prosecuted the case objects. Thirty days prior to expunging a record pursuant to this subsection, the court shall provide to the State's Attorney's office that prosecuted the case written notice of its intent to expunge the record.

Sec. 3. 13 V.S.A. § 7606 is amended to read:

§ 7606. EFFECT OF EXPUNGEMENT

\* \* \*

(d)(1) The court ~~may~~ shall keep a special index of cases that have been expunged together with the expungement order and the certificate issued pursuant to ~~section 7602 or 7603 of this title~~ this chapter. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(2) The special index and related documents specified in subdivision (1) of this subsection shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(3) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case ~~or by the court if the court finds that inspection of the documents is necessary to serve the interest of justice.~~ The Administrative Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(4) All other court documents in a case that are subject to an expungement order shall be destroyed.

(5) The Court Administrator shall establish policies for implementing this subsection.

(e) Upon receiving an inquiry from any person regarding an expunged record, an entity shall respond that "NO RECORD EXISTS."

Sec. 4. DEPARTMENT OF STATE'S ATTORNEYS AND SHERIFFS;  
EXPUNGEMENT-ELIGIBLE CRIMES; AUTOMATIC  
EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY  
RECORDS; REPORT

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

(1) consider:

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

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

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

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

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

#### Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

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

#### **House Proposal of Amendment Not Concurred In; Committee of Conference Requested; Committee of Conference Appointed**

#### **S. 289.**

House proposal of amendment to Senate bill entitled:

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

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:

\* \* \* Legislative Findings \* \* \*

#### Sec. 1. FINDINGS

The General Assembly finds and declares that:

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

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

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

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

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

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

(7) Without net neutrality, "ISPs will have the power to decide which websites you can access and at what speed each will load. In other words, they'll be able to decide which companies succeed online, which voices are heard – and which are silenced." Tim Berners-Lee, founder of the World Wide Web and Director of the World Wide Web Consortium (W3C), December 13, 2017.

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

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

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

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

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

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

(14) The State may exercise its traditional role in protecting consumers from potentially unfair and anticompetitive business practices. Doing so will provide critical protections for Vermont individuals, entrepreneurs, and small businesses that do not have the financial clout to negotiate effectively with commercial providers, some of whom may provide services and content that directly compete with Vermont companies or companies with whom Vermonters do business.

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

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

(17) The most recent order of the FCC contemplates federal and local enforcement agencies preventing harm to consumers: “In the unlikely event that ISPs engage in conduct that harms Internet openness. . . we find that

utility-style regulation is unnecessary to address such conduct. Other legal regimes – particularly antitrust law and the FTC’s authority under Section 5 of the FTC Act to prohibit unfair and deceptive practices – provide protections to consumers.” para. 140. The Attorney General enforces antitrust violations or violations of the Consumer Protection Act in Vermont.

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

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

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

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

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

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

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

§ 2466c. INTERNET SERVICE; NETWORK MANAGEMENT;  
ATTORNEY GENERAL REVIEW AND DISCLOSURE

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



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

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

### Sec. 3. NET NEUTRALITY STUDY

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

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

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

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

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

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

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

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

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

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

§ 7515b. CONNECTIVITY INITIATIVE

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

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

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

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\* \* \* Effective Date \* \* \*

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Sirotkin, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

Thereupon, pursuant to the request of the Senate, the President announced the appointment of

Senator Lyons  
Senator Champion  
Senator Sirotkin

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

**Adjournment**

On motion of Senator Ashe, the Senate adjourned until one o'clock in the afternoon on Thursday, April 26, 2018.