

House Calendar

Friday, June 26, 2020

172nd DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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ACTION CALENDAR

Unfinished Business of Wednesday, June 10, 2020

Favorable with Amendment

H. 99

An act relating to trade in covered animal parts or products

Rep. McCullough of Williston, for the Committee on Natural Resources, Fish, and Wildlife, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. part 4, chapter 124 is added to read:

CHAPTER 124. TRADE IN COVERED ANIMAL PARTS OR PRODUCTS

§ 5501. DEFINITIONS

As used in this chapter:

(1) “Bona fide educational or scientific institution” means an institution that establishes through documentation that it is a tax-exempt institution under the Internal Revenue Service’s educational or scientific tax exemption.

(2) “Covered animal” means any species of:

(A) Cheetah (Acinonyx jubatus);

(B) Elephant (family Elephantidae);

(C) Giraffe (Giraffa camelopardalis) ;

(D) Hippopotamus (family Hippopotamidae);

(E) Jaguar (Panthera onca);

(F) Leopard (Panthera pardus);

(G) Lion (Panthera leo);

(H) Mammoth (genus Mammuthus);

(I) Mastodon (genus Mammut),

(J) Pangolin (family Manidae);

(K) Endangered ray, as listed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora;

(L) Rhinoceros (family Rhinocerotidae);

(M) Sea turtle (family Chelonioidae);

(N) Endangered shark, as listed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora;

(O) Tiger (Panthera tigris);

(P) Whale (families Balaenidae, Balaenopteridae, Cetotheriidae, Eschrichtiidae, Monodontidae, Physeteridae, Kogiidae, and Ziphiidae); or

(Q) The following primates: gorillas, bonobos, orangutans, gibbons, or chimpanzees.

(3) “Commissioner” means the Commissioner of Fish and Wildlife.

(4) “Covered animal part or product” means any item that contains, or is wholly or partially made from, a covered animal, including the meat or flesh of a covered animal sold as food.

(5) “Firearm” has the same meaning as in 13 V.S.A. § 4016(a)(3).

(6) “Sale” or “sell” means any act of selling, trading, or bartering for monetary or nonmonetary consideration, and includes any transfer of ownership that occurs in the course of a commercial transaction. “Sale” or “sell” shall not include a nonmonetary transfer of ownership by way of gift, donation, or bequest.

(7) “Secretary” means the Secretary of Natural Resources.

(8) “Total value” means either the fair market value or the actual price paid for a covered animal part or product, whichever is greater.

§ 5502. PROHIBITION

Except as provided in this chapter, notwithstanding any other provision of law to the contrary, a person shall not purchase, sell, offer for sale, or possess with intent to sell any item that the person knows or should know is a covered animal part or product.

§ 5503. EXCEPTIONS

(a) The prohibition on the purchase, sale, offer for sale, or possession with intent to sell set forth in section 5502 of this title shall not apply:

(1) to employees or agents of the federal or State government undertaking any law enforcement activities pursuant to federal or State law or any mandatory duties required by federal or State law;

(2) when the activity is expressly authorized by federal law;

(3) when the covered animal part or product is a fixed component of an antique that is not made wholly or partially from the covered animal part or product, provided that:

(A) the antique status is established by the owner or seller of the covered animal part or product with documentation providing evidence of the provenance of the covered animal part or product and showing the covered animal part or product to be not less than 100 years old; and

(B) the total weight of the covered animal part or product is less than 200 grams;

(4) when the covered animal part or product is a fixed component of a firearm; knife; or musical instrument, including string instruments and bows, wind and percussion instruments, and pianos, provided that the covered animal part or product was legally acquired and provided that the total weight of the covered animal part or product is less than 200 grams; or

(5) the activity is authorized under section 5504 of this title.

(b) Documentation evidencing reasonable provenance or the age of a covered animal part or product that may be purchased, sold, offered for sale, or possessed under subsection (a) of this section may include receipts of purchase, invoices, bills of sale, prior appraisals, auction catalogues, museum or art gallery exhibit catalogues, and the signed certification of an antique appraiser to the age of the covered animal part. The issuance of a false or fraudulent certification of the age of a covered animal part or product shall be subject to penalty under section 5506 of this title.

§ 5504. EDUCATIONAL OR SCIENTIFIC USE

The Secretary may permit, under terms and conditions as the Secretary may require, the purchase, sale, offer for sale, or possession with intent to sell of any covered animal part or product for educational or scientific purposes by a bona fide educational or scientific institution unless the activity is prohibited by federal law, and provided that the covered animal part or product was legally acquired.

§ 5505. PRESUMPTION OF POSSESSION WITH INTENT TO SELL

There shall be a rebuttable presumption that a person possesses a covered animal part or product with intent to sell when the part or product is possessed by a retail or wholesale establishment or other forum engaged in the business of buying or selling similar items. This rebuttable presumption shall not preclude a court from finding intent to sell a covered animal part or product based on any other evidence that may serve to independently establish intent.

§ 5506. ADMINISTRATIVE PENALTIES; REFERRAL FOR CRIMINAL ENFORCEMENT

(a) The Secretary may assess the following administrative penalties for a

violation of a provision of this chapter:

(1) For a first offense, a person shall be assessed an administrative penalty of not more than \$1,000.00 nor less than \$400.00.

(2) For a second offense or subsequent offense, a person shall be assessed an administrative penalty of not more than \$4,000.00 nor less than \$2,000.00.

(b) Instead of bringing an environmental enforcement action for a violation of this chapter or rules adopted under this chapter, the Secretary may refer a violation of this chapter to the Commissioner of Fish and Wildlife for criminal enforcement under section 4518 of this title.

§ 5507. SEIZURE.

A person convicted of violating a provision of this chapter shall forfeit to the Secretary the covered animal part or product that is the subject of the violation. The Secretary may:

(1) authorize that the covered animal part or product be maintained for educational or training purposes;

(2) authorize that the covered animal part or product be donated to a bona fide educational or scientific institution; or

(3) require that the covered animal part or product be destroyed.

§ 5508. RULES

The Secretary may adopt rules necessary to implement the requirements of this chapter.

Sec. 2. 10 V.S.A. § 4518 is amended to read:

§ 4518. BIG GAME VIOLATIONS; THREATENED AND ENDANGERED SPECIES; SUSPENSION; VIOLATIONS

Whoever violates a provision of this part or orders or rules of the Board relating to taking, possessing, transporting, buying, or selling of big game or, relating to threatened or endangered species, or relating to the trade in covered animal parts or products shall be fined not more than \$1,000.00 nor less than \$400.00 or imprisoned for not more than 60 days, or both. Upon a second and all subsequent convictions or any conviction while under license suspension related to the requirements of part 4 of this title, the violator shall be fined not more than \$4,000.00 nor less than \$2,000.00 or imprisoned for not more than 60 days, or both.

Sec. 3. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

* * *

(27) 10 V.S.A. chapter 123, relating to threatened and endangered species;

* * *

(29) 10 V.S.A. § 1420, relating to abandoned vessels; and

(30) 3 V.S.A. § 2810, relating to interim environmental media standards; and

(31) 10 V.S.A. chapter 124, relating to the trade in covered animal parts or products.

Sec. 4. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(V) chapter 124 (trade in covered animal parts or products).

* * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on January 1, 2022.

(Committee Vote: 7-4-0)

H. 783

An act relating to recovery residences

Rep. Killacky of South Burlington, for the Committee on General, Housing, and Military Affairs, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE INTENT

It is the intent of the General Assembly that any exceptions made to existing landlord and tenant relationships in this act are limited solely to recovery residences operating pursuant to this act. These exceptions are intended to enable the expansion of recovery residences throughout the State and ensure their accessibility to individuals recovering from a substance use disorder.

Sec. 2. 18 V.S.A. § 4812 is added to read:

§ 4812. RECOVERY RESIDENCES

(a) Definition.

(1) As used in this section, “recovery residence” means a shared living residence supporting persons recovering from a substance use disorder that:

(A) Provides residents with peer support, an environment that prohibits the use of alcohol and the illegal use of prescription drugs or other illegal substances, and provides assistance accessing support services and community resources available to persons recovering from substance use disorder; and

(B) Is certified by an organization that is a Vermont affiliate of the National Alliance for Recovery Residences and adheres to the national standards established by the Alliance or its successor in interest. If there is no successor in interest, the Department of Health shall designate a certifying organization to uphold appropriate standards for recovery housing.

(2) As used in this section, “the illegal use of prescription drugs” refers to the use of prescription drugs by a person who does not hold a valid prescription for that drug or in an amount that exceeds the dosing instructions.

(b) Voluntary arrangement. The decision to live in a recovery residence shall be voluntary and shall not be required or mandated by any private or public entity or individual.

(c) Terms of residency; compliance.

(1) Landlord and tenant relationship. A recovery residence and a resident have a landlord and tenant relationship that is subject to 9 V.S.A. chapter 137, except as otherwise provided in subdivisions (3)–(4) of this subsection.

(2) Residential rental agreement.

(A) A recovery residence and a resident shall execute a written rental agreement that includes:

(i) the policies and procedures governing the tenancy;

(ii) a statement that the recovery residence and the resident will comply with the policies and procedures;

(iii) the consequences of noncompliance;

(iv) the identification of a verified location where the resident may be housed in the event of temporary removal;

(v) payment requirements;

(vi) notice requirements and procedure for terminating the tenancy;

(vii) the contact information for a resident's probation or parole officer, if the resident is on furlough or parole from the Department of Corrections; and

(viii) any other provisions to which the parties agree.

(B) The parties may amend a rental agreement in a written record signed by the parties.

(C) A resident may have a support person present when negotiating and executing a rental agreement or amendment.

(3) Temporary removal.

(A) A recovery residence shall adopt policies and procedures that govern the temporary removal of a resident who uses alcohol or illegal substances, engages in the illegal use of prescription drugs, or engages in violent, sexually harassing, or threatening behavior, consistent with the following:

(i) A recovery residence shall:

(I) provide written notice of the reason for temporary removal and of the actions the resident must take to avoid temporary removal or to be readmitted after temporary removal;

(II) design and implement harm reduction strategies for a resident who is temporarily removed, which may include providing naloxone to the resident upon temporary removal or other strategies more appropriate to the resident's recovery needs; and

(III) take action that is consistent with the resident's most recent reoccurrence agreement to the extent possible.

(ii) A recovery residence shall not temporarily remove a resident based solely on the resident's use of medication in conjunction with medication-assisted treatment, as defined in section 4750 of this title.

(B) Notwithstanding 9 V.S.A. §§ 4463 and 4464, a recovery residence that complies with the policies and procedures adopted pursuant to this subdivision (c)(3) may temporarily deny a resident access to the recovery residence and to his or her property within the residence.

(4) Termination of tenancy.

(A) A recovery residence shall adopt policies and procedures that govern the termination of tenancy of a resident who violates one or more provisions of the rental agreement, consistent with the following:

(i) A recovery residence shall:

(I) provide written notice of its intent to terminate the tenancy that includes the reason for termination and the actions the resident must take to avoid removal;

(II) design and implement harm reduction strategies for a resident whose tenancy is terminated, which may include providing naloxone to the resident upon removal or other strategies more appropriate to the resident's recovery needs; and

(III) adopt a review process under which:

(aa) a person other than the original decision maker or a subordinate of the original decision maker, which may include a Vermont affiliate of the National Alliance for Recovery Residences, reviews the decision to terminate the tenancy;

(bb) the resident has a meaningful opportunity to present evidence why the resident should not be removed; and

(cc) the resident receives prompt written notice of a final decision.

(ii) A recovery residence shall not:

(I) terminate a tenancy because a resident uses alcohol or illegal substances, or engages in the illegal use of prescription drugs, unless:

(aa) the resident fails to take the actions required to avoid temporary removal or to be readmitted after temporary removal; and

(bb) the recovery residence has contemporary drug test results verified by a laboratory approved by the State; or

(II) terminate a tenancy based solely on the resident's use of medication in conjunction with medication-assisted treatment, as defined in section 4750 of this title.

(B) Notwithstanding 9 V.S.A. §§ 4467 and 4468, a recovery residence that complies with the policies and procedures adopted pursuant to this subdivision (c)(5) may terminate the tenancy of a resident pursuant to the notice requirements and procedure for terminating the tenancy provided in the rental agreement.

(d) Drug testing. A recovery residence shall adopt policies and procedures that govern drug testing of residents and shall apply the policies and testing procedures fairly among residents.

(e) Future services. A recovery residence shall not deny future services to a resident who has been either temporarily removed from a recovery residence or whose tenancy has been terminated, based solely on the resident's use of alcohol or illegal substances or the illegal use of prescription drugs.

Sec. 3. 24 V.S.A. § 4412 is amended to read:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

(1) Equal treatment of housing and required provisions for affordable housing.

* * *

(G) A residential care home or group home to be operated under State licensing or registration, serving not more than eight persons who have a disability as defined in 9 V.S.A. § 4501, and a recovery residence as defined in 18 V.S.A. § 4812, serving not more than eight persons, shall be considered by right to constitute a permitted single-family residential use of property. This subdivision (G) does not require a municipality to allow a greater number of residential care homes or group homes on a lot than the number of single-family dwellings allowed on the lot.

* * *

Sec. 4. REPORT; RECOVERY RESIDENCE; FURLOUGH

On or before January 1, 2021 and annually thereafter through January 1, 2024, the Department of Corrections shall submit a report to the House Committees on General, Housing, and Military Affairs, on Corrections and Institutions, and on Human Services and to the Senate Committees on Economic Development, on Health and Welfare, and on Judiciary containing the number of individuals on furlough who reside in recovery residences as defined in 18 V.S.A. § 4812 and the number of individuals who have violated the conditions of their furlough and were removed from their recovery

residence and returned to prison.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2020.

(Committee Vote:8-1-2)

Rep. Redmond of Essex, for the Committee on Human Services, recommends the bill ought to pass when amended as recommended by the Committee on General, Housing, and Military Affairs and when further amended as follows:

First: In Sec. 2, 18 V.S.A. § 4812, in subdivision (a)(1)(A), by striking out “available to persons recovering from substance use disorder;” and inserting in lieu thereof “.”

Second: In Sec. 2, 18 V.S.A. § 4812, in subsection (c), by striking out subdivision (3)(A)(ii) in its entirety and inserting a new subdivision (3)(A)(ii) to read as follows:

(ii) A recovery residence shall not temporarily remove a resident based on the resident receiving medication-assisted treatment, as defined in section 4750 of this title.

Third: In Sec. 2, 18 V.S.A. § 4812, in subsection (c), by striking out subdivision (4)(A)(ii)(II) in its entirety and inserting a new subdivision (4)(A)(ii)(II) to read as follows:

(II) terminate a tenancy based on the resident receiving medication-assisted treatment, as defined in section 4750 of this title.

Fourth: In Sec. 4, report; recovery residence; furlough, after “Senate Committees on Economic Development” by inserting “, Housing and General Affairs”

(Committee Vote: 9-0-2)

Amendment to be offered by Rep. Killacky of South Burlington to the recommendation of amendment of the Committee on General, Housing, and Military Affairs as further amended as recommended by the Committee on Human Services to H. 783

First: In Sec. 2, 18 V.S.A. § 4812, in subsection (a), by striking out subdivision (1)(B) in its entirety and inserting in lieu thereof a new subdivision (1)(B) to read as follows:

(B) Is certified by an organization that is a Vermont affiliate of the National Alliance for Recovery Residences or obtains a preliminary certification within 45 days of operation and adheres to the national standards established by the Alliance or its successor in interest. If there is no successor in interest, the Department of Health shall designate a certifying organization

to uphold appropriate standards for recovery housing.

Second: In Sec. 2, 18 V.S.A. § 4812, in subsection (c), by striking out subdivision (3)(B) in its entirety and inserting in lieu thereof a new subdivision (3)(B) to read as follows:

(B) Notwithstanding 9 V.S.A. §§ 4463 and 4464, a recovery residence that complies with the policies and procedures adopted pursuant to this subdivision (c)(3) may temporarily deny a resident access to the recovery residence, but shall return to the resident his or her property or ensure its safekeeping.

**Unfinished Business of Thursday, June 25 2020
Third Reading**

S. 351

An act relating to providing financial relief assistance to the agricultural community due to the COVID-19 public health emergency

NOTICE CALENDAR

Favorable with Amendment

S. 219

An act relating to addressing racial bias and excessive use of force by law enforcement

Rep. Hashim of Dummerston, for the Committee on Judiciary, recommends that the House propose to the Senate that the bill be amended striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE INTENT

(a) This act is a continuation of the General Assembly's work over the past several years to create meaningful reforms to address any systemic racism and disproportionate use of force by law enforcement. Such reforms include 2017 Acts and Resolves No. 54, an act relating to the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel; 2018 Acts and Resolves No. 9, an act relating to racial equity in State government; 2013 Acts and Resolves No. 180, an act relating to a statewide policy on the use of and training requirements for electronic control devices; and 2017 Acts and Resolves No. 56, an act relating to the professional regulation of law enforcement officers by the Vermont Criminal Justice Training Council. The ongoing effort includes the work on S.338 (2020), an act relating to justice reinvestment, a data-driven approach to improve public safety, reduce criminal justice spending, and reinvest savings in strategies that can decrease crime and

reduce recidivism. Additionally, the legislative committees of jurisdiction continue to study law enforcement policies, training standards, and discipline, including accreditation through the Commission on Accreditation for Law Enforcement Agencies within the next five years, and work on updating a model policy for the use of body cameras. Therefore, this act represents one step in the General Assembly's ongoing effort to combat racial bias and increase transparency and accountability in policing. The General Assembly is committed to continually assessing the progress made by the State towards developing a system of public safety that is effective, equitable, and maintains the public trust and continuing its work to achieve that goal.

(b) It is the intent of the General Assembly that law enforcement agencies in Vermont use community policing strategies that develop collaborative partnerships between law enforcement and communities consistent with the pillars of 21st Century Policing as developed by President Obama's Task Force on 21st Century Policing, adopt policies and practices that reflect a guardian mindset towards the citizens they serve, and establish a culture of transparency and accountability to promote public safety and foster public trust. To this end, it is the intent of the General Assembly that law enforcement use de-escalation strategies first and foremost before using force in every community-police interaction.

(c) It is the intent of the General Assembly that it continue to work on the issues addressed in this bill, including when the 2020 legislative session reconvenes in August. Specifically, the General Assembly commits to working on:

(1) increasing the resources to and authority of the Executive Director of Racial Equity;

(2) resituating the Criminal Justice Training Council to the jurisdiction of the Department of Public Safety;

(3) evaluating the provisions of Sec. 6 of this act (law enforcement use of prohibited restraint), 13 V.S.A. § 2305, and 24 V.S.A. § 299 in consultation with interested stakeholders, including the Attorney General, the Executive Director of States Attorneys and Sheriffs, the Defender General, and the Executive Director of the Human Rights Commission, or their designees, and revising those provisions as appropriate;

(4) evaluating whether and how to gather data regarding the interactions between law enforcement and people with mental health issues;

(5) reviewing the Law Enforcement Advisory Board and ACLU model policies governing law enforcement use of body cameras in consultation with

interested stakeholders, including the Vermont chapter of the American Civil Liberties Union, the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel, and the Secretary of State, and developing a statewide policy for adoption prior to the effective date of Sec. 7 of this act; and

(6) considering recommendations that come forward through a process of meaningful community engagement, particularly with impacted, marginalized, and vulnerable communities.

* * * Law Enforcement Race Data Collection * * *

Sec. 2. 3 V.S.A. § 2222 is amended to read:

§ 2222. POWERS AND DUTIES; BUDGET AND REPORT

* * *

(k) The Secretary of Administration or designee shall review all grants from an agency of the State to a local law enforcement agency or constable, and all such grants shall be subject to the approval of the Secretary or designee. The Secretary or designee shall approve the grant only if the law enforcement agency or constable has complied with the race data reporting requirements set forth in 20 V.S.A. § 2366(e) within six months prior to the Secretary's or designee's review.

Sec. 3. SECRETARY OF ADMINISTRATION; NOTICE TO LAW ENFORCEMENT AGENCIES

On or before August 1, 2020, the Secretary of Administration shall issue a notice to all Vermont law enforcement agencies and constables that the provisions of 3 V.S.A. § 2222(k) become effective on January 1, 2021, and that, beginning on that date, State grant funding for law enforcement shall be contingent on the agency or constable complying with the requirements of 20 V.S.A. § 2366(e).

Sec. 4. 20 V.S.A. § 2366 is amended to read:

§ 2366. LAW ENFORCEMENT AGENCIES; FAIR AND IMPARTIAL POLICING POLICY; RACE DATA COLLECTION

* * *

(e)(1) On or before September 1, 2014, every State, county, and municipal law enforcement agency shall collect roadside stop data consisting of the following:

- (A) the age, gender, and race of the driver;
- (B) the ~~reason~~ grounds for the stop;

(C) the grounds for the search and the type of search conducted, if any;

(D) the evidence located, if any; ~~and~~

(E) the outcome of the stop, including whether physical force was employed or threatened during the stop, and if so, the type of force employed and whether the force resulted in bodily injury or death, and whether:

(i) a written warning was issued;

(ii) a citation for a civil violation was issued;

(iii) a citation or arrest for a misdemeanor or a felony occurred; or

(iv) no subsequent action was taken.

(2) Law enforcement agencies shall work with the Executive Director of Racial Equity, the Criminal Justice Training Council, and a vendor chosen by the Council with the goals of collecting uniform data, adopting uniform storage methods and periods, and ensuring that data can be analyzed. Roadside stop data, as well as reports and analysis of roadside stop data, shall be public.

(3) On or before September 1, 2016 and annually thereafter, law enforcement agencies shall provide the data collected under this subsection to the Executive Director of Racial Equity and the vendor chosen by the Criminal Justice Training Council under subdivision (2) of this subsection or, in the event the vendor is unable to continue receiving data under this section, to the Council. Law enforcement agencies shall provide the data collected under this subsection in an electronic format specified by the receiving entity.

(4) The data provided pursuant to subdivision (3) of this subsection shall be posted electronically in a manner that is analyzable and accessible to the public on the receiving agency's website and clear and understandable. The receiving agency shall also report the data annually to the General Assembly.

(5) As used in this subsection, "physical force" shall refer to the force employed by a law enforcement officer to compel a person's compliance with the officer's instructions that constitutes a greater amount of force than handcuffing a compliant person.

(f) Nothing in this section is intended to prohibit or impede any public agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and 1644. To the extent any State or local law enforcement policy or practice conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, that policy or practice is, to the extent of the conflict, abolished.

*** Prohibited Restraints; Unprofessional Conduct ***

Sec. 5. 20 V.S.A. chapter 151 (Vermont Criminal Justice Training Council), subchapter 2 is amended to read:

Subchapter 2. Unprofessional Conduct

§ 2401. DEFINITIONS

As used in this subchapter:

(1) “Category A conduct” means:

(A) A felony.

(B) A misdemeanor that is committed while on duty and did not involve the legitimate performance of duty.

(C) Any of the following misdemeanors, if committed off duty:

(i) simple assault, second offense;

(ii) domestic assault;

(iii) false reports and statements;

(iv) driving under the influence, second offense;

(v) violation of a relief from abuse order or of a condition of release;

(vi) stalking;

(vii) false pretenses;

(viii) voyeurism;

(ix) prostitution or soliciting prostitution;

(x) distribution of a regulated substance;

(xi) simple assault on a law enforcement officer; or

(xii) possession of a regulated substance, second offense.

(2) “Category B conduct” means gross professional misconduct amounting to actions on duty or under ~~color of~~ authority of the State, or both, that involve willful failure to comply with a State-required policy or substantial deviation from professional conduct as defined by the law enforcement agency’s policy or if not defined by the agency’s policy, then as defined by Council policy, ~~such as~~ and shall include:

(A) sexual harassment involving physical contact or misuse of position;

- (B) misuse of official position for personal or economic gain;
- (C) excessive use of force under color of authority of the State, second first offense;
- (D) biased enforcement; or
- (E) use of electronic criminal records database for personal, political, or economic gain;
- (F) placing a person in a prohibited restraint;
- (G) failing to intervene and report to a supervisor when the officer observes another officer placing a person in a prohibited restraint or using excessive force.

* * *

(5) “Unprofessional conduct” means Category A, B, or C conduct.

* * *

(7) “Prohibited restraint” means the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain.

* * *

§ 2407. LIMITATION ON COUNCIL SANCTIONS; FIRST OFFENSE OF CATEGORY B CONDUCT

(a) Category B conduct; first offense. If a law enforcement agency conducts a valid investigation of a complaint alleging that a law enforcement officer committed a first offense of Category B conduct, the Council shall take no action, except that the Council may take action for a first offense under subdivision 2401(2)(C) (excessive use of force under authority of the State), 2401(2)(F) (placing a person in a prohibited restraint), or 2401(2)(G) (failing to intervene and report to a supervisor when an officer observes another officer placing a person in a prohibited restraint or using excessive force) of this chapter.

* * *

Sec. 6. 13 V.S.A. § 1032 is added to read:

§ 1032. LAW ENFORCEMENT USE OF PROHIBITED RESTRAINT

(a) As used in this section:

(1) “Law enforcement officer” shall have the same meaning as in 20 V.S.A. § 2351a.

(2) “Prohibited restraint” means the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain.

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

(b) A law enforcement officer acting in the officer’s capacity as law enforcement who employs a prohibited restraint on a person that causes serious bodily injury to or death of the person shall be imprisoned for not more than 20 years or fined not more than \$50,000.00, or both.

* * * Body Cameras * * *

Sec. 7. 20 V.S.A. § 1818 is added to read:

§ 1818. EQUIPMENT OF OFFICERS WITH VIDEO RECORDING

DEVICES

The Department shall ensure that every Department law enforcement officer who exercises law enforcement powers is equipped with a body camera or other video recording device on his or her person.

Sec. 8. DEPARTMENT OF PUBLIC SAFETY; VIDEO RECORDING

DEVICES; ONGOING COSTS

The Department of Public Safety shall immediately initiate the acquisition of video recording devices to comply with the requirements of 20 V.S.A. § 1818. The ongoing costs of the devices that cannot be accommodated within the Department’s budget shall be included in the Department’s FY22 budget proposal to the General Assembly.

* * * Repeals and Effective Dates * * *

Sec. 9. REPEALS

(a) 13 V.S.A. § 1032 (law enforcement use of prohibited restraint) is repealed on July 1, 2021.

(b) 13 V.S.A. § 2305(3) (justifiable homicide) is repealed on July 1, 2021.

Sec. 10. EFFECTIVE DATES

(a) Sec. 2 (powers and duties; budget and report) of this act shall take effect on January 1, 2021.

(b) Sec. 5 (20 V.S.A. chapter 151) takes effect on September 1, 2020.

(c) Secs. 6 (law enforcement use of prohibited restraint) and 7 (equipment of officers with video recording devices) shall take effect on October 1, 2020.

(d) The remaining sections shall take effect on passage.

(Committee vote: 11-0)

(For text see Senate Journal , 2020, page 960)

S. 342

An act relating to temporary workers' compensation amendments related to COVID-19

Rep. Marcotte of Coventry, for the Committee on Commerce and Economic Development, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. WORKERS' COMPENSATION; ADMINISTRATIVE

FLEXIBILITY; TEMPORARY AUTHORITY

(a) In order to effectuate the remedial purpose of Vermont's Workers' Compensation law and to ensure that injured workers are able to obtain the workers' compensation benefits they are entitled to, the Commissioner shall, during a declared state of emergency related to COVID-19, have authority to issue guidance and adopt procedures to extend deadlines or temporarily amend or waive specific requirements of 21 V.S.A. chapter 9 and the rules adopted pursuant to that chapter.

(b) Any guidance or procedures that are issued or adopted by the Commissioner pursuant to this section shall be effective during the state of emergency in which they are adopted, and the Commissioner shall establish a procedure to transition those claims impacted by the emergency to preexisting rules within 45 days after the termination of the state of emergency.

(c) The Commissioner shall post any guidance issued or procedure adopted pursuant to this section on the Department's website and shall make reasonable efforts to provide prompt notice of the guidance or procedure to employers, attorneys, and employee organizations.

(d) The Commissioner shall not be required to initiate rulemaking pursuant to 3 V.S.A. § 831(c) in relation to any guidance issued or procedure adopted pursuant to this section.

Sec. 2. COVID-19; PRESUMPTION OF COMPENSABILITY

(a)(1) In the case of a front-line worker, disability or death resulting from COVID-19 shall be presumed to be compensable pursuant to 21 V.S.A. chapter 9, provided that the front-line worker receives a positive laboratory test for COVID-19 between March 1, 2020 and January 15, 2021.

(2) As used in this subsection:

(A)(i) “Elevated risk of exposure to COVID-19” means the performance of a job that requires the worker to have regular physical contact with known sources of COVID-19 or regular physical or close contact with patients, inmates in a correctional facility, residents of a residential care or long-term care facility, or members of the public in the course of his or her employment.

(ii) As used in this subdivision (2)(A), “close contact” means interactions with another individual that require the employee to be within six feet of that individual.

(B) “Front-line worker” means an individual with an elevated risk of exposure to COVID-19 who is employed as:

(i) a firefighter as defined in 20 V.S.A. § 3151(3) and (4);

(ii) a law enforcement officer who has been certified by the Vermont Criminal Justice Training Council pursuant to 20 V.S.A. chapter 151;

(iii) emergency medical personnel and volunteer personnel as defined in 24 V.S.A. § 2651;

(iv) a worker in a health care facility or in an institution or office where health care services are provided by licensed healthcare professionals;

(v) a correctional officer;

(vi) a worker in a long-term care facility or residential care facility;

(vii) a childcare provider who is required to provide childcare to the children of other front-line workers pursuant to Executive Order 01-20;

(viii) a home health care worker or personal care attendant;

(ix) a worker in a morgue, funeral establishment, or crematory facility; and

(x) a worker performing services that the Commissioner determines place the worker at a similarly elevated risk of being exposed to or contracting COVID-19 as the other occupations listed in this subsection (a).

(b) For an employee who is not a front-line worker as defined in subdivision (a)(2)(B) of this section, disability or death resulting from COVID-19 shall be presumed to be compensable pursuant to 21 V.S.A. chapter 9 if the employee receives a positive laboratory test for COVID-19 between March 1, 2020 and January 15, 2021 and, not more than 14 days prior to the date on which the employee is tested or examined, either:

(1) had documented occupational exposure in the course of employment to an individual with COVID-19; or

(2) performed services at a residence or facility with one or more residents or employees who:

(A) were present at the time the services were performed; and either

(B)(i) had COVID-19 at that time; or

(ii) tested positive for COVID-19 within 14 days after the services were performed.

(c)(1) The presumption of compensability in subsection (a) of this section shall not apply if it is shown by a preponderance of the evidence that the disease was caused by non-employment-connected risk factors or non-employment-connected exposure.

(2) The presumption of compensability in subsection (b) of this section shall not apply if the employer can show by a preponderance of the evidence that:

(A) the disease was caused by non-employment-connected risk factors or non-employment-connected exposure; or

(B) at the time the employee was potentially exposed to COVID-19, the employee's place of employment was in compliance with the Restart Vermont Worksafe Guidance issued by the Agency of Commerce and Community Development, and any similar guidance issued by local or municipal authorities.

(d) The Commissioner shall not be required to initiate rulemaking pursuant to 3 V.S.A. § 831(c) in relation to any guidance issued or procedure adopted in relation to this section.

Sec. 3. PROSPECTIVE REPEAL

In the absence of legislative action to the contrary, Secs. 1 and 2 of this act are repealed on January 15, 2021.

Sec. 4. WORKERS' COMPENSATION COVID-19 REIMBURSEMENT;

STUDY; REPORT

(a) The Commissioner of Financial Regulation shall examine the potential for creating a special fund that can be used to reimburse workers' compensation insurers, intermunicipal insurance associations, and self-insured employers for COVID-19 related workers' compensation costs related to COVID-19. In particular, the Commissioner shall examine the following issues:

(1) the average cost of paying a COVID-19 related workers' compensation claim in Vermont;

(2) factors that can influence the cost of a COVID-19 related workers' compensation claim, including medical costs, the average amount of time that a worker must be out of work, applicable deductibles, and any other factors that the Commissioner determines are appropriate;

(3) potential COVID-19 related impacts on workers' compensation costs and experience modifiers based on the experience of Vermont and other states with respect to COVID-19 infection rates and COVID-19 related workers' compensation claims, as well as projections for future rates of COVID-19 infections and COVID-19 related workers' claims in Vermont;

(4) the amount of funding and any legislative action that would be necessary to substantially mitigate or eliminate the impact of COVID-19 related workers' compensation claims on workers' compensation costs; and

(5) requirements for structuring such a fund so that monies from the Coronavirus Relief Fund can be used in compliance with the requirements of section 5001 of Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (the CARES Act), as may be amended, and any guidance issued pursuant to that section.

(b) The Commissioner shall consult with interested parties including relevant trade groups and advocates for employers, workers' compensation insurers, and employees.

(c) On or before August 15, 2020, the Commissioner shall submit a report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs with his or her findings and any recommendations for legislative action.

Sec. 5. EFFECTIVE DATE

Notwithstanding 1 V.S.A. § 214, this act shall take effect on passage and shall apply retroactively to March 1, 2020.

(Committee vote: 9-0-1)

(For text see Senate Journal April 24, 2020)

Amendment to be offered by Representatives Marcotte of Coventry, Bancroft of Westford, Dickinson of St. Albans Town, Jerome of Brandon, Kimbell of Woodstock, Morris of Springfield, O’Sullivan of Burlington, Ralph of Hartland, and Toleno of Brattleboro to S. 342

Representatives Marcotte of Coventry, Bancroft of Westford, Dickinson of St. Albans Town, Jerome of Brandon, Kimbell of Woodstock, Morris of Springfield, O’Sullivan of Burlington, Ralph of Hartland, and Toleno of Brattleboro move that the report of the Committee on Commerce and Economic Development be amended as follows:

First: Before Sec. 1, workers’ compensation; administrative flexibility, by adding a reader assistance heading to read as follows:

* * * Workers’ Compensation * * *

Second: In Sec. 2, COVID-19; presumption of compensability, in subdivision (a)(2)(B)(vii), by striking out the word “required” and inserting in lieu thereof the word “permitted”

Third: By striking out Sec. 5, effective date, in its entirety and inserting in lieu thereof Secs. 5, 6, and 7 and reader assistance headings to read as follows:

Sec. 5. WORKERS’ COMPENSATION RATE OF CONTRIBUTION

For fiscal year 2021, after consideration of the formula in 21 V.S.A. § 711(b) and historical rate trends, the General Assembly determines that the rate of contribution for the direct calendar year premium for workers’ compensation insurance shall remain at the rate of 1.4 percent. The contribution rate for self-insured workers’ compensation losses and workers’ compensation losses of corporations approved under 21 V.S.A. chapter 9 shall remain at one percent.

* * * Sales and Use Tax; Paper Bags * * *

Sec. 6. 32 V.S.A. § 9741(54) is added to read:

(54) Sales of recyclable paper carryout bags to customers pursuant to 10 V.S.A. § 6693, provided that sales of recyclable paper carryout bags to stores and food service establishments as defined under 10 V.S.A. § 6691 shall not be exempt under this subdivision and shall not be considered sales for resale under subdivision 9701(5) of this title.

* * * Effective Dates * * *

Sec. 7. EFFECTIVE DATES

(a) Notwithstanding 1 V.S.A. § 214, the section and Sec. 1 and 2 of this act shall take effect on passage and shall apply retroactively to March 1, 2020.

(b) Secs. 5 and 6 shall take effect on July 1, 2020, provided that if the date of passage of this act is after July 1, 2020, then notwithstanding 1 V.S.A. § 214, Secs. 5 and 6 shall take effect on passage and shall apply retroactively to July 1, 2020.

(c) The remaining sections of this act shall take effect on passage.

Amendment to be offered by Rep. Cordes of Lincoln to S. 342

Representative Cordes of Lincoln moves that the report of the Committee on Commerce and Economic Development be amended as follows:

First: In Sec. 2, COVID-19; presumption of compensability, in subdivision (a)(1), after “positive laboratory test for COVID-19” by inserting “or a diagnosis of COVID-19 from a licensed healthcare provider”

Second: In Sec. 2, COVID-19; presumption of compensability, in subsection (b), after “positive laboratory test for COVID-19” by inserting “or a diagnosis of COVID-19 from a licensed healthcare provider”

Amendment to be offered by Reps. Browning of Arlington and Donahue of Northfield to S. 342

Representatives Browning of Arlington and Donahue of Northfield move that the House propose to the Senate that the bill be amended as follows:

First: In Sec. 2, COVID-19; presumption of compensability, by striking out subdivisions (a)(2)(B)(viii), (ix), and (x) in their entirety and inserting in lieu thereof subdivisions (a)(2)(B)(viii) and (ix) to read as follows:

(viii) a home health care worker or personal care attendant; and

(ix) a worker in a morgue, funeral establishment, or crematory facility.

Second: In Sec. 2, COVID-19; presumption of compensability, by striking out subsections (b), (c), and (d) in their entirety and inserting in lieu thereof new subsections (b) and (c) to read as follows:

(b) The presumption of compensability in subsection (a) of this section shall not apply if it is shown by a preponderance of the evidence that the disease was, more likely than not, caused by non-employment-connected risk factors or non-employment-connected exposure.

(c) The Commissioner shall not be required to initiate rulemaking pursuant to 3 V.S.A. § 831(c) in relation to any guidance issued or procedure adopted in relation to this section.

Senate Proposal of Amendment

H. 954

An act relating to miscellaneous tax provisions

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

First: By striking out Sec. 4, property tax collection, in its entirety and inserting in lieu thereof:

Sec. 4. [Deleted.]

Second: By striking out Sec. 8, 32 V.S.A. § 5870, in its entirety and inserting in lieu thereof:

Sec. 8. USE TAX SAFE HARBOR; REPORT

On or before January 15, 2021, the Department of Taxes, with the assistance of the Joint Fiscal Office, shall provide the General Assembly with a report on the remittance of the Vermont use tax on taxpayers' State individual income tax returns as provided under 32 V.S.A. § 5870. The report required under this section shall:

(1) analyze the fiscal impact on the remittance of the Vermont use tax of the following:

(A) the U.S. Supreme Court decision in *South Dakota v. Wayfair*, 138 S. Ct. 2080 (2108) and the conforming Vermont remote seller collection requirements imposed under 32 V.S.A. § 9701(9)(F) and (9)(G); and

(B) the enactment of marketplace facilitator collection requirements in 2019 Acts and Resolves No. 46; and

(2) recommend options for amending the alternative reporting of use tax that a taxpayer may elect under 32 V.S.A. § 5870(a), including a reduction of the amount that is a percentage of a taxpayer's adjusted gross income, given the fiscal impact analysis required under subdivision (1) of this section.

Third: After Sec. 10, noncollecting vendor reporting, by adding a new Sec. 10a to read as follows:

Sec. 10a. 32 V.S.A. § 9741(54) is added to read:

(54) Sales of recyclable paper carryout bags to customers pursuant to 10 V.S.A. § 6693, provided that sales of recyclable paper carryout bags to stores and food service establishments as defined under 10 V.S.A. § 6691 shall not be

exempt under this subdivision and shall not be considered sales for resale under 32 V.S.A. § 9701(5).

Fourth: By striking out Sec. 12, 32 V.S.A. § 9248, in its entirety and inserting in lieu thereof a new Sec. 12 to read as follows:

Sec. 12. 32 V.S.A. § 9248 is amended to read:

§ 9248. INFORMATIONAL REPORTING

The Department of Taxes ~~shall~~ may collect information on operators from persons providing an Internet platform for the short-term rental of property for occupancy in this State. The information collected shall include any information the Commissioner shall require, and the name, address, and terms of the rental transactions of persons acting as operators through the Internet platform. The failure to provide information as required under this section shall subject the person operating the Internet platform to a fine of \$5.00 for each instance of failure. The Commissioner is authorized to adopt rules and procedures to implement this section.

Fifth: By striking out Sec. 19, 32 V.S.A. § 5825a(b), in its entirety and inserting in lieu thereof the following:

Sec. 19. 32 V.S.A. § 5825a is amended to read:

§ 5825a. CREDIT FOR VERMONT HIGHER EDUCATION
INVESTMENT PLAN CONTRIBUTIONS

(a) A taxpayer of this State, including each spouse filing a joint return, shall be eligible for a nonrefundable credit against the tax imposed under section 5822 of this title of 10 percent of the first \$2,500.00 per beneficiary, contributed by the taxpayer during the taxable year to a Vermont ~~higher education investment plan~~ Higher Education Investment Plan account under 16 V.S.A. chapter 87, subchapter 7, provided the account is provided directly by the Vermont Student Assistance Corporation to the participant.

(b) A taxpayer who has received a credit under subsection (a) of this section shall repay to the Commissioner 10 percent of any distribution from a higher education investment plan account, ~~which distribution is not used exclusively for costs of attendance at an approved postsecondary education institution as defined in 16 V.S.A. § 2822(6),~~ up to a maximum of the total credits received by the taxpayer under subsection (a) of this section minus any amount of repayment of such credits in prior tax years except when the distribution:

(1) is used exclusively for costs of attendance at an approved postsecondary education institution as defined in 16 V.S.A. § 2822(6);

(2) qualifies as an expense associated with a registered apprenticeship program pursuant to 26 U.S.C. § 529(c)(8); or

(3) is made after the death of the beneficiary or after the beneficiary becomes disabled pursuant to subdivisions (q)(2)(C) and (m)(7) of 26 U.S.C. § 72.

(c) Repayments under this subsection (b) of this section shall be subject to assessment, notice, penalty and interest, collection, and other administration in the same manner as an income tax under this chapter.

Sec. 19a. 16 V.S.A. chapter 87, subchapter 7 is amended to read:

* * *

§ 2876. DEFINITIONS

As used in this subchapter, except where the context clearly requires another interpretation:

(1) “Beneficiary” means any individual designated by a participation agreement to benefit from payments for qualified postsecondary education costs ~~at an institution of postsecondary education.~~

(2) “Benefits” means the payment of qualified postsecondary education costs on behalf of a beneficiary ~~by the Corporation’s Investment Plan during the beneficiary’s attendance at an institution of postsecondary education from a participant’s investment plan account.~~

(3) “Corporation” means Vermont Student Assistance Corporation.

(4) “Internal Revenue Code” means the federal Internal Revenue Code of 1986, as amended, together with the regulations promulgated ~~thereunder~~ pursuant to that Code.

(5) “Qualified postsecondary education costs” means ~~the qualified costs of tuition and fees and other expenses for attendance at an approved postsecondary education institution~~ costs of tuition and fees for attendance at an approved postsecondary education institution, and other qualified higher education expenses as provided under 26 U.S.C. § 529.

(6) “Approved postsecondary education institution” means a postsecondary education institution as defined in section 2822 of this title.

(7) “Vermont Higher Education Investment Plan” or “Investment Plan” means ~~the program~~ one or more plans created pursuant to this subchapter.

(8) "Participant" means a person who has entered into a participation agreement pursuant to this subchapter intended for the advance payment of qualified postsecondary education costs on behalf of a beneficiary.

(9) "Participation agreement" means an agreement between a participant and the Corporation, pursuant to and conforming with the requirements of this subchapter.

§ 2877. VERMONT HIGHER EDUCATION INVESTMENT PLAN
CREATED

(a) There is created a program of the State to be known as the Vermont Higher Education Investment Plan and a trust for that purpose to be administered by the Vermont Student Assistance Corporation as an instrumentality of the State. The program may consist of one or more different investment plans, including one or more plans that may be offered to a participant only with the assistance of a qualified financial advisor.

(b) In order to establish and administer the Investment Plan, the Corporation, in addition to its other powers and authority, shall have the power and authority to:

* * *

(2) Enter into agreements with any ~~institution~~ of approved postsecondary education institution, the State, or any federal or other agency or entity as required for the operation of ~~the~~ an Investment Plan pursuant to this subchapter.

(3) Accept any grants, gifts, legislative appropriations, and other ~~moneys monies~~ from the State, any unit of federal, State, or local government; or any other person, firm, partnership, or corporation for deposit contribution to the account of the Investment Plan, or for the operation or other related purposes of the Corporation.

(4) Invest the funds received from participants in appropriate investment vehicles approved and held in trust for participants by the Corporation as selected by the participants, including education loans made by the Corporation.

(5) Enter into participation agreements with participants.

(6) Develop and use two or more types of participation agreements to provide a range of investment ~~structures~~ options for participants.

(7) Make payments to ~~institutions of postsecondary education on behalf of beneficiaries~~ as directed by the participants pursuant to participation agreements.

(8) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in this subchapter and the rules ~~and regulations, policies, and procedures~~ adopted by the Corporation.

(9) Make provision for the payment of costs of administration and operation of ~~the an~~ Investment Plan subject to the limitations on charges on participation agreements established in subdivision 2878(5) of this title.

(10) Adopt rules ~~and regulations, policies, and procedures~~ to implement this subchapter and take all necessary action to ensure an Investment Plan is in conformance with the Internal Revenue Code and other applicable law.

* * *

§ 2878. PARTICIPATION AGREEMENTS FOR INVESTMENT PLAN

The Corporation shall have the authority to enter into Investment Plan participation agreements with participants ~~on behalf of beneficiaries~~ pursuant to the provisions of this subchapter, including the following terms and agreements:

(1) A participation agreement shall stipulate the terms and conditions of the Investment Plan ~~in to~~ which the participant makes ~~deposits~~ contributions.

(2) A participation agreement shall clearly specify the method for calculating the return on the ~~deposit made by the participant, which may be a variable or adjustable rate of return~~ various investment options available and shall reference the relevant expenses and other pertinent information about the account.

* * *

(4) A participation agreement shall clearly and prominently disclose to participants the risks associated with ~~depositing monies with the Corporation~~ the various investment options available under the applicable Investment Plan.

(5) Participation agreements shall be organized and presented in a way and with language that is easily understandable by the general public. A participation agreement shall clearly and prominently disclose to participants that the Corporation, the State, and any other governmental entity are not liable for, nor guarantee the return of or on the participant's contributions to an Investment Plan. A participation agreement shall also clearly and prominently disclose to participants the existence of any load charge or similar charge assessed against the accounts of the participants for administration, operation, or services. No fee or similar charge may be imposed with regard to an investment managed by the Corporation. Any fee, load, or similar

charge with regard to any investment not managed by the Corporation shall be no greater than the cost determined by the Corporation to be required to administer the investment. The cost of originating and servicing any education loans made or acquired pursuant to participation agreements shall not be considered as load charges or similar charges.

* * *

§ 2878a. PARTICIPATION AGREEMENTS FOR INVESTMENT PLAN;
INDIVIDUAL DEVELOPMENT INVESTMENT ACCOUNTS

The Corporation may participate in the Individual Development Investment Program established under 33 V.S.A. § 1123, in accordance with the rules of the Agency of Human Services adopted thereunder, in connection with an individual or family who, at the time of ~~depositing~~ contributing funds into an account created pursuant to a Vermont Higher Education Investment Plan, receives public assistance or is otherwise an eligible saver under 33 V.S.A. § 1123.

§ 2879. INVESTMENT AND PAYMENTS

All money paid by a participant in connection with a participation agreements agreement shall be deposited credited to the participant's account as received, held by the Corporation in trust for the benefit of the participant, and shall be promptly invested by the Corporation as selected by the participant from the investment options available under the participation agreement. ~~Deposits and earnings thereon accumulated on behalf of participants in the Investment Plan~~ Contributions and earnings accumulated in a participant's Investment Plan account may be used, as provided in the participation agreement, ~~for payments to any institution of postsecondary education including for payments of qualified postsecondary education costs~~. The trust shall continue in existence as long as it holds any funds belonging to a participant.

* * *

§ 2879c. TAX EXEMPTION

* * *

(b) Contributions to an account held under the a Vermont Higher Education Investment Plan that is provided directly by the Corporation to a participant shall be eligible for a credit against Vermont income tax as provided under 32 V.S.A. § 5825a.

§ 2879D. PROPERTY RIGHTS TO ASSETS IN THE PLAN

The assets of the Vermont Higher Education Investment Plan shall at all times be held in trust for the benefit of the participant, shall not be commingled with any other funds of the Corporation or the State, shall be preserved, invested, and expended solely and only for the purposes set forth in this chapter and in accordance with the participation agreements, and no property rights therein shall exist in favor of the Corporation or the State. Amounts held in, or withdrawn from, a participant's Investment Plan account under a participation agreement shall not be subject to liens, attachment, garnishment, levy, seizure, claim by creditors of the contributors, participants, or any beneficiary, or subject to any involuntary sale, transfer, or assignment by any execution or any other legal or equitable operation of law, including bankruptcy or insolvency laws.

* * *

Sixth: By inserting a Sec. 25a to read as follows:

Sec. 25a. 32 V.S.A. § 5933(a) is amended to read:

(a) A claimant agency may submit any debt of ~~\$50.00~~ \$45.00 or more to the Department for collection under the procedure established by this chapter. This setoff debt collection remedy is in addition to and not in substitution for any other remedy available by law.

Seventh: By striking out Sec. 27, effective dates, and its reader assistance heading in their entirety and inserting in lieu thereof Secs. 27–29 and their reader assistance headings to read as follows:

* * * Land Use Change Tax Lien Subordination * * *

Sec. 27. 2019 Acts and Resolves No. 20, Sec. 109 is amended to read:

Sec. 109. REPEALS

(a) 32 V.S.A. § ~~3757(f)~~ 3777 (land use change tax lien subordination) is repealed on July 1, 2020.

* * *

* * * Interest Rate; Overpayments and Underpayments * * *

Sec. 28. 32 V.S.A. § 3108(a) is amended to read:

(a) Not later than December 15 of each year, the Commissioner shall establish an annual rate of interest applicable to unpaid tax liabilities and tax overpayments that shall be equal to the average prime rate charged by banks during the immediately preceding 12 months commencing on October 1 of the

prior year, rounded upwards to the nearest quarter percent. ~~Not later than December 15 of each year, the Commissioner shall establish an annual rate of interest applicable to unpaid tax liabilities, which in each instance shall be equal to the annual rate established for tax overpayments plus 200 basis points.~~ The rates established hereunder shall be effective on January 1 of the immediately following year. As used in this section, the term “prime rate charged by banks” shall mean the average predominate prime rate quoted by commercial banks to large businesses as determined by the Board of Governors of the Federal Reserve Board.

* * * Effective Dates * * *

Sec. 29. EFFECTIVE DATES

This act shall take effect on passage except:

(1) Sec. 10a, 32 V.S.A. § 9741(54) (sales and use tax exemption), shall take effect on July 1, 2020, provided that if the date of passage of this act is after July 1, 2020, then notwithstanding 1 V.S.A. § 214, Sec. 10a shall take effect retroactively on July 1, 2020.

(2) Sec. 11 (universal service charge) shall take effect on July 1, 2021.

(3) Notwithstanding 1 V.S.A. § 214, Secs. 13–14 (annual link to federal statutes) shall take effect retroactively on January 1, 2020 and apply to taxable years beginning on and after January 1, 2019.

(4) Notwithstanding 1 V.S.A. § 214, Sec. 16 (TY 2016 refunds) shall take effect retroactively on April 15, 2020.

(For text see House Journal May 15, 2020)

Senate Proposal of Amendment

H. 960

An act relating to miscellaneous health care provisions

The Senate proposes to the House to amend the bill

* * * Mental Health * * *

Sec. 1. 18 V.S.A. § 9375 is amended to read:

§ 9375. DUTIES

(a) The Board shall execute its duties consistent with the principles expressed in section 9371 of this title.

(b) The Board shall have the following duties:

* * *

~~(15) Collect and review data from each psychiatric hospital licensed pursuant to chapter 43 of this title, which may include data regarding a psychiatric hospital's scope of services, volume, utilization, discharges, payer mix, quality, coordination with other aspects of the health care system, and financial condition. The Board's processes shall be appropriate to psychiatric hospitals' scale and their role in Vermont's health care system, and the Board shall consider ways in which psychiatric hospitals can be integrated into systemwide payment and delivery system reform.~~

Collect and review data from each community mental health and developmental disability agency designated by the Commissioner of Mental Health or of Disabilities, Aging, and Independent Living pursuant to chapter 207 of this title, which may include data regarding a designated or specialized service agency's scope of services, volume, utilization, payer mix, quality, coordination with other aspects of the health care system, and financial condition, including solvency. The Board's processes shall be appropriate to the designated and specialized service agencies' scale and their role in Vermont's health care system, and the Board shall consider ways in which the designated and specialized service agencies can be integrated fully into systemwide payment and delivery system reform.

* * *

Sec. 2. 18 V.S.A. § 9451 is amended to read:

§ 9451. DEFINITIONS

As used in this subchapter:

(1) "Hospital" means a ~~general~~ hospital licensed under chapter 43 of this title, except a hospital that is conducted, maintained, or operated by the State of Vermont.

* * *

Sec. 3. HOSPITAL BUDGET REVIEW; TRANSITIONAL PROVISIONS

(a) For any hospital whose budget newly comes under Green Mountain Care Board review as a result of the amendments to 18 V.S.A. § 9451 made by Sec. 2 of this act, the Board may increase the scope of the budget review process set forth in 18 V.S.A. chapter 221, subchapter 7 for the hospital gradually, provided the Board conducts a full review of the hospital's proposed budget not later than the budget for hospital fiscal year 2024. In developing its process for transitioning to a full review of the hospital's budget, the Board shall collaborate with the hospital and with the Agency of Human Services to prevent duplication of efforts and of reporting requirements. The Board and

the Agency shall jointly determine which documents submitted by the hospital to the Agency are appropriate for the Agency to share with the Board.

(b) In determining whether and to what extent to exercise discretion in the scope of its budget review for a hospital new to the Board's hospital budget review process, the Board shall consider:

(1) any existing fiscal oversight of the hospital by the Agency of Human Services, including any memoranda of understanding between the hospital and the Agency; and

(2) the fiscal pressures on the hospital as a result of the COVID-19 pandemic.

Sec. 4. MENTAL HEALTH INTEGRATION COUNCIL; REPORT

(a) Creation. There is created the Mental Health Integration Council for the purpose of helping to ensure that all sectors of the health care system actively participate in the State's principles for mental health integration established pursuant to 18 V.S.A. § 7251(4) and (8) and as envisioned in the Department of Mental Health's 2020 report "Vision 2030: A 10-Year Plan for an Integrated and Holistic System of Care."

(b) Membership.

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

(A) the Commissioner of Mental Health or designee;

(B) the Commissioner of Health or designee;

(C) the Commissioner of Vermont Health Access or designee;

(D) the Commissioner for Children and Families or designee;

(E) the Commissioner of Corrections or designee;

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

(G) the Commissioner of Financial Regulation or designee;

(H) the Director of Health Care Reform or designee;

(I) the Executive Director of the Green Mountain Care Board or designee;

(J) the Secretary of Education or designee;

(K) a representative, appointed by the Vermont Medical Society;

(L) a representative, appointed by the Vermont Association for Hospitals and Health Systems;

(M) a representative, appointed by Vermont Care Partners;

(N) a representative, appointed by the Vermont Association of Mental Health and Addiction Recovery;

(O) a representative, appointed by Bi-State Primary Care;

(P) a representative, appointed by the University of Vermont Medical School;

(Q) the Chief Executive Officer of OneCare Vermont or designee;

(R) the Health Care Advocate established pursuant to 18 V.S.A. § 9602;

(S) the Mental Health Care Ombudsman established pursuant to 18 V.S.A. § 7259;

(T) a representative, appointed by the insurance plan with the largest number of covered lives in Vermont;

(U) two persons who have received mental health services in Vermont, appointed by Vermont Psychiatric Survivors, including one person who has delivered peer services;

(V) one family member of a person who has received mental health services, appointed by the Vermont chapter of National Alliance on Mental Illness; and

(W) one family member of a child who has received mental health services, appointed by the Vermont Federation of Families for Children's Mental Health.

(2) The Council may create subcommittees comprising the Council's members for the purpose of carrying out the Council's charge.

(c) Powers and duties. The Council shall address the integration of mental health in the health care system, including:

(1) identifying obstacles to the full integration of mental health into a holistic health care system and identifying means of overcoming those barriers;

(2) helping to ensure the implementation of existing law to establish full integration within each member of the Council's area of expertise;

(3) establishing commitments from non-state entities to adopt practices and implementation tools that further integration;

(4) proposing legislation where current statute is either inadequate to achieve full integration or where it creates barriers to achieving the principles of integration; and

(5) fulfilling any other duties the Council deems necessary to achieve its objectives.

(d) Assistance. The Council shall have the administrative, technical, and legal assistance of Department of Mental Health.

(e) Report.

(1) On or before December 15, 2021, the Commissioners of Mental Health and of Health shall report on the Council's progress to the Joint Health Reform Oversight Committee.

(2) On or before January 15, 2023, the Council shall submit a final written report to the House Committee on Health Care and to the Senate Committee on Health and Welfare with its findings and any recommendations for legislative action, including a recommendation as to whether the term of the Council should be extended.

(f) Meetings.

(1) The Commissioner of Mental Health shall call the first meeting of the Council.

(2) The Commissioner of Mental Health shall serve as chair. The Commissioner of Health shall serve as vice chair.

(3) The Council shall meet every other month between October 1, 2020 and January 1, 2023.

(4) The Council shall cease to exist on July 30, 2023.

(g) Compensation and reimbursement. Members of the Council shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than six meetings annually. These payments shall be made from monies appropriated to the Department of Mental Health.

Sec. 5. BRATTLEBORO RETREAT; CONDITIONS OF STATE FUNDING

(a) Findings. In recognition of the significant need within Vermont's health care system for inpatient psychiatric capacity, the General Assembly has made significant investments in capital funds and in rate adjustments to assist the Brattleboro Retreat in its financial sustainability. The General Assembly has a significant interest in the quality of care provided at the Brattleboro Retreat, which provides 100 percent of the State's inpatient psychiatric care

for children and youth, and more than half of the adult inpatient care, of which approximately 50 percent is paid for with State funding.

(b) Conditions. As a condition of further State funding, the General Assembly requires that the following quality oversight measures be implemented by the Brattleboro Retreat under the oversight of the Department of Mental Health:

(1) allow the existing mental health patient representative under contract with the Department pursuant to 18 V.S.A. § 7253(1)(J) to have full access to inpatient units to ensure that the mental health patient representative is available to individuals who are not in the custody of the Commissioner;

(2) in addition to existing policies regarding the provision of certificates of need for emergency involuntary procedures, provide to the Department deidentified certificates of need for emergency involuntary procedures used on individuals who are not in the custody of the Commissioner; and

(3) ensure that the mental health patient representative be a regular presenter at the Brattleboro Retreat's employee orientation programming.

(c)(1) Patient experience and quality of care. To support proactive, continuous quality and practice improvement and to ensure timely access to high-quality patient care, the Department and the Brattleboro Retreat shall:

(A) to the extent feasible by the Department, meet jointly each month with the mental health patient representative contracted pursuant to 18 V.S.A. § 7253(1)(J) and the mental health care ombudsman established pursuant to 18 V.S.A. § 7259 to review patient experiences of care; and

(B) identify clinical teams within the Department and the Brattleboro Retreat to meet monthly for discussions on quality issues, including service delivery, clinical practices, practice improvement and training, case review, admission and discharge coordination, and other patient care and safety topics.

(2) On or before February 1, 2021, the Department shall report to the House Committee on Health Care and to the Senate Committee on Health and Welfare regarding patient experiences and quality of care at the Brattleboro Retreat.

(d)(1) On or before October 1, 2020, as part of the reporting requirements of the Sustainability Report between the Agency of Human Services and the Brattleboro Retreat, the Agency and the Brattleboro Retreat shall submit an interim report to the Joint Fiscal Committee, and to the Chairs of the Senate Committee on Health and Welfare and the House Committee on Health Care describing the steps that the Brattleboro Retreat is taking to improve communication and relations with its employees.

(2) On or before February 1, 2021, as part of the reporting requirements of the Sustainability Report between the Agency of Human Services and the Brattleboro Retreat, the Agency and the Brattleboro Retreat shall submit a final report to the Senate Committee on Health and Welfare and to the House Committee on Health Care describing the steps that the Brattleboro Retreat is taking to improve communication and relations with its employees, the Brattleboro Retreat's assessment of the effectiveness of those efforts, and how the Brattleboro Retreat plans to manage future communications and relations with its employees.

* * * VPharm Coverage Expansion * * *

Sec. 6. 33 V.S.A. § 2073 is amended to read:

§ 2073. VPHARM ASSISTANCE PROGRAM

(a) ~~Effective January 1, 2006, the~~ The VPharm program is established as a State pharmaceutical assistance program to provide supplemental pharmaceutical coverage to Medicare beneficiaries. The supplemental coverage under subsection (c) of this section shall provide ~~only~~ the same pharmaceutical coverage as the Medicaid program to enrolled individuals whose income is not greater than ~~150~~ 225 percent of the federal poverty guidelines ~~and only coverage for maintenance drugs for enrolled individuals whose income is greater than 150 percent and no greater than 225 percent of the federal poverty guidelines.~~

(b) Any individual with income ~~no~~ not greater than 225 percent of the federal poverty guidelines participating in Medicare Part D, having secured the low income subsidy if the individual is eligible and meeting the general eligibility requirements established in section 2072 of this title, shall be eligible for VPharm.

* * *

Sec. 7. SUPPLEMENTAL VPHARM COVERAGE; GLOBAL COMMITMENT WAIVER RENEWAL; RULEMAKING

(a) When Vermont next seeks changes to its Global Commitment to Health Section 1115 Medicaid demonstration waiver, the Agency of Human Services shall request approval from the Centers for Medicare and Medicaid Services to include an expansion of the VPharm coverage for Vermont Medicare beneficiaries with income between 150 and 225 percent of the federal poverty level (FPL) to be the same as the pharmaceutical coverage under the Medicaid program.

(b) Within 30 days following approval of the VPharm coverage expansion by the Centers for Medicare and Medicaid Services, the Agency of Human

Services shall commence the rulemaking process in accordance with 3 V.S.A. chapter 25 to amend its rules accordingly.

* * * Prior Authorization * * *

Sec. 8. 18 V.S.A. § 9418b is amended to read:

§ 9418b. PRIOR AUTHORIZATION

* * *

(h)(1) A health plan shall review the list of medical procedures and medical tests for which it requires prior authorization at least annually and shall eliminate the prior authorization requirements for those procedures and tests for which such a requirement is no longer justified or for which requests are routinely approved with such frequency as to demonstrate that the prior authorization requirement does not promote health care quality or reduce health care spending to a degree sufficient to justify the administrative costs to the plan.

(2) A health plan shall attest to the Department of Financial Regulation and the Green Mountain Care Board annually on or before September 15 that it has completed the review and appropriate elimination of prior authorization requirements as required by subdivision (1) of this subsection.

Sec. 9. PRIOR AUTHORIZATION; ELECTRONIC HEALTH RECORDS;
REPORT

On or before January 15, 2022, the Department of Financial Regulation, in consultation with health insurers and health care provider associations, shall report to the House Committee on Health Care, the Senate Committees on Health and Welfare and on Finance, and the Green Mountain Care Board opportunities to increase the use of real-time decision support tools embedded in electronic health records to complete prior authorization requests for imaging and pharmacy services, including options that minimize cost for both health care providers and health insurers.

Sec. 10. PRIOR AUTHORIZATION; ALL-PAYER ACO MODEL; REPORT

The Green Mountain Care Board, in consultation with the Department of Vermont Health Access, certified accountable care organizations, payers participating in the All-Payer ACO Model, health care providers, and other interested stakeholders, shall evaluate opportunities for and obstacles to aligning and reducing prior authorization requirements under the All-Payer ACO Model as an incentive to increase scale, as well as potential opportunities to waive additional Medicare administrative requirements in the future. On or before January 15, 2022, the Board shall submit the results of its evaluation to

the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance.

Sec. 11. PRIOR AUTHORIZATION; GOLD CARDING; PILOT PROGRAM; REPORTS

(a) On or before January 15, 2022, each health insurer with more than 1,000 covered lives in this State for major medical health insurance shall implement a pilot program that automatically exempts from or streamlines certain prior authorization requirements for a subset of participating health care providers, some of whom shall be primary care providers.

(b) Each insurer shall make available electronically, including on a publicly available website, details about its prior authorization exemption or streamlining program, including:

(1) the medical procedures or tests that are exempt from or have streamlined prior authorization requirements for providers who qualify for the program;

(2) the criteria for a health care provider to qualify for the program;

(3) the number of health care providers who are eligible for the program, including their specialties and the percentage who are primary care providers; and

(4) whom to contact for questions about the program or about determining a health care provider's eligibility for the program.

(c) On or before January 15, 2023, each health insurer required to implement a prior authorization pilot program under this section shall report to the House Committee on Health Care, the Senate Committees on Health and Welfare and on Finance, and the Green Mountain Care Board:

(1) the results of the pilot program, including an analysis of the costs and savings;

(2) prospects for the health insurer continuing or expanding the program;

(3) feedback the health insurer received about the program from the health care provider community; and

(4) an assessment of the administrative costs to the health insurer of administering and implementing prior authorization requirements.

Sec. 12. PRIOR AUTHORIZATION; PROVIDER EXEMPTIONS; REPORT

On or before September 30, 2021, the Department of Vermont Health Access shall provide findings and recommendations to the House Committee on Health Care, the Senate Committees on Health and Welfare and on Finance, and the Green Mountain Care Board regarding clinical prior authorization requirements in the Vermont Medicaid program, including:

(1) a description and evaluation of the outcomes of the prior authorization waiver pilot program for Medicaid beneficiaries attributed to the Vermont Medicaid Next Generation ACO Model;

(2)(A) for each service for which Vermont Medicaid requires prior authorization:

(i) the denial rate for prior authorization requests; and

(ii) the potential for harm in the absence of a prior authorization requirement;

(B) based on the information provided pursuant to subdivision (A) of this subdivision (2), the services for which the Department would consider:

(i) waiving the prior authorization requirement; and

(ii) exempting from prior authorization requirements those health care professionals whose prior authorization requests are routinely granted;

(3) the results of the Department's current efforts to engage with health care providers and Medicaid beneficiaries to determine the burdens and consequences of the Medicaid prior authorization requirements and the providers' and beneficiaries' recommendations for modifications to those requirements;

(4) the potential to implement systems that would streamline prior authorization processes for the services for which it would be appropriate, with a focus on reducing the burdens on providers, patients, and the Department;

(5) which State and federal approvals would be needed in order to make proposed changes to the Medicaid prior authorization requirements; and

(6) the potential for aligning prior authorization requirements across payers.

* * * Extending Certain Act 91 Provisions Beyond State of Emergency * * *

Sec. 13. 2020 Acts and Resolves No. 91 is amended to read:

* * * Supporting Health Care and Human Service Provider Sustainability* * *

Sec. 1. AGENCY OF HUMAN SERVICES; HEALTH CARE AND
HUMAN SERVICE PROVIDER SUSTAINABILITY

~~During a declared state of emergency in Vermont as a result of COVID-19~~
Through March 31, 2021, the Agency of Human Services shall consider ~~waiving or~~ modifying existing rules, or adopting emergency rules, to protect access to health care services, long-term services and supports, and other human services under the Agency's jurisdiction. In ~~waiving,~~ modifying, or adopting rules, the Agency shall consider the importance of the financial viability of providers that rely on funding from the State, federal government, or Medicaid, or a combination of these, for a major portion of their revenue.

* * *

* * * Protections for Employees of Health Care Facilities and
Human Service Providers * * *

Sec. 3. PROTECTIONS FOR EMPLOYEES OF HEALTH CARE FACILITIES AND HUMAN SERVICE PROVIDERS

In order to protect employees of a health care facility or human service provider who are not licensed health care professionals from the risks associated with COVID-19, through March 31, 2021, all health care facilities and human service providers in Vermont, including hospitals, federally qualified health centers, rural health clinics, residential treatment programs, homeless shelters, home- and community-based service providers, and long-term care facilities, shall follow guidance from the Vermont Department of Health regarding measures to address employee safety, to the extent feasible.

* * * Compliance Flexibility * * *

Sec. 4. HEALTH CARE AND HUMAN SERVICE PROVIDER REGULATION; WAIVER OR VARIANCE PERMITTED

Notwithstanding any provision of the Agency of Human Services' administrative rules or standards to the contrary, ~~during a declared state of emergency in Vermont as a result of COVID-19~~ through March 31, 2021, the Secretary of Human Services may waive or permit variances from the following State rules and standards governing providers of health care services and human services as necessary to prioritize and maximize direct patient care, support children and families who receive benefits and services through the Department for Children and Families, and allow for continuation of operations with a reduced workforce and with flexible staffing arrangements that are responsive to evolving needs, to the extent such waivers or variances are permitted under federal law:

- (1) Hospital Licensing Rule;
- (2) Hospital Reporting Rule;

- (3) Nursing Home Licensing and Operating Rule;
- (4) Home Health Agency Designation and Operation Regulations;
- (5) Residential Care Home Licensing Regulations;
- (6) Assisted Living Residence Licensing Regulations;
- (7) Home for the Terminally Ill Licensing Regulations;
- (8) Standards for Adult Day Services;
- (9) Therapeutic Community Residences Licensing Regulations;
- (10) Choices for Care High/Highest Manual;
- (11) Designated and Specialized Service Agency designation and provider rules;
- (12) Child Care Licensing Regulations;
- (13) Public Assistance Program Regulations;
- (14) Foster Care and Residential Program Regulations; and
- (15) other rules and standards for which the Agency of Human Services is the adopting authority under 3 V.S.A. chapter 25.

* * *

Sec. 6. MEDICAID AND HEALTH INSURERS; PROVIDER ENROLLMENT AND CREDENTIALING

(a) During Until the last to terminate of a declared state of emergency in Vermont as a result of COVID-19, a declared federal public health emergency as a result of COVID-19, and a declared national emergency as a result of COVID-19, and to the extent permitted under federal law, the Department of Vermont Health Access shall relax provider enrollment requirements for the Medicaid program, and the Department of Financial Regulation shall direct health insurers to relax provider credentialing requirements for health insurance plans, in order to allow for individual health care providers to deliver and be reimbursed for services provided across health care settings as needed to respond to Vermonters' evolving health care needs.

(b) In the event that another state of emergency is declared in Vermont as a result of COVID-19 after the termination of the State and federal emergencies, the Departments shall again cause the provider enrollment and credentialing requirements to be relaxed as set forth in subsection (a) of this section.

* * *

* * * Access to Health Care Services and Human Services * * *

Sec. 8. ACCESS TO HEALTH CARE SERVICES; DEPARTMENT OF
FINANCIAL REGULATION; EMERGENCY RULEMAKING

It is the intent of the General Assembly to increase Vermonters' access to medically necessary health care services during and after a declared state of emergency in Vermont as a result of COVID-19. ~~During such a declared state of emergency, the~~ Until July 1, 2021, and notwithstanding any provision of 3 V.S.A. § 844 to the contrary, the Department of Financial Regulation shall consider adopting, and shall have the authority to adopt, emergency rules to address the following ~~for the duration of the state of emergency through June 30, 2021:~~

(1) expanding health insurance coverage for, and waiving or limiting cost-sharing requirements directly related to, COVID-19 diagnosis, treatment, and prevention;

(2) modifying or suspending health insurance plan deductible requirements for all prescription drugs, except to the extent that such an action would disqualify a high-deductible health plan from eligibility for a health savings account pursuant to 26 U.S.C. § 223; and

(3) expanding patients' access to and providers' reimbursement for health care services, including preventive services, consultation services, and services to new patients, delivered remotely through telehealth, audio-only telephone, and brief telecommunication services.

Sec. 9. PRESCRIPTION DRUGS; MAINTENANCE MEDICATIONS;
EARLY REFILLS

(a) As used in this section, "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. The term does not include policies or plans providing coverage for a specified disease or other limited benefit coverage.

(b) ~~During a declared state of emergency in Vermont as a result of COVID-19~~ Through June 30, 2021, all health insurance plans and Vermont Medicaid shall allow their members to refill prescriptions for chronic maintenance medications early to enable the members to maintain a 30-day supply of each prescribed maintenance medication at home.

(c) As used in this section, "maintenance medication" means a prescription drug taken on a regular basis over an extended period of time to treat a chronic or long-term condition. The term does not include a regulated drug, as defined in 18 V.S.A. § 4201.

Sec. 10. PHARMACISTS; CLINICAL PHARMACY; EXTENSION OF
PRESCRIPTION FOR MAINTENANCE MEDICATION

(a) ~~During a declared state of emergency in Vermont as a result of COVID-19 Through June 30, 2021,~~ a pharmacist may extend a previous prescription for a maintenance medication for which the patient has no refills remaining or for which the authorization for refills has recently expired if it is not feasible to obtain a new prescription or refill authorization from the prescriber.

(b) A pharmacist who extends a prescription for a maintenance medication pursuant to this section shall take all reasonable measures to notify the prescriber of the prescription extension in a timely manner.

(c) As used in this section, “maintenance medication” means a prescription drug taken on a regular basis over an extended period of time to treat a chronic or long-term condition. The term does not include a regulated drug, as defined in 18 V.S.A. § 4201.

Sec. 11. PHARMACISTS; CLINICAL PHARMACY; THERAPEUTIC SUBSTITUTION DUE TO LACK OF AVAILABILITY

(a) ~~During a declared state of emergency in Vermont as a result of COVID-19 Through March 31, 2021,~~ a pharmacist may, with the informed consent of the patient, substitute an available drug or insulin product for an unavailable prescribed drug or insulin product in the same therapeutic class if the available drug or insulin product would, in the clinical judgment of the pharmacist, have substantially equivalent therapeutic effect even though it is not a therapeutic equivalent.

(b) As soon as reasonably possible after substituting a drug or insulin product pursuant to subsection (a) of this section, the pharmacist shall notify the prescribing clinician of the drug or insulin product, dose, and quantity actually dispensed to the patient.

Sec. 12. BUPRENORPHINE; PRESCRIPTION RENEWALS

~~During a declared state of emergency in Vermont as a result of COVID-19 Through March 31, 2021,~~ to the extent permitted under federal law, a health care professional authorized to prescribe buprenorphine for treatment of substance use disorder may authorize renewal of a patient’s existing buprenorphine prescription without requiring an office visit.

Sec. 13. 24-HOUR FACILITIES AND PROGRAMS; BED-HOLD DAYS

~~During a declared state of emergency in Vermont as a result of COVID-19 Through March 31, 2021,~~ to the extent permitted under federal law, the Agency of Human Services may reimburse Medicaid-funded long-term care facilities and other programs providing 24-hour per day services for their bed-hold days.

* * * Regulation of Professions * * *

* * *

Sec. 17. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
MEDICAL PRACTICE; OUT-OF-STATE HEALTH CARE
PROFESSIONALS

(a) Notwithstanding any provision of Vermont's professional licensure statutes or rules to the contrary, ~~during a declared state of emergency in Vermont as a result of COVID-19~~ through March 31, 2021, a health care professional, including a mental health professional, who holds a valid license, certificate, or registration to provide health care services in any other U.S. jurisdiction shall be deemed to be licensed, certified, or registered to provide health care services, including mental health services, to a patient located in Vermont using telehealth or as part of the staff of a licensed facility, provided the health care professional:

(1) is licensed, certified, or registered in good standing in the other U.S. jurisdiction or jurisdictions in which the health care professional holds a license, certificate, or registration;

(2) is not subject to any professional disciplinary proceedings in any other U.S. jurisdiction; and

(3) is not affirmatively barred from practice in Vermont for reasons of fraud or abuse, patient care, or public safety.

(b) A health care professional who plans to provide health care services in Vermont as part of the staff of a licensed facility shall submit or have submitted on the individual's behalf the individual's name, contact information, and the location or locations at which the individual will be practicing to:

(1) the Board of Medical Practice for medical doctors, physician assistants, and podiatrists; or

(2) the Office of Professional Regulation for all other health care professions.

(c) A health care professional who delivers health care services in Vermont pursuant to subsection (a) of this section shall be subject to the imputed jurisdiction of the Board of Medical Practice or the Office of Professional Regulation, as applicable based on the health care professional's profession, in accordance with Sec. 19 of this act.

(d) This section shall remain in effect ~~until the termination of the declared state of emergency in Vermont as a result of COVID-19 and~~ through March

31, 2021, provided the health care professional remains licensed, certified, or registered in good standing.

Sec. 18. RETIRED HEALTH CARE PROFESSIONALS; BOARD OF
MEDICAL PRACTICE; OFFICE OF PROFESSIONAL
REGULATION

(a)(1) ~~During a declared state of emergency in Vermont as a result of COVID-19~~ Through March 31, 2021, a former health care professional, including a mental health professional, who retired not more than three years earlier with the individual's Vermont license, certificate, or registration in good standing may provide health care services, including mental health services, to a patient located in Vermont using telehealth or as part of the staff of a licensed facility after submitting, or having submitted on the individual's behalf, to the Board of Medical Practice or Office of Professional Regulation, as applicable, the individual's name, contact information, and the location or locations at which the individual will be practicing.

(2) A former health care professional who returns to the Vermont health care workforce pursuant to this subsection shall be subject to the regulatory jurisdiction of the Board of Medical Practice or the Office of Professional Regulation, as applicable.

(b) ~~During a declared state of emergency in Vermont as a result of COVID-19~~ Through March 31, 2021, the Board of Medical Practice and the Office of Professional Regulation may permit former health care professionals, including mental health professionals, who retired more than three but less than 10 years earlier with their Vermont license, certificate, or registration in good standing to return to the health care workforce on a temporary basis to provide health care services, including mental health services, to patients in Vermont. The Board of Medical Practice and Office of Professional Regulation may issue temporary licenses to these individuals at no charge and may impose limitations on the scope of practice of returning health care professionals as the Board or Office deems appropriate.

Sec. 19. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
MEDICAL PRACTICE; IMPUTED JURISDICTION

A practitioner of a profession or professional activity regulated by Title 26 of the Vermont Statutes Annotated who provides regulated professional services to a patient in the State of Vermont without holding a Vermont license, as may be authorized ~~in~~ during or after a declared state of emergency, is deemed to consent to, and shall be subject to, the regulatory and disciplinary jurisdiction of the Vermont regulatory agency or body having jurisdiction over the regulated profession or professional activity.

Sec. 20. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
MEDICAL PRACTICE; EMERGENCY AUTHORITY TO ACT
FOR REGULATORY BOARDS

(a)(1) ~~During a declared state of emergency in Vermont as a result of COVID-19~~ Through March 31, 2021, if the Director of Professional Regulation finds that a regulatory body attached to the Office of Professional Regulation by 3 V.S.A. § 122 cannot reasonably, safely, and expeditiously convene a quorum to transact business, the Director may exercise the full powers and authorities of that regulatory body, including disciplinary authority.

(2) ~~During a declared state of emergency in Vermont as a result of COVID-19~~ Through March 31, 2021, if the Executive Director of the Board of Medical Practice finds that the Board cannot reasonably, safely, and expeditiously convene a quorum to transact business, the Executive Director may exercise the full powers and authorities of the Board, including disciplinary authority.

(b) The signature of the Director of the Office of Professional Regulation or of the Executive Director of the Board of Medical Practice shall have the same force and effect as a voted act of their respective boards.

(c)(1) A record of the actions of the Director of the Office of Professional Regulation taken pursuant to the authority granted by this section shall be published conspicuously on the website of the regulatory body on whose behalf the Director took the action.

(2) A record of the actions of the Executive Director of the Board of Medical Practice taken pursuant to the authority granted by this section shall be published conspicuously on the website of the Board of Medical Practice.

Sec. 21. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
MEDICAL PRACTICE; EMERGENCY REGULATORY
ORDERS

~~During a declared state of emergency in Vermont as a result of COVID-19~~ Through March 31, 2021, the Director of Professional Regulation and the Commissioner of Health may issue such orders governing regulated professional activities and practices as may be necessary to protect the public health, safety, and welfare. If the Director or Commissioner finds that a professional practice, act, offering, therapy, or procedure by persons licensed or required to be licensed by Title 26 of the Vermont Statutes Annotated is exploitative, deceptive, or detrimental to the public health, safety, or welfare, or a combination of these, the Director or Commissioner may issue an order to

cease and desist from the applicable activity, which, after reasonable efforts to publicize or serve the order on the affected persons, shall be binding upon all persons licensed or required to be licensed by Title 26 of the Vermont Statutes Annotated, and a violation of the order shall subject the person or persons to professional discipline, may be a basis for injunction by the Superior Court, and shall be deemed a violation of 3 V.S.A. § 127.

* * *

* * * Telehealth * * *

* * *

Sec. 26. WAIVER OF CERTAIN TELEHEALTH REQUIREMENTS
DURING STATE OF EMERGENCY FOR A LIMITED TIME

Notwithstanding any provision of 8 V.S.A. § 4100k or 18 V.S.A. § 9361 to the contrary, ~~during a declared state of emergency in Vermont as a result of COVID-19~~ through March 31, 2021, the following provisions related to the delivery of health care services through telemedicine or by store-and-forward means shall not be required, to the extent their waiver is permitted by federal law:

(1) delivering health care services, including dental services, using a connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 in accordance with 8 V.S.A. § 4100k(i), as amended by this act, if it is not practicable to use such a connection under the circumstances;

(2) representing to a patient that the health care services, including dental services, will be delivered using a connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 in accordance with 18 V.S.A. § 9361(c), if it is not practicable to use such a connection under the circumstances; and

(3) obtaining and documenting a patient's oral or written informed consent for the use of telemedicine or store-and-forward technology prior to delivering services to the patient in accordance with 18 V.S.A. § 9361(c), if obtaining or documenting such consent, or both, is not practicable under the circumstances.

* * *

* * * Effective Dates * * *

Sec. 38. EFFECTIVE DATES

This act shall take effect on passage, except that:

(1) In Sec. 24, 8 V.S.A. § 4100k(e) (coverage of health care services delivered by store-and-forward means) shall take effect on January 1, 2021 May 1, 2020 for commercial health insurance and on July 1, 2020 for Vermont Medicaid.

* * *

Sec. 14. OFFICE OF PROFESSIONAL REGULATION; TEMPORARY LICENSURE

Notwithstanding any provision of 3 V.S.A. § 129(a)(10) to the contrary, through March 31, 2021, a board or profession attached to the Office of Professional Regulation may issue a temporary license to an individual who is a graduate of an approved education program if the licensing examination required for the individual's profession is not reasonably available.

Sec. 15. BOARD OF MEDICAL PRACTICE; TEMPORARY PROVISIONS; PHYSICIANS, PHYSICIAN ASSISTANTS, AND PODIATRISTS

(a) Notwithstanding any provision of 26 V.S.A. § 1353(11) to the contrary, the Board of Medical Practice or its Executive Director may issue a temporary license through March 31, 2021 to an individual who is licensed to practice as a physician, physician assistant, or podiatrist in another jurisdiction, whose license is in good standing, and who is not subject to disciplinary proceedings in any other jurisdiction. The temporary license shall authorize the holder to practice in Vermont until a date not later than April 1, 2021, provided the licensee remains in good standing.

(b) Through March 31, 2021, the Board of Medical Practice or its Executive Director may waive supervision and scope of practice requirements for physician assistants, including the requirement for documentation of the relationship between a physician assistant and a physician pursuant to 26 V.S.A. § 1735a. The Board or Executive Director may impose limitations or conditions when granting a waiver under this subsection.

* * * Delivery of Health Care Services by Telehealth and Telephone * * *

Sec. 16. COVERAGE FOR HEALTH CARE SERVICES DELIVERED BY TELEPHONE; WORKING GROUP

(a) The Department of Financial Regulation shall convene a working group to develop recommendations for health insurance and Medicaid coverage of health care services delivered by telephone after the COVID-19 state of emergency ends. The working group shall include representatives of the Department of Vermont Health Access, health insurers, the Vermont Medical Society, Bi-State Primary Care Association, the VNAs of Vermont, the

Vermont Association of Hospitals and Health Systems, the Office of the Health Care Advocate, and other interested stakeholders.

(b) On or before December 1, 2020, the Department of Financial Regulation shall provide to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance the working group's recommendations for ongoing coverage of health care services delivered by telephone.

Sec. 17. TELEHEALTH; CONNECTIVITY; FUNDING OPPORTUNITIES

(a) The Vermont Program for Quality in Health Care, Inc., shall consult with its Statewide Telehealth Workgroup, the Department of Public Service, and organizations representing health care providers and health care consumers to identify:

(1) areas of the State that do not have access to broadband service and that are also medically underserved or have high concentrations of high-risk or vulnerable patients, or both, and where equitable access to telehealth services would result in improved patient outcomes or reduced health care costs, or both; and

(2) opportunities to use federal funds and funds from other sources to increase Vermonters' access to clinically appropriate telehealth services, including opportunities to maximize access to federal grants through strategic planning, coordination, and resource and information sharing.

(b) Based on the information obtained pursuant to subsection (a) of this section, the Vermont Program for Quality in Health Care, Inc., and the Department of Public Service, with input from organizations representing health care providers and health care consumers, shall support health care providers' efforts to pursue available funding opportunities in order to increase Vermonters' access to clinically appropriate telehealth services via information dissemination and technical assistance to the extent feasible under the current billback funding mechanism under 18 V.S.A. § 9416(c).

(c) In coordinating and administering the efforts described in this section, the Vermont Program for Quality in Health Care, Inc. shall use federal funds to the greatest extent possible.

* * * Effective Dates * * *

Sec. 18. EFFECTIVE DATES

This act shall take effect on passage, except:

(1) Sec. 4 (Mental Health Integration Council; report) shall take effect on July 1, 2020;

(2) Sec. 6 (33 V.S.A. § 2073) shall take effect on the later of January 1, 2022 or upon approval of the VPharm coverage expansion by the Centers for Medicare and Medicaid Services;

(3) in Sec. 8, 18 V.S.A. § 9418b(h)(2) (attestation of prior authorization requirement review) shall take effect on July 1, 2021; and

(4) notwithstanding 1 V.S.A. § 214, in Sec. 14 (2020 Acts and Resolves No. 91), the amendment to Sec. 38 (effective date for store and forward) shall take effect on passage and shall apply retroactively to March 30, 2020.

Ordered to Lie

H. 162

An act relating to removal of buprenorphine from the misdemeanor crime of possession of a narcotic.

Pending Action: Second reading

H. 492

An act relating to establishing a homeless bill of rights and prohibiting discrimination against people without homes.

Pending Action: Second reading

H. 535

An act relating to approval of amendments to the charter of the Town of Brattleboro.

Pending Action: Second reading