

# Senate Calendar

TUESDAY, MAY 14, 2019

SENATE CONVENES AT: 9:30 A.M.

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**ORDERS OF THE DAY**

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**ACTION CALENDAR**

**UNFINISHED BUSINESS OF MONDAY, MAY 13, 2019**

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

**H. 133**

An act relating to miscellaneous energy subjects

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

By striking out Sec. 24, effective date, in its entirety and inserting in lieu thereof five new sections and their reader assistance headings to read as follows:

\* \* \* Energy Storage Facilities \* \* \*

Sec. 24. 30 V.S.A. § 201 is amended to read:

§ 201. DEFINITIONS

\* \* \*

(c) As used in this chapter, “energy storage facility” means a system that uses mechanical, chemical, or thermal processes to store energy for export to the grid.

Sec. 25. 30 V.S.A. § 248 is amended to read:

§ 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND FACILITIES; CERTIFICATE OF PUBLIC GOOD

(a)(1) No company, as defined in section 201 of this title, may:

\* \* \*

(B) invest in an electric generation facility, energy storage facility, or transmission facility located outside this State unless the Public Utility Commission first finds that the same will promote the general good of the State and issues a certificate to that effect.

(2) Except for the replacement of existing facilities with equivalent facilities in the usual course of business, and except for electric generation or energy storage facilities that are operated solely for on-site electricity consumption by the owner of those facilities and for hydroelectric generation facilities subject to licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1:

(A) no company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may begin site preparation for or construction of an electric generation facility, energy storage facility, or electric transmission facility within the State that is designed for immediate or eventual operation at any voltage; and

(B) no such company may exercise the right of eminent domain in connection with site preparation for or construction of any such transmission facility, energy storage facility, or generation facility, unless the Public Utility Commission first finds that the same will promote the general good of the State and issues a certificate to that effect.

\* \* \*

(7) When a certificate of public good under this section or amendment to such a certificate is issued for an in-state electric generation or energy storage facility with a capacity that is greater than 15 kilowatts, the certificate holder within 45 days shall record a notice of the certificate or amended certificate, on a form prescribed by the Commission, in the land records of each municipality in which a facility subject to the certificate is located and shall submit proof of this recording to the Commission. The recording under this subsection shall be indexed as though the certificate holder were the grantor of a deed. The prescribed form shall not exceed one page and shall require identification of the land on which the facility is to be located by reference to the conveyance to the current landowner, the number of the certificate, and the name of each person to which the certificate was issued, and shall include information on how to contact the Commission to view the certificate and supporting documents.

\* \* \*

(u) A certificate under this section shall only be required for an energy storage facility that has a capacity of 500 kW or greater.

#### Sec. 26. DEPARTMENT OF PUBLIC SERVICE RECOMMENDATIONS

On or before January 15, 2020, the Department of Public Service, after consultation with stakeholders, shall provide to the General Assembly recommendations, including proposed statutory language, for the regulatory treatment of energy storage facilities. These recommendations shall address both energy storage facilities with a capacity of less than 500 kW and energy storage facilities of any size with grid-exporting capabilities not subject to direct or indirect control by a Vermont distribution utility.

\* \* \* Standard Offer Program Exemption \* \* \*

Sec. 27. 30 V.S.A. § 8005a is amended to read:

§ 8005a. STANDARD OFFER PROGRAM

\* \* \*

(k) Executed standard offer contracts; transferability; allocation of benefits and costs. With respect to executed contracts for standard offers under this section:

\* \* \*

(B) A retail electricity provider ~~shall be exempt and wholly that was~~ relieved from the requirements of this subdivision ~~if, by the Commission on or before January 25, 2018, shall be exempt from the requirements of this subdivision in any year that the Standard Offer Facilitator allocates electricity pursuant to this subdivision if the retail electricity provider meets the following criteria:~~

(i) during the immediately preceding 12-month period ending October 31, the amount of renewable energy supplied to the provider by generation owned by or under contract to the provider, regardless of whether the provider owned the energy's environmental attributes, was not less than the amount of energy sold by the provider to its retail customers; and

(ii) the retail electricity provider owns and retires an amount of 30 V.S.A. § 8005(a)(1) qualified energy environmental attributes that is not less than the provider's retail sales.

\* \* \*

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

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

**NEW BUSINESS**

**Third Reading**

**H. 536.**

An act relating to education finance.

**H. 539.**

An act relating to approval of amendments to the charter of the Town of Stowe and to the merger of the Town and the Stowe Fire District No. 3.

**H. 540.**

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

**H. 544.**

An act relating to approval of amendments to the charter of the City of Burlington.

**H. 549.**

An act relating to approval of the dissolution of Rutland Fire District No. 10.

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 287.**

An act relating to small probate estates.

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

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

Sec. 1. 14 V.S.A. chapter 81 is amended to read:

**CHAPTER 81. SMALL ESTATES**

**§ 1901. FILING INVENTORY AND BOND CONDITIONED UPON  
PAYMENT OF FUNERAL EXPENSE WITH PETITION  
COMMENCEMENT OF SMALL ESTATE**

~~When application is made to the judge of probate for the appointment of an administrator or executor of an estate, there may accompany the petition the following:~~

~~(1) A true and complete inventory of the estate of the deceased, appraised under oath at its true cash value;~~

~~(2) A receipt showing that the funeral expenses of the deceased have been paid, or a personal bond in an amount determined by the judge of probate to be reasonable, conditioned for the payment of the funeral expenses of the deceased, within one year from the date of death; and~~

~~(3) The will, if any.~~

(a) When a decedent's estate has a fair market value of not more than \$45,000.00 and consists entirely of personal property, provided that the estate may include a time-share estate as defined by 32 V.S.A. § 3619(a), an estate may be commenced by filing:

(1) a petition to open a probate estate;

(2) a list of interested persons;

(3) the filing fee;

(4) an original death certificate;

(5) an inventory of the estate, including information or estimates available at the time of filing;

(6) an affidavit of paid and outstanding funeral expenses and any other known or reasonably ascertainable debts of the decedent;

(7) a bond without surety in the amount of the fair market value of the estate; and

(8) the will, if any.

(b) An interested party who does not consent to the small estate proceeding in writing shall be provided with notice of the petition and the pending fiduciary appointment and may file any objections with the court within 14 days after receiving the notice. If no objections are filed, the fiduciary appointment and any will offered for admission shall be approved by the court without further notice or hearing.

(c) If, after an estate is opened pursuant to subsection (a) of this section, it is determined that the value of the decedent's estate at the time of his or her death exceeded \$45,000.00, the fiduciary shall petition the court to order that the estate be administered pursuant to the laws and rules applicable to estates with a fair market value in excess of \$45,000.00. The court shall grant the petition if it finds that the estate has a fair market value in excess of \$45,000.00 and that all applicable fees have been paid.

#### § 1902. ~~LETTERS OF ADMINISTRATION AND LETTERS~~ ~~TESTAMENTARY, SMALL ESTATES, NOTICE~~

~~(a) Upon receiving and filing such petition, the judge of probate may make such investigation of the circumstances of the case and the facts set forth in the petition, as he or she deems proper and necessary.~~

~~(b) The court may grant administration of the estate to the petitioner or some other suitable person forthwith without further notice, and may issue letters of administration to the administrator or letters testamentary to the~~



~~executor without requiring further bonds, if from the petition and the investigation it appears to the satisfaction of the court that:~~

~~(1)(A) the deceased left a surviving spouse or children of any age, or both; or~~

~~(B) the deceased left a surviving parent or parents but no spouse or child;~~

~~(2) the deceased died seized of no real estate other than a time-share estate as defined by 32 V.S.A. § 3619(a); and~~

~~(3) the personal estate of the deceased, appraised at its true cash value as of the date of death, amounts to not more than the sum of \$10,000.00.~~

(a) When a small estate is commenced pursuant to section 1901 of this title:

(1) If the decedent had a will, the will shall be admitted and letters of administration shall be issued as provided in section 902 of this title.

(2) If the decedent did not have a will, letters of administration shall be issued as provided in section 903 of this title.

(b) Within 60 days after the issuance of letters of administration, and at any time thereafter if deemed necessary by the fiduciary, the fiduciary shall confirm, correct, or supplement the inventory filed with the petition.

(c) Letters of administration issued pursuant to this section shall be effective for one year after the date of issuance. The court may extend the one-year duration upon motion of the fiduciary for good cause shown.

#### § 903. SAME; DISCHARGE UPON PAYMENT OF FUNERAL EXPENSES; RESIDUE

~~(a) In intestate estates whenever it shall appear to the satisfaction of the judge of probate that an administrator appointed under sections 1901 and 1902 of this title has paid or caused to be paid the funeral and burial expenses of said deceased, and has paid over all the balance and residue of said estate in accordance with the provisions of chapter 42 of this title, the court may forthwith discharge the administrator without further accounting and without notice.~~

(1) If it appears from the record that the estate is insolvent, the fiduciary shall apply for an order of dividend from the court. If the estate is not insolvent, the fiduciary shall make payment in settlement with all known or reasonably ascertainable creditors, including payment of income taxes due for the year of the decedent's death, and pay any remaining balance to the

beneficiaries of the estate as provided by the will, if any, or as otherwise provided by law.

(2) Upon completion of the payments required by subdivision (1) of this subsection, the fiduciary shall file with the court a sworn statement setting forth the amounts and recipients of each payment.

(b) In testate estates, whenever it shall appear to the satisfaction of the judge of probate that an executor has paid or caused to be paid the funeral and burial expenses of the deceased and has paid over the remaining property in accordance with the terms of the will unless waived, and in that event in accordance with law, the court may forthwith discharge such executor without further accounting and without notice. The court may discharge the fiduciary without further accounting and without notice after the fiduciary has completed the requirements of subsection (a) of this section.

(c) If a discharge is given under this section, any assets distributed by the executor or administrator fiduciary shall be subject to claims later established, and sections 1202 and 1203 of this title shall apply, but the executors or administrators shall not be liable to distributees for losses to them when required to reimburse creditors. Each distributee shall have a duty of proportionate contribution for any claims brought against one or more other distributees, not to exceed the amount received by the distributee from the estate.

Sec. 2. 14 V.S.A. § 107 is amended to read:

§ 107. ALLOWANCE OF WILL; CUSTODY OF PROPERTY

\* \* \*

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

\* \* \*

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 13, 2019, page 395)

## H. 524.

An act relating to health insurance and the individual mandate.

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

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

First: By striking out Sec. 6, 33 V.S.A. § 1811, in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

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

§ 1811. HEALTH BENEFIT PLANS FOR INDIVIDUALS AND SMALL EMPLOYERS

\* \* \*

(d)(1) Guaranteed issue. A registered carrier shall guarantee acceptance of all individuals, small employers, and employees of small employers, and each dependent of such individuals and employees, for any health benefit plan offered by the carrier, regardless of any outstanding premium amount a subscriber may owe to the carrier for coverage provided during the previous plan year.

(2) Preexisting condition exclusions. A registered carrier shall not exclude, restrict, or otherwise limit coverage under a health benefit plan for any preexisting health condition.

(3) Annual limitations on cost sharing.

(A)(i) The annual limitation on cost sharing for self-only coverage for any year shall be the same as the dollar limit established by the federal government for self-only coverage for that year in accordance with 45 C.F.R. § 156.130.

(ii) The annual limitation on cost sharing for other than self-only coverage for any year shall be twice the dollar limit for self-only coverage described in subdivision (i) of this subdivision (A).

(B)(i) In the event that the federal government does not establish an annual limitation on cost sharing for any plan year, the annual limitation on cost sharing for self-only coverage for that year shall be the dollar limit for self-only coverage in the preceding calendar year, increased by any percentage by which the average per capita premium for health insurance coverage in Vermont for the preceding calendar year exceeds the average per capita premium for the year before that.

(ii) The annual limitation on cost-sharing for other than self-only coverage for any year in which the federal government does not establish an annual limitation on cost sharing shall be twice the dollar limit for self-only coverage described in subdivision (i) of this subdivision (B).

(4) Ban on annual and lifetime limits. A health benefit plan shall not establish any annual or lifetime limit on the dollar amount of essential health benefits, as defined in Section 1302(b) of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and applicable regulations and federal guidance, for any individual insured under the plan, regardless of whether the services are provided in-network or out-of-network.

(5)(A) No cost sharing for preventive services. A health benefit plan shall not impose any co-payment, coinsurance, or deductible requirements for:

(i) preventive services that have an “A” or “B” rating in the current recommendations of the U.S. Preventive Services Task Force;

(ii) immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved;

(iii) with respect to infants, children, and adolescents, evidence-informed preventive care and screenings as set forth in comprehensive guidelines supported by the federal Health Resources and Services Administration; and

(iv) with respect to women, to the extent not included in subdivision (i) of this subdivision (5)(A), evidence-informed preventive care and screenings set forth in binding comprehensive health plan coverage guidelines supported by the federal Health Resources and Services Administration.

(B) Subdivision (A) of this subdivision (5) shall apply to a high-deductible health plan only to the extent that it would not disqualify the plan from eligibility for a health savings account pursuant to 26 U.S.C. § 223.

\* \* \*

Second: By striking out Sec. 7, 8 V.S.A. § 4079a, in its entirety and inserting in lieu thereof the following:

Sec. 7. [Deleted.]

Third: In Sec. 13, effective dates, by striking out subsection (d) in its entirety and by relettering subsection (e) to be subsection (d)

(Committee vote: 7-0-0)

(For House amendments, see House Journal for March 28, 2019, pages 709-713)

#### **H. 525.**

An act relating to miscellaneous agricultural subjects.

**Reported favorably with recommendation of proposal of amendment by Senator Collamore for the Committee on Agriculture.**

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

\* \* \* Seed Sales; Reporting \* \* \*

Sec. 1. 6 V.S.A. § 642 is amended to read:

#### **§ 642. DUTIES AND AUTHORITY OF THE SECRETARY**

(a) The Secretary shall enforce and carry out the provisions of this subchapter, including:

(1) Sampling, inspecting, making analysis of, and testing seeds subject to the provisions of this subchapter that are transported, sold, or offered or exposed for sale within the State for sowing purposes. The Secretary shall notify promptly a person who sells, offers, or exposes seeds for sale and, if appropriate, the person who labels or transports seeds, of any violation and seizure of the seeds, or order to cease sale of the seeds under section 643 of this title.

(2) Making or providing for purity and germination tests of seed for farmers and dealers on request and to fix and collect charges for the tests made.

(3) Cooperating with the U.S. Department of Agriculture and other agencies in seed law enforcement.

(4) Prior to sale, distribution, or use of a new genetically engineered seed in the State and after consultation with a seed review committee convened under subsection (c) of this section, review the traits of the new genetically engineered seed. The Secretary may prohibit, restrict, condition, or limit the sale, distribution, or use of the seed in the State when determined necessary to prevent an adverse effect on agriculture in the State.

(b) The Secretary shall establish rules to carry out the provisions of this subchapter, including those governing the methods of sampling, inspecting, analyzing, testing, and examining seeds and reasonable standards for seed.

(c)(1) The Secretary shall convene a seed review committee to review the seed traits of a new genetically engineered seed proposed for sale, distribution, or use in the State.

(2) A seed review committee convened under this subsection shall be composed of the Secretary of Agriculture, Food and Markets or designee and the following members appointed by the Secretary:

(A) a certified commercial agricultural pesticide applicator;

(B) an agronomist or relevant crop specialist from the University of Vermont or Vermont Technical College;

(C) a licensed seed dealer; and

(D) a member of a farming sector affected by the new genetically engineered seed.

(3) A majority of the seed review committee shall approve of the sale, distribution, or use of a new genetically engineered seed prior to sale, distribution, or use in the State. In order to ensure the appropriate use or traits of a new genetically engineered seed in the State, a seed review committee may propose to the Secretary limits or conditions on the sale, distribution, or use of a seed or recommend a limited period of time for sale of the seed.

Sec. 2. 6 V.S.A. § 648 is amended to read:

§ 648. INSPECTIONS

\* \* \*

(g) For seeds sold in Vermont that contain genetically engineered material, the manufacturer or processor distributing such seed in Vermont shall report annually on January or before February 15 to the Secretary on forms supplied by the Secretary regarding sales during the previous calendar year.

(h) For seeds sold in Vermont, the manufacturer or processor distributing the seed in Vermont shall report annually on or before February 15 to the Secretary on forms supplied by the Secretary regarding the quantity of treated article seed and the quantity of untreated seed sold in Vermont during the previous calendar year. As used in this subsection, “treated article seed” means an agricultural seed, flower seed, or vegetable seed that is a treated article pesticide as that term is defined in section 1101 of this title.

\* \* \* Dairy Operations \* \* \*

Sec. 3. 6 V.S.A. § 2722 is amended to read:

§ 2722. APPLICATION

Applications shall be completely filled out and sworn to by the applicant or a partner or officer thereof and in case of renewal shall be filed with the Secretary on or before July 15 of each year. New handlers may apply for a license at any time. Renewal applications not received on or before August 15 shall be assessed a late fee of \$100.00. The application for a handler's license shall provide the following information and such other information as the Secretary by regulation shall reasonably require:

\* \* \*

\* \* \* Raw Milk \* \* \*

Sec. 4. 6 V.S.A. §§ 2777 and 2778 are amended to read:

§ 2777. STANDARDS FOR THE SALE OF UNPASTEURIZED (RAW) MILK

(a) Unpasteurized milk shall be sold directly from the producer to the consumer for personal consumption only and shall not be resold.

(b) Unpasteurized milk shall be sold only from the farm on which it was produced except when ~~delivery is arranged in conformance with sale or delivery off the farm is allowed under~~ section 2778 of this chapter. Unpasteurized milk shall not be sold or offered as free samples at any location other than on the farm on which the milk was produced.

(c) Unpasteurized milk operations shall conform to reasonable sanitary standards, including:

(1)(A) Unpasteurized milk shall be derived from healthy animals ~~which that~~ are subject to appropriate veterinary care, including rabies vaccination according to accepted vaccination standards established by the Agency.

(B) A producer shall ensure that all ruminant animals are tested for brucellosis and tuberculosis, according to accepted testing standards established by the Agency, prior to the sale of unpasteurized milk.

(C) A producer shall ensure that dairy animals entering the producer's milking herd, including those born on the farm, are tested for brucellosis and tuberculosis, according to accepted testing standards established by the Agency, prior to the animal's milk being sold to consumers, unless:

(i) The dairy animal has a negative U.S. Department of Agriculture approved test for brucellosis within 30 days prior to importation into the State, in which case a brucellosis test shall not be required;

(ii) The dairy animal has a negative U.S. Department of Agriculture approved tuberculosis test within 60 days prior to importation into the State, in which case a tuberculosis test shall not be required;

(iii) The dairy animal leaves and subsequently reenters the producer's herd from a state or Canadian province that is classified as "certified free" of brucellosis and "accredited free" of tuberculosis or an equivalent classification, in which case a brucellosis or tuberculosis test shall not be required.

(D) A producer shall post test results and verification of vaccinations on the farm in a prominent place and make results available to customers and the Agency.

(d) Unpasteurized milk shall conform to the following production and marketing standards:

(1) Record keeping and reporting.

(A) A producer shall collect one composite sample of unpasteurized milk each day and keep the previous 14 days' samples frozen. The producer shall provide samples to the Agency if requested.

(B) A producer shall maintain a current list of all customers, including addresses, telephone numbers, and, when available, e-mail addresses.

(C) The producer shall maintain a list of transactions for at least one year which shall include customer names, the date of each purchase, and the amount purchased.

(2) Labeling. Unpasteurized (raw) milk shall be labeled as such, and the label shall contain:

(A) The date the milk was obtained from the animal.

(B) The name, address, zip code, and telephone number of the producer.

(C) The common name of the type of animal producing the milk, such as cattle, goat, sheep, or an image of the animal.

(D) The words "Unpasteurized (Raw) Milk. ~~Not pasteurized.~~ Keep Refrigerated." on the container's principal display panel, and these words shall be clearly readable in letters at least one-eighth inch in height and prominently displayed.



(E) The words ~~“This product has not been pasteurized and therefore may contain harmful bacteria that can cause illness particularly in children, elders, and persons with weakened immune systems and in pregnant women can cause illness, miscarriage, or fetal death, or death of a newborn.”~~ “Consuming raw unpasteurized milk may cause illness, particularly in children, seniors, persons with weakened immune systems, and pregnant women.” on the container’s principal display panel and clearly readable in letters at least one-sixteenth inch in height.

(3) Temperature. Unpasteurized milk shall be cooled to 40 degrees Fahrenheit or lower within two hours of the finish of milking and so maintained until it is obtained by the consumer. All farms shall be able to demonstrate to the Agency’s inspector that they have the capacity to keep the amount of milk sold on the highest volume day stored and kept at 40 degrees Fahrenheit or lower in a sanitary and effective manner.

(4) Storage. An unpasteurized milk bulk storage container shall be cleaned and sanitized after each emptying. Each container shall be emptied within 24 hours of the first removal of milk for packaging. Milk may be stored for up to 72 hours, but all storage containers ~~must~~ shall be emptied and cleaned at least every 72 hours. Unless milk storage containers are cleaned and sanitized daily, a written log of dates and times when milking, cleaning, and sanitizing occur shall be posted in a prominent place and be easily visible to customers.

(5) Shelf life. Unpasteurized milk shall not be transferred to a consumer after four days from the date on the label.

(6) Customer inspection and notification.

(A) The producer shall provide the customer with the opportunity to tour the farm and any area associated with the milking operation. The producer shall permit the customer to return to the farm at a reasonable time and at reasonable intervals to reinspect any areas associated with the milking operation.

(B)(i) A sign that is not smaller than 8 and one half inches by 11 inches with the words ~~“Unpasteurized (Raw) Milk. Not pasteurized. Keep Refrigerated.”~~ and ~~“This product has not been pasteurized and therefore may contain harmful bacteria that can cause illness particularly in children, elders, and persons with weakened immune systems and in pregnant women can cause illness, miscarriage, or fetal death, or death of a newborn.”~~ “Consuming raw unpasteurized milk may cause illness, particularly in children, seniors, persons with weakened immune systems, and pregnant women.” shall be displayed prominently on the farm in a place where it can be easily seen by customers.

~~The lettering shall be at least one inch in height and shall be clearly readable.~~

(ii) The Secretary of Agriculture, Food and Markets shall design a template of the sign required under subdivision (6)(B)(i) of this section and shall post the template to the website of the Agency of Agriculture, Food and Markets for use by producers.

(e) A producer selling 87.5 or fewer gallons (350 quarts) of unpasteurized milk per week shall meet the requirements of subsections (a) through (d) of this section and shall sell unpasteurized milk ~~only~~ from the farm on which it was produced. A producer selling 87.5 or fewer gallons of unpasteurized milk may choose to meet the requirements of subsection (f) of this section, in which case the producer may deliver or sell in accordance with section 2778 of this title.

(f) A producer selling more than 87.5 gallons to 350 gallons (more than 350 to 1,400 quarts) of unpasteurized milk per week shall meet the requirements of subsections (a) through (d) of this section as well as the following standards:

(1) Inspection. The Agency shall annually inspect the producer's facility and determine that the producer is in compliance with the sanitary standards listed in subsection (c) of this section.

(2) Bottling. Unpasteurized milk shall be sold in containers ~~which~~ that have been filled by the producer. Containers shall be cleaned by the producer except that the producer may allow customers to clean their own containers only if each customer's container is labeled with the customer's name and address and the customers use their own containers. Producers shall ensure that only clean bottles are filled and distributed.

(3) Testing.

(A) A producer shall have unpasteurized milk tested twice per month by a U.S. Food and Drug Administration accredited laboratory using accredited lab approved testing containers. Milk shall be tested for the following and the results shall be below these limits:

(i) total bacterial (aerobic) count: 15,000 cfu l (cattle and goats);

(ii) total coliform count: 10 cfu l (cattle and goats); and

(iii) somatic cell count: 225,000 l (cattle); 500,000 l (goats).

(B) The producer shall ensure that all test results are forwarded to the Agency, by the laboratory, upon completion of testing or within five days of receipt of the results by the producer.

(C) The producer shall keep test results on file for one year and shall post results on the farm in a prominent place that is easily visible to customers. The producer shall provide test results to the farm's customers if requested.

(D) The Secretary shall issue a warning to a producer when any two out of four consecutive, monthly tests exceed the limits. The Secretary shall have the authority to suspend unpasteurized milk sales if any three out of five consecutive, monthly tests exceed the limits until an acceptable sample result is achieved. The Secretary shall not require a warning to the consumer based on a high test result.

(4) Registration. Each producer operating under this subsection shall register with the Agency.

(5) Reporting. On or before March 1 of each year, each producer shall submit to the Agency a statement of the total gallons of unpasteurized milk sold in the previous 12 months.

(6) Off-farm sale and delivery. The sale and delivery of unpasteurized milk is permitted ~~and shall be in compliance with~~ as provided for under section 2778 of this title.

(g) The sale of more than 350 gallons (1,400 quarts) of unpasteurized milk in any one week is prohibited.

#### § 2778. SALE OR DELIVERY OF UNPASTEURIZED (RAW) MILK

(a) ~~Delivery~~ Sale or delivery of unpasteurized milk off the farm is permitted only within the State of Vermont and only of milk produced by a producer meeting the requirements of subsection 2777(f) of this chapter.

(b) ~~Delivery~~ Sale or delivery of unpasteurized milk off the farm shall conform to the following requirements:

(1) ~~Delivery shall be to a customer who has purchased milk in advance either by a one-time payment or through a subscription. Milk is purchased in advance of delivery when payment is provided prior to delivery at the customer's home or prior to commencement of the farmers' market where the customer receives delivery. Vendors shall verbally inform each customer of the need to keep milk refrigerated.~~

(2) A producer may sell or deliver unpasteurized milk directly to the customer:

(A) at the customer's home or may deliver it to the customer's home when delivery is into a refrigerated unit at the customer's home if such unit is capable of maintaining the unpasteurized milk at 40 degrees Fahrenheit or lower until obtained by the customer; or

(B) at a farmers' market, as that term is defined in section 5001 of this title, where the producer is a vendor.

(3) During delivery or storage prior to sale, unpasteurized milk shall be protected from exposure to direct sunlight.

(4) During delivery or storage prior to sale, unpasteurized milk shall be kept at 40 degrees Fahrenheit or lower at all times.

(c) A producer may contract with another individual to deliver the unpasteurized milk in accordance with this section. The producer shall be jointly and severally liable for the delivery of the unpasteurized milk in accordance with this section.

~~(d) Prior to delivery at a farmers' market under this section, a producer shall submit to the Agency of Agriculture, Food and Markets written or electronic notice of intent to deliver unpasteurized milk at a farmers' market. The notice shall:~~

~~(1) include the producer's name and proof of registration;~~

~~(2) identify the farmers' market or markets where the producer will deliver milk; and~~

~~(3) specify the day or days of the week on which delivery will be made at a farmers' market.~~

(e) A producer selling or delivering unpasteurized milk at a farmers' market under this section shall display the registration required under subdivision 2777(f)(4) of this title and the sign required under subdivision 2777(d)(6) on the farmers' market stall or stand in a prominent manner that is clearly visible to consumers.

\* \* \* Farm-to-School; Local Food Grants \* \* \*

Sec. 5. 6 V.S.A. § 4721 is amended to read:

#### § 4721. LOCAL FOODS GRANT PROGRAM

(a) There is created in the Agency of Agriculture, Food and Markets the Roza McLaughlin Farm-to-School Program to execute, administer, and award local grants for the purpose of helping Vermont schools develop farm-to-school programs that will sustain relationships with local farmers and producers, enrich the educational experience of students, improve the health of Vermont children, and enhance Vermont's agricultural economy.

(b) A school, a school district, a consortium of schools, a consortium of school districts, or a registered or licensed child care providers provider, or an organization administering or assisting the development of farm-to-school

programs may apply to the Secretary of Agriculture, Food and Markets for a grant award to:

(1) fund equipment, resources, training, and materials that will help to increase use of local foods in child nutrition programs;

(2) fund items, including local food products, gardening supplies, field trips to farms, gleanings on farms, and stipends to visiting farmers, that will help educators to use hands-on educational techniques to teach children about nutrition and farm-to-school connections;

(3) fund professional development and technical assistance, in partnership with the Agency of Education and farm-to-school technical service providers, to help teachers, child nutrition personnel, organizations administering or assisting the development of farm-to-school programs, and members of the farm-to-school community educate students about nutrition and farm-to-school connections and assist schools and licensed or registered child care providers in developing a farm-to-school program; and

(4) fund technical assistance or support strategies to increase participation in federal child nutrition programs that increase the viability of sustainable meal programs.

(c) The Secretaries of Agriculture, Food and Markets and of Education and the Commissioner of Health, in consultation with farmers, child nutrition staff, educators, organizations administering or assisting the development of farm-to-school programs, and farm-to-school technical service providers jointly shall adopt procedures relating to the content of the grant application and the criteria for making awards.

(d) The Secretary shall determine that there is significant interest in the school community before making an award and shall give priority consideration to schools, school districts, and registered or licensed child care providers that are developing farm-to-school connections and education, that indicate a willingness to make changes to their child nutrition programs to increase student access and participation, and that are making progress toward the implementation of the Vermont School Wellness Policy Guidelines developed by the Agency of Agriculture, Food and Markets, the Agency of Education, and the Department of Health, updated in June 2015 or of the successor of these guidelines.

(e) No award shall be greater than ~~\$15,000.00~~ 20 percent of the total annual amount available for granting except that a grant award to the following entities may, at the discretion of the Secretary of Agriculture, Food and Markets, exceed the cap:

(1) Farm-to-School service providers; or

(2) school districts or consortiums of school districts that completed merger under 2010 Acts and Resolves No. 153, 2012 Acts and Resolves No. 156, or 2015 Acts and Resolves No. 46 on or before July 1, 2019, provided that the grant is used for the purpose of expanding Farm-to-School projects to additional schools within the new school district.

\* \* \* Agricultural Water Quality \* \* \*

Sec. 6. 6 V.S.A. § 4802 is amended to read:

§ 4802. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Agriculture, Food and Markets.

(2) “Farming” ~~shall have~~ has the same meaning as used in 10 V.S.A. § 6001(22).

(3) “Good standing” means a participant in a program administered under this chapter:

(A) does not have an active enforcement violation that has reached a final order with the Secretary; and

(B) is in compliance with all terms of a current grant agreement or contract with the Agency.

~~(3)~~(4) “Healthy soil” means soil that has a well-developed, porous structure, is chemically balanced, supports diverse microbial communities, and has abundant organic matter.

~~(4)~~(5) “Manure” means livestock waste in solid or liquid form that may also contain bedding, spilled feed, water, or soil.

~~(5)~~(6) “Secretary” means the Secretary of Agriculture, Food and Markets.

~~(6)~~(7) “Top of bank” means the point along the bank of a stream where an abrupt change in slope is evident, and where the stream is generally able to overflow the banks and enter the adjacent floodplain during an annual flood event. Annual flood event shall be determined according to the Agency of Natural Resources’ Flood Hazard Area and River Corridor Protection Procedure.

~~(7)~~(8) “Waste” or “agricultural waste” means material originating or emanating from a farm that is determined by the Secretary or the Secretary of Natural Resources to be harmful to the waters of the State, including:

sediments; minerals, including heavy metals; plant nutrients; pesticides; organic wastes, including livestock waste, animal mortalities, compost, feed and crop debris; waste oils; pathogenic bacteria and viruses; thermal pollution; silage runoff; untreated ~~milkhouse~~ milk house waste; and any other farm waste as the term “waste” is defined in 10 V.S.A. § 1251(12).

~~(8)~~(9) “Water” ~~shall~~ has have the same meaning as used in 10 V.S.A. § 1251(13).

Sec. 7. 6 V.S.A. § 4810a is amended to read:

§ 4810a. REQUIRED AGRICULTURAL PRACTICES; REVISION

(a) ~~On or before September 15, 2016, the~~ The Secretary of Agriculture, Food and Markets shall ~~file under 3 V.S.A. § 841 a final proposal of a rule amending~~ maintain the required agricultural practices in order to improve water quality in the State, assure practices on all farms eliminate adverse impacts to water quality, and implement the small farm certification program required by section 4871 of this title. At a minimum, the ~~amendments to the~~ required agricultural practices shall:

\* \* \*

(b) ~~On or before January 15, 2018, the~~ The Secretary of Agriculture, Food and Markets shall ~~amend by rule~~ maintain the required agricultural practices in order to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage. Upon adoption of requirements for subsurface tile drainage, the Secretary may require an existing subsurface tile drain to comply with the requirements of the RAPs for subsurface tile drainage upon a determination that compliance is necessary to reduce adverse impacts to water quality from the subsurface tile drain.

Sec. 8. 6 V.S.A. § 4811 is amended to read:

§ 4811. POWERS OF SECRETARY

The Secretary of Agriculture, Food and Markets in furtherance of the purposes of this chapter may:

(1) Make, adopt, revise, and amend reasonable rules which define practices described in section 4810 of this title as well as other rules deemed necessary to carry out the provisions of this chapter.

(2) Appoint assistants, subject to applicable laws, to perform or assist in the performance of any duties or functions of the Secretary under this chapter.

(3) Enter any lands, public or private, and review and copy any land management records as may be necessary to carry out the provisions of this chapter.

(4) Sign memorandums of understanding between agencies when the Secretary of Agriculture, Food and Markets agrees it is necessary for the success of the program.

(5) Solicit and receive federal or private funds.

(6) Cooperate fully with the federal government or other agencies in the operation of any joint federal-state programs concerning the regulation of agricultural non-point source pollution.

(7) Establish programs to improve agricultural water quality.

(8) Provide grants or contracts from agricultural water quality programs established under this chapter, or by the Secretary of Agriculture, Food and Markets for the purpose of providing technical and financial assistance in preventing agricultural pollution from entering groundwater and waters of the State, provided that the Secretary shall only use capital funding available to the Agency for water quality programs or projects that are eligible for capital assistance.

Sec. 9. 6 V.S.A. § 4820 is amended to read:

§ 4820. DEFINITIONS

As used in this subchapter:

\* \* \*

(6) ~~“Good standing” means the participant:~~

~~(A) does not have an active enforcement violation that has reached a final order with the Secretary; or~~

~~(B) is in compliance with all terms of a current grant agreement or contract with the Agency. [Repealed.]~~

Sec. 10. 6 V.S.A. § 4828 is amended to read:

§ 4828. CAPITAL EQUIPMENT ASSISTANCE PROGRAM

(a) It is the purpose of this section to provide assistance to ~~contract applicators, nonprofit organizations, and farms~~ to purchase or use innovative equipment that will aid in the reduction of surface runoff of agricultural wastes to State waters, improve water quality of State waters, reduce odors from manure application, separate phosphorus from manure, decrease greenhouse gas emissions, and reduce costs to farmers.

(b) The capital equipment assistance program is created in the Agency of Agriculture, Food and Markets to provide ~~farms, nonprofit organizations, and custom applicators in Vermont~~ with State financial assistance for the purchase



of new or innovative equipment to improve manure application, separation of phosphorus from manure, or nutrient management plan implementation.

(c) Assistance under this section shall in each fiscal year be allocated according to the following priorities and as further defined by the Secretary:

~~(1) First priority.~~ Priority shall be given to capital equipment to be used on ~~farm sites that are serviced by custom applicators, multiple farms;~~ equipment to be used for phosphorus reduction, separation, or treatment equipment providers; and projects managed by nonprofit organizations and projects that are located in descending order within the boundaries of:

~~(A)(1)~~ the Lake Champlain Basin;

~~(B)(2)~~ the Lake Memphremagog Basin;

~~(C)(3)~~ the Connecticut River Basin; and

~~(D)(4)~~ the Hudson River Basin.

~~(2) Next priority shall be given to capital equipment to be used at a farm site that is located in descending order within the boundaries of:~~

~~(A) the Lake Champlain Basin;~~

~~(B) the Lake Memphremagog Basin;~~

~~(C) the Connecticut River Basin; and~~

~~(D) the Hudson River Basin.~~

(d) An applicant for a State grant under this section to purchase or implement phosphorus ~~removal~~ reduction, separation, or treatment technology or equipment shall pay 10 percent of the total eligible project cost. The dollar amount of a State grant to purchase or implement phosphorus ~~removal~~ reduction, separation, or treatment technology or equipment shall be equal to the total eligible project cost, less 10 percent of the total as paid by the applicant, and shall not exceed \$300,000.00.

Sec. 11. 6 V.S.A. § 4989 is amended to read:

§ 4989. CERTIFICATION OF NUTRIENT MANAGEMENT PLAN  
TECHNICAL SERVICE PROVIDERS

(a) ~~On or before July 1, 2019, the~~ The Secretary of Agriculture, Food and Markets shall adopt by rule a process by which a nutrient management technical service provider shall be certified to operate within the State. The certification process shall require a nutrient management technical service provider to complete eight hours of training over each five-year period regarding:

- (1) calculating manure and agricultural waste generation;
- (2) taking soil and manure samples;
- (3) identifying and creating maps of all natural resource features;
- (4) use of erosion calculation tools;
- (5) reconciling plans using records;
- (6) use of nutrient index tools; and
- (7) requirements within the Required Agricultural Practices, Medium Farm Operation rules and general permit, and Large Farm Operation rules.

~~(b) Beginning on July 1, 2019, a nutrient management technical service provider shall not create a nutrient management plan for a farm unless certified by the Secretary of Agriculture, Food and Markets~~ Beginning 45 days after the effective date of the rule adopted by the Secretary of Agriculture, Food and Markets under subsection (a) of this section to regulate nutrient management technical service providers, a nutrient management technical service provider shall not create a nutrient management plan for a farm unless certified by the Secretary of Agriculture, Food and Markets.

\* \* \* Environmental Stewardship Program \* \* \*

Sec. 12. 6 V.S.A. chapter 215, subchapter 7A is added to read:

Subchapter 7A. Regenerative Farming

§ 4961. PURPOSE

The purposes of this subchapter are to:

- (1) enhance the economic viability of farms in Vermont;
- (2) improve the health and productivity of the soils of Vermont;
- (3) encourage farmers to implement regenerative farming practices;
- (4) reduce the amount of agricultural waste entering the waters of Vermont;
- (5) enhance crop resilience to rainfall fluctuations and mitigate water damage to crops, land, and surrounding infrastructure;
- (6) promote cost-effective farming practices;
- (7) reinvigorate the rural economy; and
- (8) help the next generation of Vermont farmers learn regenerative farming practices so that farming remains integral to the economy, landscape, and culture of Vermont.

## § 4962. DEFINITIONS

As used in this subchapter:

(1) “Certified Vermont Environmental Steward” means an owner or operator of a farm who has achieved the thresholds for the Vermont Environmental Stewardship Program to be certified as a farm that improves soil health and contributes to improving water quality.

(2) “Regenerative farming” means a series of cropland management practices that:

(A) contributes to generating or building soils and soil fertility and health;

(B) increases water percolation, increases water retention, and increases the amount of clean water running off farms;

(C) increases biodiversity and ecosystem health and resiliency; and

(D) sequesters carbon in agricultural soils.

## § 4963. REGENERATIVE FARMING; VERMONT ENVIRONMENTAL STEWARDSHIP PROGRAM

(a) Establishment of program. There is created within the Agency of Agriculture, Food and Markets the Vermont Environmental Stewardship Program (VESP) to provide technical and financial assistance to Vermont farmers seeking to implement regenerative farming practices to achieve certification as a Certified Vermont Environmental Steward.

(b) Program standards; application. The Secretary of Agriculture, Food and Markets shall establish by procedure standards for certification as a Certified Environmental Steward. Application for certification shall be made in the manner required by the Secretary of Agriculture, Food and Markets.

(c) Program services. The VESP shall provide the following services to farmers voluntarily seeking to transition to achieve certification as a Certified Vermont Environmental Steward:

(1) information and education regarding the requirements for certification, including the method, timeline, and process of certification;

(2) technical assistance in completing any required application for certification;

(3) technical assistance in developing plans and implementing practices to achieve certification from the VESP; and

(4) technical assistance in complying with the requirements of the VESP after a farm is certified.

(d) Financial assistance; eligibility. An owner or operator of a farm participating in the VESP shall be eligible for financial assistance from existing Agency of Agriculture, Food and Markets financial assistance programs for costs incurred in implementing any of the practices required for certification as a Certified Environmental Steward.

(e) Revocation of certification. The Secretary may, after due notice and hearing, revoke a certification issued under this section when the owner or operator of a certified farm fails to comply with the standards for certification established under subsection (b) of this section.

(f) Administrative penalty; falsely advertising. The Secretary may assess an administrative penalty of up to \$1,000.00 against the owner or operator of a farm who knowingly advertises as a Certified Environmental Steward when not certified by the Secretary.

#### Sec. 13. FUNDING VERMONT ENVIRONMENTAL STEWARDSHIP PROGRAM

In addition to the existing capital and noncapital financial assistance that may be available to a farmer from the Agency of Agriculture, Food and Markets, the Agency of Agriculture, Food and Markets separately may use funds available to the Agency and eligible for use for water quality programs or projects to provide noncapital financial incentives to Vermont farmers participating in the Vermont Environmental Stewardship Program to implement regenerative farming practices to achieve certification as a Certified Vermont Environmental Steward.

\* \* \* Conservation Reserve Enhancement Program \* \* \*

Sec. 14. 6 V.S.A. § 4829 is added to read:

#### § 4829. CONSERVATION RESERVE ENHANCEMENT PROGRAM

(a) The Conservation Reserve Enhancement Program is created in the Agency of Agriculture, Food and Markets to provide the farms of Vermont with State or federal financial assistance for the implementation of alternative nutrient reduction practices that improve soil quality, improve nutrient retention, and reduce agricultural waste discharges. The Agency of Agriculture, Food and Markets may approve one or more of the following practices for participation in the program:

(1) riparian forest buffers;

(2) grassed waterways;

(3) grassed filter strips; or

(4) other practices approved by the Secretary and administered through a memorandum of understanding with the Commodity Credit Corporation.

(b) Grant agreements entered into under this section shall at a minimum have a term of 15 years in duration and can include permanent easements.

(c)(1) The Agency of Agriculture, Food and Markets shall use capital funding available to the Agency and eligible for use for water quality programs or projects to provide financial assistance to Vermont farmers to complete practices approved by the Agency for participation in the program under subdivisions (a)(1)–(3) of this section.

(2) The Agency shall use noncapital funds eligible for use for water quality programs or projects to provide financial assistance to Vermont farmers to complete practices approved by the Agency for participation in the program under subdivision (a)(4) of this section.

\* \* \* Agriculture Environmental Management Program \* \* \*

Sec. 15. 6 V.S.A. § 4830 is added to read:

§ 4830. AGRICULTURAL ENVIRONMENTAL MANAGEMENT PROGRAM

(a) The Agricultural Environmental Management Program is created in the Agency of Agriculture, Food and Markets to provide the farms of Vermont with State financial assistance to alternatively manage their farmstead, cropland, and pasture in a manner that will address identified water quality concerns that, traditionally, would have been wholly or partially addressed through federal, State, and landowner investments in BMP infrastructure, in agronomic practices, or both. The Agency of Agriculture, Food and Markets may approve one or more of the following practices for participation in the program:

(1) conservation easements;

(2) land acquisition;

(3) farm structure decommissioning;

(4) site reclamation; or

(5) issue a grant as an in-lieu payment not to exceed \$200,000.00 as an alternative to the best management practice program implementation to otherwise address the same conservation issues for an equivalent or longer term.

(b) The Agency of Agriculture, Food and Markets shall use funds available to the Agency and eligible for use for water quality programs or projects to provide financial assistance to Vermont farmers, provided that the Agency may use capital funds to provide financial assistance for practices approved under subdivisions (a)(1)–(4) of this section if the practice is:

(1) performed in conjunction with a term agreement of not less than 15 years in duration or a permanent easement protecting the investment; and

(2) abating a water quality resource concern on a farm; and

(3) the Agency may use capital funds to provide financial assistance for a practice approved under subdivision (a)(5) of this section only upon the approval of the State Treasurer.

\* \* \* Emergency Environmental Remediation \* \* \*

Sec. 16. 6 V.S.A. § 21 is amended to read:

§ 21. AUTHORITY TO ADDRESS PUBLIC HEALTH HAZARDS AND  
FOOD SAFETY ISSUES

(a) As used in this section:

(1) “Adulterated” shall have the same meaning as in 18 V.S.A. § 4059 and shall include adulteration under rules adopted under 18 V.S.A. chapter 82.

(2) “Emergency” means any natural disaster, weather-related incident, health- or disease-related incident, resource shortage, plant pest outbreak, accident, or fire that poses a threat or may pose a threat, as determined by the Secretary, to health, safety, the environment, or property in Vermont.

(3) “Farm” means a site or parcel on which farming is conducted.

(4) “Farming” shall have the same meaning as in 10 V.S.A. § 6001(22).

(5) “Public health hazard” means the potential harm to the public health by virtue of any condition or any biological, chemical, or physical agent. In determining whether a health hazard is public or private, the Secretary shall consider at least the following factors:

(A) the number of persons at risk;

(B) the characteristics of the person or persons at risk;

(C) the characteristics of the condition or agent that is the source of potential harm;

(D) the availability of private remedies;

(E) the geographical area and characteristics thereof where the condition or agent that is the source of the potential harm or the receptors exists; and

(F) the policy of the Agency of Agriculture, Food and Markets as established by rule or procedure.

(6) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(7) "Secretary" means the Secretary of Agriculture, Food and Markets.

(b) The Secretary shall have the authority to:

(1) respond to and remediate incidences of mass animal death, agricultural structure fires, or other emergencies on a farm in order to prevent a public health hazard or protect the environment, including:

(A) Expending up to \$25,000.00 in funding from the Agency of Agriculture, Food and Markets' budget to remediate the issue when there are no other financial resources available, and the Secretary has determined the expenditure is necessary for either public health or the environment.

(B) The Secretary may attempt to recover monies expended under subdivision (b)(1)(A) of this subsection from the responsible party;

(2) condemn, confiscate, or establish restrictions on the use, sale, or distribution of adulterated raw agricultural commodities or animal feed; and

(3) cooperate with the Department of Health and other State and federal agencies regarding:

(A) the prevention or remediation of the adulteration of raw agricultural commodities, food, or animal feed on farms; and

(B) application of the FDA Food Safety Modernization Act, Pub. L. No. 111-353, to farms, farm products, or value-added products produced in the State.

\* \* \* Slaughter Facilities; Records \* \* \*

Sec. 17. 6 V.S.A. § 1152 is amended to read:

§ 1152. ADMINISTRATION; INSPECTION; TESTING; RECORDS

(a) The Secretary shall be responsible for the administration and enforcement of the ~~livestock disease control program~~ Livestock Disease Control Program. The Secretary may appoint the State Veterinarian to manage the ~~program~~ Program, and other personnel as are necessary for the sound administration of the ~~program~~ Program.

(b) The Secretary shall maintain a public record of all permits issued and of all animals tested by the Agency of Agriculture, Food and Markets under this chapter for a period of five years.

(c) The Secretary may conduct any inspections, investigations, tests, diagnoses, or other reasonable steps necessary to discover and eliminate contagious diseases existing in domestic animals in this State. The Secretary shall investigate any reports of diseased animals, provided there are adequate resources. In carrying out the provisions of this part, the Secretary or his or her authorized agent may enter any real estate, premises, buildings, enclosures, or areas where animals may be found for the purpose of making reasonable inspections and tests. A livestock owner or the person in possession of the animal to be inspected, upon request of the Secretary, shall restrain the animal and make it available for inspection and testing.

(d) The Secretary may contract and cooperate with the U.S. Department of Agriculture, other federal agencies or states, and accredited veterinarians for the control and eradication of contagious diseases of animals. The Secretary shall consult and cooperate, as appropriate, with the Commissioners of Fish and Wildlife and of Health regarding the control of contagious diseases.

(e) If necessary, the Secretary shall set priorities for the use of the funds available to operate the ~~program~~ Program established by this chapter.

(f) Any commercial slaughterhouse operating in the State shall maintain and retain for three years records of the number of animals slaughtered at the facility, the physical address of origination of each animal, the date of slaughter of each animal, and all official identification numbers of slaughtered animals. A commercial slaughterhouse shall make the records required under this subsection available to the Agency upon request.

(g) Records produced or acquired by the Secretary under this chapter shall be available to the public, except that:

(1) the Secretary may withhold from inspection and copying records that are confidential under federal law; and

(2) the Secretary may withhold or redact a record to the extent needed to avoid disclosing directly or indirectly the identity of individual persons, households, or businesses.

Sec. 18. 6 V.S.A. § 1470 is added to read:

§ 1470. RECORDS

(a) A commercial slaughter facility operating in the State shall maintain and retain for three years records of the number of animals slaughtered at the



facility, the physical address of origination of each animal, the date of slaughter of each animal, and all official identification numbers of slaughtered animals. A commercial slaughterhouse shall make the records required under this subsection available to the Agency upon request.

(b) Records produced or acquired by the Secretary under this chapter shall be available to the public for inspection and copying, except that:

(1) the Secretary may withhold from inspection and copying records that are confidential under federal law; and

(2) the Secretary may withhold or redact a record to the extent needed to avoid disclosing directly or indirectly the identity of individual persons, households, or businesses.

\* \* \* Commercial Feed; Raw Milk \* \* \*

Sec. 19. 6 V.S.A. § 329 is amended to read:

§ 329. RULES

(a) The Secretary is authorized to adopt rules establishing procedures or standards, or both, for product registration, labeling, adulteration, reporting, inspection, sampling, guarantees, product analysis, or other conditions necessary for the implementation and enforcement of this chapter. Where appropriate, the rules shall be consistent with the model rules developed by the Association of American Feed Control Officials and regulations adopted by the federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.).

(b) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization, together with any regulation promulgated pursuant to the authority of the federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), relevant to the subject matter of this chapter, are hereby adopted as rules under this chapter, together with all subsequent amendments. The Secretary may, by rule, amend or repeal any rule adopted under this subsection.

(c) A person shall not manufacture or distribute raw milk as a commercial feed in the State for any species unless all of the following conditions are satisfied:

(1) the raw milk shall be decharacterized using a sufficient method to render it distinguishable from products packaged for human consumption;

(2) raw animal feed or pet food product shall be packaged in containers that are labeled “not for human consumption”;

(3) raw animal feed or pet food products shall not be stored or placed for retail sale with, or in the vicinity of, milk or milk products intended for human consumption; and

(4) notwithstanding any rule adopted under subsection (b) of this section to the contrary of the provisions of this subsection, the manufacture and distribution of raw animal feed or pet food products shall comply with the requirements of this chapter.

\* \* \* Clean Water Fund Audit \* \* \*

Sec. 20. 10 V.S.A. § 1389b is amended to read:

§ 1389b. CLEAN WATER FUND AUDIT

(a) On or before January 15, 2021, the Secretary of Administration shall submit to the House and Senate Committees on Appropriations, the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Committee on Agriculture, the House Committee on Agriculture and Forestry, the Senate Committee on Natural Resources and Energy, and the House Committee on Natural Resources, Fish, and Wildlife a program audit of the Clean Water Fund. The audit shall include:

(1) a summary of the expenditures from the Clean Water Fund, including the water quality projects and programs that received funding;

(2) an analysis and summary of the efficacy of the water quality projects and programs funded from the Clean Water Fund or implemented by the State;

(3) an evaluation of whether water quality projects and programs funded or implemented by the State are achieving the intended water quality benefits;

(4) an assessment of the capacity of the Agency of Agriculture, Food and Markets to effectively administer and enforce agricultural water quality requirements on farms in the State; ~~and~~

(5) an assessment of the capacity of the Department of Environmental Conservation to effectively administer and enforce agricultural water quality requirements on farms in the State; and

(6) a recommendation of whether the General Assembly should authorize the continuation of the Clean Water Fund and, if so, at what funding level.

(b) The audit required by this section shall be conducted by a qualified, independent environmental consultant or organization with knowledge of the federal Clean Water Act, State water quality requirements and programs, the Lake Champlain Total Maximum Daily Load plan, and the program elements of the State clean water initiative.

(c) Notwithstanding provisions of section 1389 of this title to the contrary, the Secretary of Administration shall pay for the costs of the audit required under this section from the Clean Water Fund, established under section 1388 of this title.

\* \* \* Pumpout Tank \* \* \*

Sec. 21. 10 V.S.A. § 1979 is amended to read:

(b)(1) The Secretary shall approve the use of sewage holding and pumpout tanks for existing or proposed buildings or structures that are owned by a charitable, religious, or nonprofit organization when he or she determines that:

(A) the plan for construction and operation of the holding tank will not result in a public health hazard or environmental damage;

(B) a designer demonstrates that an economically feasible means of meeting current standards is significantly more costly than the construction and operation of sewage holding and pumpout tanks, based on a projected 20-year life of the project; and

(C) the design flows do not exceed 600 gallons per day or the existing or proposed building or structure shall not be used to host events on more than 28 days in any calendar year.

(2) Before constructing a holding tank permitted under this subsection, the applicant shall post a bond or other financial surety sufficient to finance maintenance of the holding tank for the life of the system, which shall be at least 20 years.

(3)(A) A permit issued under this subsection shall run with the land for the duration of the permit and shall apply to all subsequent owners of the property being served by the holding tank regardless of whether the owner is a charitable, religious, or nonprofit organization.

(B) All permit conditions, including the financial surety requirement of subdivision (2) of this subsection (b), shall apply to a subsequent owner.

(C) A subsequent owner shall not increase the design flows of the holding and pumpout tank system without approval from the Secretary.

\* \* \* Wetlands \* \* \*

Sec. 22. LEGISLATIVE STUDY COMMITTEE ON WETLANDS;  
REPORT

(a) Creation. There is created the Legislative Study Committee on Wetlands to clarify State wetlands statutes and permitting under the statutes.

(b) Membership. The Legislative Study Committee on Wetlands shall be composed of the following members:

(1) two current members of the Senate Committee on Agriculture, who shall be appointed by the Committee on Committees;

(2) two current members of the Senate Committee on Natural Resources and Energy, who shall be appointed by the Committee on Committees;

(3) two current members of the House Committee on Agriculture and Forestry, who shall be appointed by the Speaker of the House; and

(4) two current members of the House Committee on Natural Resources, Fish and Wildlife, who shall be appointed by the Speaker of the House.

(c) Assistance. The Legislative Study Committee on Wetlands shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal Office.

(d) Report. On or before January 15, 2020, the Legislative Study Committee on Wetlands shall submit a written report to the General Assembly to update and clarify the requirements for the regulation of wetlands under State statute. The Study Committee shall submit the report in the form of draft legislation and shall include:

(1) whether the definition of “wetlands” should be amended, including whether the definition of wetlands under State wetlands law should be based on objective criteria such as size or location;

(2) the standard by which the State shall review a permit application for the disturbance of a wetland or wetland buffer;

(3) proposed exemptions from regulation under State wetlands law for specific activities, including:

(A) whether land on which farming or a subset of farming is conducted should be excluded from the definition of “wetlands” subject to State regulation or should be exempt from wetlands permitting under State law; and

(B) whether the exemptions under State wetlands law should be consistent or similar to the exemptions under federal wetlands law; and

(4) proposed permitting fees for wetlands permits.

(f) Meetings.

(1) The Office of Legislative Council shall call the first meeting of the Legislative Study Committee on Wetlands to occur on or before August 1, 2019.

(2) The Legislative Study Committee on Wetlands shall select a chair from among its members at the first meeting.

(3) A majority of the Legislative Study Committee on Wetlands shall constitute a quorum.

(4) The Legislative Study Committee on Wetlands shall cease to exist on January 15, 2020.

(g) Compensation and reimbursement. For attendance at meetings during adjournment of the General Assembly, a legislative member of the Legislative Study Committee on Wetlands shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than six meetings. These payments shall be made from monies appropriated to the General Assembly.

Sec. 23. 3 V.S.A. § 2822(j) is amended to read:

(j) In accordance with subsection (i) of this section, the following fees are established for permits, licenses, certifications, approvals, registrations, orders, and other actions taken by the Agency of Natural Resources.

\* \* \*

(26) For individual conditional use determinations, for individual wetland permits, for general conditional use determinations issued under 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit, an administrative processing fee assessed under subdivision (2) of this subsection and an application fee of:

(A) \$0.75 per square foot of proposed impact to Class I or II wetlands.

(B) \$0.25 per square foot of proposed impact to Class I or II wetland buffers.

\* \* \*

(H) Maximum fee, for the construction of any water quality improvement project in any Class II wetland or buffer, \$200.00 per application. As used in this subdivision, "water quality improvement project" means projects specifically designed and implemented to reduce pollutant loading in accordance with the requirements of a Total Maximum Daily Load Implementation Plan or Water Quality Remediation Plan, or pursuant to a plan for reducing pollutant loading to a waterbody. These projects include:

(i) the retrofit of impervious surfaces in existence as of January 1, 2019 for the purpose of addressing stormwater runoff;

(ii) the replacement of stream-crossing structures necessary to improve aquatic organism passage, stream flow, or flood capacity;

(iii) construction of the following conservation practices on farms, when constructed and maintained in accordance with Natural Resources Conservation Service Conservation Practice Standards for Vermont and the Agency of Agriculture, Food and Markets' Required Agricultural Practices:

(I) construction of animal trails and walkways;

(II) construction of access roads;

(III) designation and construction of a heavy-use protection area;

(IV) construction of artificial wetlands; and

(V) the relocation of structures, when necessary, to allow for the management and treatment of agricultural waste, as defined in the Required Agricultural Practices Rule.

(I) Maximum fee for the construction of a permanent structure used for farming, \$5,000.00, provided that the maximum fee for waste storage facility or bunker silo shall be \$200.00 when constructed and maintained in accordance with Natural Resources Conservation Service Conservation Practice Standards for Vermont and the Agency of Agriculture, Food and Markets' Required Agricultural Practices. As used in this subdivision, "permanent structure," "farming," and "waste storage facility" have the same meaning as in 10 V.S.A. § 902.

#### **Sec. 24. WETLAND SCIENTIST LICENSURE REQUIREMENTS**

The Agency of Natural Resources shall commence a study of potential approaches to licensing and certifying qualified wetlands scientists, including developing a set of standard qualifications required for all professional wetland scientists. On or before January 1, 2024, the Agency shall submit a report to the Legislature summarizing its findings and providing recommendations for the development of a professional certification program for wetland scientists.

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

Sec. 25. EFFECTIVE DATES

(a) This section and Secs. 23 (wetlands permit fees) and 24 (wetlands scientist licensing) shall take effect on passage.

(b) All other sections shall take effect on July 1, 2019.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 21, 2019, pages 573-576)

**Reported favorably by Senator Pearson for the Committee on Finance.**

The Committee recommends that the bill be amended as recommended by the Committee on Agriculture and when so amended ought to pass.

(Committee vote: 7-0-0)

**Reported favorably by Senator Starr for the Committee on Appropriations.**

The Committee recommends that the bill be amended as recommended by the Committee on Agriculture and when so amended ought to pass.

(Committee vote: 6-0-1)

**H. 530.**

An act relating to the qualifications and election of the Adjutant and Inspector General.

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

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

Sec. 1. 2 V.S.A. § 10 is amended to read:

**§ 10. ELECTION OF STATE AND JUDICIAL OFFICERS**

(a) At 10 o'clock and 30 minutes, forenoon, on the seventh Thursday after their biennial meeting and organization, the Senate and House of Representatives shall meet in joint assembly and proceed therein to elect the State officers, except judicial officers, whose election by the Constitution and laws devolves in the first instance upon them in joint assembly, including the Sergeant at Arms, ~~the Adjutant and Inspector General,~~ and the legislative trustees of the University of Vermont and State Agricultural College. In case

election of all such officers shall not be made on that day, they shall meet in joint assembly at 10 o'clock and 30 minutes, forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed in such election, until all such officers are elected.

\* \* \*

Sec. 2. REDESIGNATION; ADDITION OF SUBCHAPTER

20 V.S.A. chapter 21, subchapter 1, which shall include 20 V.S.A. §§ 361–369, is added to read:

Subchapter 1. General Provisions

Sec. 3. 20 V.S.A. chapter 21, subchapter 2 is added to read:

Subchapter 2. Adjutant and Inspector General Nominating Board

§ 370. ADJUTANT AND INSPECTOR GENERAL NOMINATING BOARD

(a) The Adjutant and Inspector General Nominating Board is created to nominate candidates for Adjutant and Inspector General.

(b)(1) The Board shall consist of nine members who shall be selected as follows:

(A) one member appointed by the Governor, who shall not be a current member of the Vermont National Guard;

(B) one member appointed by the Executive Director of the Vermont Office of Veterans Affairs, who shall be a veteran but shall not be a current member of the Vermont National Guard;

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

(D) three members of the House, not all of whom shall be members of the same party, appointed by the Speaker of the House; and

(E) three members of the Senate, not all of whom shall be members of the same party, appointed by the Committee on Committees.

(2)(A) The members of the Board shall serve for terms of two years and may serve for not more than three consecutive terms.

(B)(i) All appointments shall be made between January 15 and February 15 of each odd-numbered year, except to fill a vacancy.



(ii) Any vacancy in the membership of the Board shall be filled by the appointing authority for the remainder of the term.

(C) Members shall serve until their successors are appointed.

(3) The members shall elect their own chair who shall serve for a term of two years.

(c) Legislative members of the Board shall be entitled to per diem compensation and reimbursement for expenses in accordance with 2 V.S.A. § 406. Members of the Board who are not otherwise compensated by their employer shall be entitled to per diem compensation and reimbursement for expenses in the same manner as board members are compensated under 32 V.S.A. § 1010. The compensation and reimbursement for the Board members shall be paid from the legislative appropriation.

(d) A quorum of the Board shall consist of a majority of the members.

(e) The Board may use the staff and services of the Legislative Council to, in addition to other duties, obtain information regarding candidates for Adjutant and Inspector General by soliciting comments from members of the Vermont National Guard and the public.

#### § 371. DECLARATION OF CANDIDACY FOR ADJUTANT AND INSPECTOR GENERAL; REQUIREMENTS

(a)(1) All candidates for Adjutant and Inspector General shall, on or before January 15 of each even-numbered year, declare their candidacy to the Board pursuant to procedures adopted by the Board and demonstrate that they meet the qualifications set forth in subsection (b) of this section as required pursuant to procedures adopted by the Board.

(2)(A) In the case of a vacancy occurring during a term, any candidates for Adjutant and Inspector General shall, not later than 90 days after the office of Adjutant and Inspector General becomes vacant, declare their candidacy to the Board pursuant to procedures adopted by the Board and demonstrate that they meet the qualifications set forth in subsection (b) of this section as required pursuant to procedures adopted by the Board.

(B) During a vacancy in the Office of Adjutant and Inspector General, the Deputy Adjutant General shall fulfill the Duties of the Office until a new Adjutant and Inspector General is appointed by the Governor.

(b) A candidate for Adjutant and Inspector General shall:

(1) be a resident of Vermont;

(2) have attained the rank of lieutenant colonel (O-5) or above;

(3) be a current member of the U.S. Army, the U.S. Air Force, the U.S. Army Reserve, the U.S. Air Force Reserve, the Army National Guard or the Air National Guard, or be eligible to return to active service in the Army National Guard or the Air National Guard; and

(4) be a graduate of a Senior Service College or currently enrolled in a Senior Service College.

(c) As used in this section, “resident of Vermont” means an individual who is domiciled in Vermont as evidenced by an intent to maintain a principal dwelling place in Vermont indefinitely and to return to Vermont if temporarily absent, coupled with an act or acts consistent with that intent.

#### § 372. PROCEDURES OF THE BOARD; CONFIDENTIALITY

(a) The Board shall endeavor to adopt all necessary forms and procedures for receiving and reviewing applications of candidates for Adjutant and Inspector General by September 30 of the first year of each biennial session.

(b) The Board’s procedures shall not be subject to rulemaking under 3 V.S.A. §§ 836–844 and may be adopted and revised at the discretion of the Board.

(c) All candidates shall have the right to a reasonable time period to prepare and present to the Board a response to any testimony or written complaint adverse to their candidacy for Adjutant and Inspector General.

(d)(1) Except as otherwise provided by subdivision (2) of this subsection:

(A) the proceedings of the Board shall be confidential and exempt from the Vermont Open Meeting Law, 1 V.S.A. chapter 5, subchapter 2; and

(B) all records of the Board, including information related to candidates, shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

(2) The following shall be public:

(A) the Board’s operating procedures;

(B) the Board’s application procedures and any application or other forms used by the Board, provided they do not contain information about a candidate or confidential proceedings;

(C) proceedings of the Board that are not directly related to the consideration of candidates;

(D) the names of the candidates; and

(E) the list of well-qualified candidates submitted to the Governor by the Board.

#### § 373. DUTIES OF NOMINATING BOARD

(a) Evaluation. In determining whether a candidate for Adjutant and Inspector General should be submitted to the Governor for consideration, the Board shall do the following:

(1) Interview the candidate for Adjutant and Inspector General.

(2) Hold a hearing to receive information and hear testimony in relation to the candidates.

(3) Review comments received in relation to the candidate from members of the Vermont National Guard and the public. The Board may, in its discretion, conduct interviews or seek additional information related to comments received in relation to a candidate.

(4) Determine whether the candidate is well qualified for appointment by the Governor based on the candidate's application materials and interview, and any comments and related information received in relation to the candidate. The Board shall evaluate whether each candidate is well qualified based on:

(A) whether the candidate satisfies the qualifications set forth in subsection 371(b) of this chapter; and

(B) the candidate's leadership; integrity; and administrative and communication skills.

(b) Nomination. After interviewing and evaluating each of the candidates, the Board shall submit to the Governor a list of all well qualified candidates for Adjutant and Inspector General.

Sec. 4. 20 V.S.A. § 363 is amended to read:

#### § 363. OFFICERS GENERALLY

(a)(1) ~~The General Assembly shall biennially elect~~ On or before April 15 of the second year of each biennial session, the Governor shall appoint, with the advice and consent of the Senate and from a list of candidates submitted by the Adjutant and Inspector General Nominating Board, an Adjutant and Inspector General, who for a term of two years.

(2) An Adjutant and Inspector General appointed to fill a vacancy occurring during a term shall serve the remainder of the unexpired term.

(3)(A) The Adjutant and Inspector General shall, at all times during the term of office satisfy the requirements set forth in 20 V.S.A. § 371(b).

(b) The Adjutant and Inspector General shall also be Quartermaster General with the rank of a major general.

(c)(1) The Adjutant General may appoint a ~~deputy~~ Deputy with appropriate rank, the approval of the Governor. The Adjutant General may also appoint an Assistant Adjutant General for Army, an Assistant Adjutant General for Air, an Assistant Adjutant General for Joint Operations, a Sergeant Major, and a Chief Master Sergeant, without pay, with the approval of the Governor.

(2) The Adjutant and Inspector General may remove the appointed assistant adjutant generals and sergeants and shall be responsible for their acts.

(3) Upon appointment, each Assistant Adjutant General shall be a federally recognized officer of the National Guard of the rank of lieutenant colonel or above, and shall have a rank of colonel or brigadier general, and the Sergeant Major shall be a federally recognized noncommissioned officer of the National Guard of the rank of master sergeant or first sergeant or above, and the Chief Master Sergeant shall be a federally recognized noncommissioned officer of the rank of senior master sergeant or first sergeant.

(4) The Deputy, Assistants ~~assistants~~, and Sergeants ~~sergeants~~ shall perform duties as the Adjutant and Inspector General and ~~Quartermaster General~~ shall direct.

(d)(1) In the absence or disability of the ~~officer~~ Adjutant and Inspector General, the Deputy shall perform the duties of that office.

(2) In case a vacancy occurs in the office of Adjutant and Inspector General and ~~Quartermaster General~~, the Deputy shall assume and discharge the duties of the office until the vacancy is filled.

(e) ~~The appointments~~ Appointments made pursuant to subsections (a) and (c) of this section shall be in writing and recorded in the ~~office~~ Office of the Secretary of State.

(f) All other officers of the National Guard shall be chosen in accordance with rules adopted by the Governor consistent with the laws of this State and the United States.

## Sec. 5. ADJUTANT AND INSPECTOR GENERAL; CURRENT TERM

Notwithstanding any provision of law to the contrary, the term of the Adjutant and Inspector General in office on the effective date of this act shall end on April 15, 2022.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2020.

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

An act relating to the qualifications and appointment of the Adjutant and Inspector General.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 22, 2019, pages 646-647)

**Reported favorably by Senator Kitchel for the Committee on Appropriations.**

The Committee recommends that the bill be amended as recommended by the Committee on Government Operations and when so amended ought to pass.

(Committee vote: 6-0-1)

**House Proposals of Amendment**

**S. 31**

An act relating to informed health care financial decision making.

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

Sec. 1. 18 V.S.A. chapter 42 is amended to read:

**CHAPTER 42. BILL OF RIGHTS FOR HOSPITAL PATIENTS AND  
PATIENT ACCESS TO INFORMATION**

**Subchapter 1. Bill of Rights for Hospital Patients**

**§ 1851. DEFINITIONS**

As used in this ~~chapter~~ subchapter:

(1) "Hospital" means a ~~general~~ hospital required to be licensed under ~~18 V.S.A. chapter 43~~ of this title.

(2) "Patient" means a person admitted to a hospital on an inpatient basis.

**§ 1852. PATIENTS' BILL OF RIGHTS; ADOPTION**

\* \* \*

(12) The patient has the right to receive an itemized, detailed, and understandable explanation of charges regardless of the source of payment and to be provided with information about financial assistance and billing and collections practices.

\* \* \*

## Subchapter 2. Access to Information

### § 1854. PUBLIC ACCESS TO INFORMATION

\* \* \*

### § 1855. AMBULATORY SURGICAL PATIENTS; EXPLANATION OF CHARGES

(a) As used in this section:

(1) “Ambulatory surgical center” has the same meaning as in section 9432 of this title.

(2) “Hospital” means a hospital required to be licensed under chapter 43 of this title.

(b) A patient receiving outpatient surgical services or an outpatient procedure at an ambulatory surgical center or hospital shall receive an itemized, detailed, and understandable explanation of charges regardless of the source of payment and shall be provided with information about the ambulatory surgical center’s or hospital’s financial assistance and billing and collections practices.

Sec. 2. 18 V.S.A. § 9375(b) is amended to read:

(b) The Board shall have the following duties:

\* \* \*

(14) 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.

Sec. 3. 18 V.S.A. § 9351 is amended to read:

§ 9351. HEALTH INFORMATION TECHNOLOGY PLAN

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

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

(3)(A) The Department, in consultation with the Steering Committee, shall administer the Plan, ~~which shall~~.

(B) The Plan shall include the implementation of an integrated electronic health information infrastructure for the sharing of electronic health information among health care facilities, health care professionals, public and private payers, and patients. The Plan shall provide for each patient's electronic health information to be accessible to health care facilities, health care professionals, and public and private payers to the extent permitted under federal law unless the patient has affirmatively elected not to have the patient's electronic health information shared in that manner.

(C) The Plan shall include standards and protocols designed to promote patient education, patient privacy, physician best practices, electronic connectivity to health care data, access to advance care planning documents, and, overall, a more efficient and less costly means of delivering quality health care in Vermont.

\* \* \*

Sec. 4. VERMONT HEALTH INFORMATION EXCHANGE; OPT-OUT  
CONSENT POLICY; IMPLEMENTATION

(a) The Department of Vermont Health Access, in consultation with its Health Information Exchange Steering Committee, shall administer a robust stakeholder process to develop an implementation strategy for the consent policy for the sharing of patient health information through the Vermont Health Information Exchange (VHIE), as revised pursuant to Sec. 3 of this act. The implementation strategy shall:

- (1) include substantial opportunities for public input;
- (2) focus on the creation of patient education mechanisms and processes that:
  - (A) combine new information on the consent policy with existing patient education obligations, such as disclosure requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
  - (B) aim to address diverse needs, abilities, and learning styles with respect to information delivery;
  - (C) clearly explain:
    - (i) the purpose of the VHIE;
    - (ii) the way in which health information is currently collected;
    - (iii) how and with whom health information may be shared using the VHIE;
    - (iv) the purposes for which health information may be shared using the VHIE;
    - (v) how to opt out of having health information shared using the VHIE; and
    - (vi) how patients can change their participation status in the future; and
  - (D) enable patients to fully understand their rights regarding the sharing of their health information and provide them with ways to find answers to associated questions, including providing contact information for the Office of the Health Care Advocate;
- (3) identify the mechanisms by which Vermonters will be able to easily opt out of having their health information shared through the VHIE and a timeline identifying when each mechanism will be available, which shall begin in advance of the July 1, 2020 change to the consent policy;
- (4) include plans for developing or supplementing consent management processes at the VHIE to reflect the needs of patients and providers;
- (5) include multisector communication strategies to inform each Vermonter about the VHIE, the consent policy, and their ability to opt out of having their health information shared through the VHIE; and
- (6) identify a methodology for evaluating the extent to which the public outreach regarding the VHIE, consent policy, and opt-out processes has been successful.



(b)(1) The Department of Vermont Health Access shall provide updates on the stakeholder engagement process and the consent policy implementation strategy to the House Committee on Health Care, the Senate Committee on Health and Welfare, the Health Reform Oversight Committee, and the Green Mountain Care Board on or before August 1 and November 1, 2019.

(2) The Department of Vermont Health Access shall provide a final report on the outcomes of the stakeholder engagement process and the consent policy implementation strategy to the House Committee on Health Care, the Senate Committee on Health and Welfare, and the Green Mountain Care Board on or before January 15, 2020.

#### Sec. 5. EFFECTIVE DATES

(a) Secs. 1 (18 V.S.A. chapter 42) and 2 (18 V.S.A. § 9375(b) shall take effect on July 1, 2019.

(b) Sec. 3 (18 V.S.A. § 9351) shall take effect on July 1, 2020.

(c) Sec. 4 (Vermont Health Information Exchange; opt-out consent policy; implementation) and this section shall take effect on passage.

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

An act relating to informed health care financial decision making and the consent policy for the Vermont Health Information Exchange.

#### **Proposal of amendment to House proposal of amendment to S. 31 to be offered by Senator Lyons**

Senator Lyons moves that the Senate concur in the House proposal of amendment with further proposal of amendment as follows:

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 42 is amended to read:

#### **CHAPTER 42. BILL OF RIGHTS FOR HOSPITAL PATIENTS AND PATIENT ACCESS TO INFORMATION**

##### **Subchapter 1. Bill of Rights for Hospital Patients**

#### **§ 1851. DEFINITIONS**

As used in this ~~chapter~~ subchapter:

(1) “Hospital” means a ~~general~~ hospital required to be licensed under ~~18 V.S.A. chapter 43~~ of this title.

(2) “Patient” means a person admitted to a hospital on an inpatient basis.

§ 1852. PATIENTS’ BILL OF RIGHTS; ADOPTION

\* \* \*

(12) The patient has the right to receive an itemized, detailed, and understandable explanation of charges regardless of the source of payment and to be provided with information about financial assistance and billing and collections practices.

\* \* \*

Subchapter 2. Access to Information

§ 1854. PUBLIC ACCESS TO INFORMATION

\* \* \*

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(a) As used in this section:

(1) “Ambulatory surgical center” has the same meaning as in section 9432 of this title.

(2) “Hospital” means a hospital required to be licensed under chapter 43 of this title.

(b) A patient receiving outpatient surgical services or an outpatient procedure at an ambulatory surgical center or hospital shall receive an itemized, detailed, and understandable explanation of charges regardless of the source of payment and shall be provided with information about the ambulatory surgical center’s or hospital’s financial assistance and billing and collections practices.

Sec. 2. 18 V.S.A. § 9375(b) is amended to read:

(b) The Board shall have the following duties:

\* \* \*

(14) 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.

### Sec. 3. PRICE TRANSPARENCY; BILLING PROCESSES; REPORT

(a) The Green Mountain Care Board, in consultation with interested stakeholders, shall examine health care price transparency initiatives in other states to identify possible options for making applicable health care pricing information readily available to consumers of health care services in this State to help inform their health care decision making.

(b) The Green Mountain Care Board, in consultation with interested stakeholders, shall consider and provide recommendations regarding potential financial procedures for health care services that would coordinate processes between hospitals and payers without requiring the patient's involvement and would provide patients who receive hospital services with a single, comprehensive bill that reflects the patient's entire, actual financial obligation.

(c) On or before November 15, 2019, the Green Mountain Care Board shall provide its findings and recommendations pursuant to subsections (a) and (b) of this section to the House Committee on Health Care, the Senate Committees on Health and Welfare and on Finance, and the Health Reform Oversight Committee.

Sec. 4. 18 V.S.A. § 9351 is amended to read:

#### § 9351. HEALTH INFORMATION TECHNOLOGY PLAN

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

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

(3)(A) The Department, in consultation with the Steering Committee, shall administer the Plan,~~which shall~~.

(B) The Plan shall include the implementation of an integrated electronic health information infrastructure for the sharing of electronic health information among health care facilities, health care professionals, public and private payers, and patients. The Plan shall provide for each patient's electronic health information that is contained in the Vermont Health Information Exchange to be accessible to health care facilities, health care

professionals, and public and private payers to the extent permitted under federal law unless the patient has affirmatively elected not to have the patient's electronic health information shared in that manner.

(C) The Plan shall include standards and protocols designed to promote patient education, patient privacy, physician best practices, electronic connectivity to health care data, access to advance care planning documents, and, overall, a more efficient and less costly means of delivering quality health care in Vermont.

\* \* \*

Sec. 5. VERMONT HEALTH INFORMATION EXCHANGE; OPT-OUT  
CONSENT POLICY; IMPLEMENTATION

(a) The Department of Vermont Health Access, in consultation with its Health Information Exchange Steering Committee, shall administer a robust stakeholder process to develop an implementation strategy for the consent policy for the sharing of patient health information through the Vermont Health Information Exchange (VHIE), as revised pursuant to Sec. 3 of this act. The implementation strategy shall:

(1) include substantial opportunities for public input;

(2) focus on the creation of patient education mechanisms and processes that:

(A) combine new information on the consent policy with existing patient education obligations, such as disclosure requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(B) aim to address diverse needs, abilities, and learning styles with respect to information delivery;

(C) clearly explain:

(i) the purpose of the VHIE;

(ii) the way in which health information is currently collected;

(iii) how and with whom health information may be shared using the VHIE;

(iv) the purposes for which health information may be shared using the VHIE;

(v) how to opt out of having health information shared using the VHIE; and

(vi) how patients can change their participation status in the future; and

(D) enable patients to fully understand their rights regarding the sharing of their health information and provide them with ways to find answers to associated questions, including providing contact information for the Office of the Health Care Advocate;

(3) identify the mechanisms by which Vermonters will be able to easily opt out of having their health information shared through the VHIE and a timeline identifying when each mechanism will be available, which shall begin in advance of the February 1, 2020 change to the consent policy;

(4) include plans for developing or supplementing consent management processes at the VHIE to reflect the needs of patients and providers;

(5) include multisector communication strategies to inform each Vermonter about the VHIE, the consent policy, and their ability to opt out of having their health information shared through the VHIE; and

(6) identify a methodology for evaluating the extent to which the public outreach regarding the VHIE, consent policy, and opt-out processes has been successful.

(b)(1) The Department of Vermont Health Access shall provide updates on the stakeholder engagement process and the consent policy implementation strategy to the House Committee on Health Care, the Senate Committee on Health and Welfare, the Health Reform Oversight Committee, and the Green Mountain Care Board on or before August 1 and November 1, 2019.

(2) The Department of Vermont Health Access shall provide a final report on the outcomes of the stakeholder engagement process and the consent policy implementation strategy to the House Committee on Health Care, the Senate Committee on Health and Welfare, and the Green Mountain Care Board on or before January 15, 2020.

#### Sec. 6. EFFECTIVE DATES

(a) Secs. 1 (18 V.S.A. chapter 42), 2 (18 V.S.A. § 9375(b)), and 3 (price transparency; billing processes; report) shall take effect on July 1, 2019.

(b) Sec. 4 (18 V.S.A. § 9351) shall take effect on February 1, 2020.

(c) Sec. 5 (Vermont Health Information Exchange; opt-out consent policy; implementation) and this section shall take effect on passage.

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

An act relating to informed health care financial decision making and the consent policy for the Vermont Health Information Exchange.

## S. 58

An act relating to the State hemp program.

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

Sec. 1. 6 V.S.A. chapter 34 is amended to read:

### CHAPTER 34. HEMP

#### § 561. FINDINGS; INTENT

(a) Findings.

\* \* \*

(5) The federal Agricultural Act of 2014, Pub. L. No. 113-79 authorized Section 10113 of the Agriculture Improvement Act of 2018, Pub. L. No. 115-334 authorizes the growing, cultivation, and marketing of industrial hemp, notwithstanding restrictions under the federal Controlled Substances Act, if certain criteria are satisfied under a U.S. Department of Agriculture approved State program.

(b) Purpose. The intent of this chapter is to establish policy and procedures for growing, processing, testing, and marketing hemp and hemp products in Vermont that comply with federal law so that farmers and other businesses in the Vermont agricultural industry can take advantage of this market opportunity.

#### § 562. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Agriculture, Food and Markets.

(2)(A) “Grow” means:

(i) planting, cultivating, harvesting, or drying of hemp; and

(ii) selling, storing, and transporting hemp grown by a grower.

(B) “Grow” may be used interchangeably with the word “produce.”

(3) “Grower” means a person who is registered with the Agency to produce hemp crops.

(4) “Hemp products” or “hemp-infused products” means all products made from hemp with the federally defined tetrahydrocannabinol concentration level for hemp derived from, or made by, processing hemp plants or plant parts, that are prepared in a form available for commercial sale, including cosmetics, personal care products, food intended for animal or

human consumption, cloth, cordage, fiber, food, fuel, paint, paper, construction materials, plastics, seed, seed meal, seed oil, and certified seed for cultivation and any product containing one or more hemp-derived cannabinoids, such as cannabidiol.

~~(3)~~(5) “Hemp” or “industrial hemp” means the plant *Cannabis sativa* L. and any part of the plant, ~~whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis~~ including the seeds and all derivatives, extracts, cannabinoids, acids, salts, isomers, and salts of isomers, whether growing or not, with the federally defined tetrahydrocannabinol concentration level of hemp. “Hemp” shall be considered an agricultural commodity.

(6) “Process” means the storing, drying, trimming, handling, compounding, or converting of a hemp crop by a processor for a single grower or multiple growers into hemp products or hemp-infused products. “Process” includes transporting, aggregating, or packaging hemp from a single grower or multiple growers.

(7) “Processor” means a person who is registered with the Agency to process hemp crops. A retail establishment selling hemp products or hemp-infused products is not a processor.

~~(4)~~(8) “Secretary” means the Secretary of Agriculture, Food and Markets.

#### § 563. HEMP; AN AGRICULTURAL PRODUCT

Industrial hemp is an agricultural product that may be grown as a crop produced, possessed, marketed, and commercially traded in Vermont pursuant to the provisions of this chapter and section 10113 of the Agriculture Improvement Act of 2018, Pub. L. No. 115-334. The cultivation of industrial hemp shall be subject to and comply with the required agricultural practices adopted under section 4810 of this title.

#### § 564. STATE HEMP PROGRAM; REGISTRATION; APPLICATION; ADMINISTRATION; PILOT PROJECT

~~(a) The Secretary shall establish a pilot program to research the growth, cultivation, and marketing of industrial hemp. Under the pilot program, the Secretary shall register persons who will participate in the pilot program through growing or cultivating industrial hemp. The Secretary shall certify the site where industrial hemp will be cultivated by each person registered under this chapter. A person who intends to participate in the pilot program and grow industrial hemp shall register with the Secretary and submit on a form provided by the Secretary the following:~~

~~(1) the name and address of the person;~~

~~(2) a statement that the seeds obtained for planting are of a type and variety that do not exceed the maximum concentration of tetrahydrocannabinol set forth in subdivision 562(3) of this title; and~~

~~(3) the location and acreage of all parcels sown and other field reference information as may be required by the Secretary.~~

~~(b) The form provided by the Secretary pursuant to subsection (a) of this section shall include a notice statement that:~~

~~(1) cultivation and possession of industrial hemp in Vermont is a violation of the federal Controlled Substances Act unless the industrial hemp is grown, cultivated, or marketed under a pilot program authorized by section 7606 of the federal Agricultural Act of 2014, Pub. L. No. 113-79;~~

~~(2) federal prosecution for growing hemp in violation of federal law may include criminal penalties, forfeiture of property, and loss of access to federal agricultural benefits, including agricultural loans, conservation programs, and insurance programs; and~~

~~(3) registrants may purchase or import hemp genetics from any state that complies with federal requirements for the cultivation of industrial hemp.~~

~~(c) A person registered with the Secretary pursuant to this section shall allow industrial hemp crops, throughout sowing, growing season, harvest, storage, and processing, to be inspected and tested by and at the discretion of the Secretary or designee. The Secretary shall retain tests and inspection information collected under this section for the purposes of research of the growth and cultivation of industrial hemp.~~

~~(d) The Secretary may assess an annual registration fee of \$25.00 for the performance of his or her duties under this chapter. The Secretary shall establish and administer a State Hemp Program to regulate the growing, processing, testing, and marketing of industrial hemp and hemp products in the State.~~

~~(b)(1) A person shall register annually with the Secretary as part of the State Hemp Program in order to grow, process, or test hemp or hemp products in the State. A person shall apply for registration or renewal of a registration on a form provided by the Secretary. The application shall be accompanied by the fee required under section 570 of this title. The application or renewal form shall include:~~

~~(A) the name and address of the person applying for or renewing a registration;~~



(B) whether the person is applying to grow, process, or test hemp or hemp products;

(C) for a person applying as a grower:

(i) the location and acreage of all parcels where hemp will be grown;

(ii) a statement that the seeds obtained for planting are of a type and variety that do not exceed the federally defined tetrahydrocannabinol concentration level of hemp;

(D) for a person applying as a processor, the location of the processing site;

(E) for a person applying to test hemp or hemp products, the location of the site where testing will occur and any proof of certification required by the Secretary; and

(F) any additional information that the Secretary may require by rule.

(2) The Secretary may verify the information provided in the application or renewal form under subdivision (1) of this subsection and on any maps accompanying the application or renewal form and may request additional information in order to perform a review of an application for registration or renewal.

(c) The Secretary may deny an application for registration or renewal if the applicant:

(1) does not provide all the information requested on the application or renewal form;

(2) fails to submit the fee required under section 570 of this title;

(3) fails to submit additional information requested by the Secretary under subsection (a) of this section; or

(4) does not, as determined by the Secretary, satisfy the requirements of section 10113 of the Agriculture Improvement Act of 2018, Pub. L. No. 115-334 for participation in the Program.

(d) A person registered under this section may purchase or import hemp genetics from any state that complies with the federal requirements for the cultivation of industrial hemp.

(e) A person registered with the Secretary under this section to grow, process, or test hemp crops or hemp products, shall allow the Secretary to inspect hemp crops, processing sites, or laboratories registered under the State

Hemp Program. The Secretary shall retain tests and inspection information collected under this section for the purposes of research of the growth and cultivation of industrial hemp.

(f) The name and general location of a person registered under this section shall be available for inspection and copying under the Public Records Act, provided that all records produced or acquired by the Agency of Agriculture, Food and Markets related to the location of parcels where hemp will be grown, including coordinates, maps, and parcel identifiers, shall be confidential and shall not be disclosed for inspection and copying under the Public Records Act.

#### § 566. RULEMAKING AUTHORITY

(a) The Secretary may adopt rules to provide for the implementation of this chapter and the pilot project program authorized under this chapter, which may include rules to:

(1) require hemp to be tested during growth for tetrahydrocannabinol levels;

(2) authorize or specify the method or methods of testing hemp, including, where appropriate, the ratio of cannabidiol to tetrahydrocannabinol levels or a taxonomic determination using genetic testing; and

(3) ~~to require inspection and supervision of hemp during sowing, growing season, harvest, storage, and processing. The Secretary shall not adopt under this or any other section a rule that would prohibit a person to grow hemp based on the legal status of hemp under federal law; and~~

(4) require labels or label information for hemp products in order to provide consumers with product content or source information or to conform with federal requirements.

(b) The Secretary shall adopt rules establishing how the Agency of Agriculture, Food and Markets will conduct research within the ~~pilot~~ program for industrial hemp.

(c) The Secretary shall adopt rules establishing requirements for the registration of processors of hemp and hemp-infused products.

\* \* \*

#### § 568. TEST RESULTS; ENFORCEMENT

(a) If the Secretary or a dispensary registered under 18 V.S.A. chapter 86 tests a hemp crop and the hemp has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis, the person registered with the Secretary as growing the hemp crop shall:

(1) enter into an agreement with a dispensary registered under 18 V.S.A. chapter 86 for the separation of the delta-9 tetrahydrocannabinol from the hemp crop, return of the hemp crop to the person registered with the Secretary, and retention of the separated delta-9 tetrahydrocannabinol by the dispensary;

(2) sell the hemp crop to a dispensary registered under 18 V.S.A. chapter 86; or

(3) arrange for the Secretary to destroy or order the destruction of the hemp crop.

~~(b) A person registered with the Secretary as growing the hemp crop shall not be subject to civil, criminal, or administrative liability or penalty under 18 V.S.A. chapter 84 if the tested industrial hemp has a delta-9 tetrahydrocannabinol concentration of one percent or less on a dry weight basis~~ To enforce the provisions of this chapter, the Secretary, upon presenting appropriate credentials, may conduct one or more of the following:

(1) Enter upon any premises where hemp is grown or processed and inspect premises, machinery, equipment and facilities, any crop during any growth phase, or any hemp product or hemp-infused product during processing or storage. Inspection under this section may include the taking of samples, inspection of records, and inspection of equipment or vehicles used in the growing, processing, or transport of hemp crops, hemp products, or hemp-infused products.

(2) Inspect any retail location offering hemp products or hemp-infused products. Inspection under this section may include the taking of samples of such products.

(3) Issue and enforce a written or printed “stop sale” order to the owner or custodian of any hemp crop, hemp product, or hemp-infused product subject to the requirements of this chapter or rules adopted under this chapter that the Secretary finds is in violation of any of the provisions of this chapter or rules adopted under this chapter. An order may prohibit further sale, processing, and movement of the hemp crop, hemp product, or hemp-infused product until the Secretary has approved and issued a release from the “stop sale” order.

(c) A crop or product confirmed by the Secretary to meet the definition of hemp under State or federal law may be sold or transferred in interstate commerce to the extent authorized by federal law.

#### § 569. ADMINISTRATIVE PENALTIES

(a) Except for violations set forth under subsection (b) of this section, the Secretary may assess an administrative penalty, not to exceed \$1,000.00 per violation, for any violation of this chapter or rules adopted under this chapter, including:

(1) failure to provide the location of the land on which the grower grows hemp crops or the processor processes hemp crops into hemp products or hemp-infused products; or

(2) failing to obtain a registration in accordance with section 570 of this title.

(b) The Secretary may assess an administrative penalty, not to exceed \$5,000.00 per violation in any case in which the Secretary determines that a grower or processor:

(1) failed to follow a corrective action plan to correct a negligent violation;

(2) has grown or processed hemp in violation of the requirements of this chapter or the rules adopted under this chapter three times in a five-year period; or

(3) has produced hemp in violation of the requirements of this chapter or the rules adopted under this chapter with a culpable mental state greater than negligence.

(c) In determining the amount of the penalty assessed under this section, the Secretary may give consideration to the appropriateness of the penalty with respect to the size of the business being assessed, the gravity of the violation, the good faith of the person alleged to be in violation, and the overall compliance history of the person alleged to be in violation.

(d) The Secretary shall use the following procedure in assessing penalties:

(1) the Secretary shall issue a written notice of violation setting forth facts that would establish probable cause that a violation of this chapter or the rules adopted under this chapter has occurred;

(2) the notice required under subdivision (1) of this subsection shall comply with all of the following:

(A) The notice shall be served by personal service or by certified mail, return receipt requested.

(B) The notice shall advise the recipient of the right to a hearing. If a hearing is requested, the hearing shall be conducted pursuant to 3 V.S.A. chapter 25.

(C) The notice shall state the proposed penalty and shall advise the recipient that, if no hearing is requested, the decision of the Secretary shall become final and a penalty shall be imposed.

(D) The notice shall advise the recipient that they shall have 15 days from the date on which notice is received to request a hearing.

(e) Any party aggrieved by a final decision of the Secretary may appeal to a Superior Court within 30 days of the final decision of the Secretary. The Secretary may enforce a final administrative penalty by filing a civil collection action in any District or Superior Court.

#### § 570. REGISTRATION FEES

(a) A person applying for a registration or renewal under section 564 of this title annually shall pay the following fees:

(1) for an application to grow less than 0.5 acres of hemp for personal use: \$25.00;

(2) for an application or renewal of registration to grow or process hemp seed for food oil production, grain crop, fiber, or textile: \$100.00;

(3) except as provided for in subdivision (4) of this subsection, for an application or renewal of registration to grow, process, or grow and process hemp commercially for floral material production, viable seed, or cannabinoids, including cannabidiolic acid (CBDA), cannabidiol (CBD), cannabinol (CBN), cannabigerol (CBG), cannabichromene (CBC), or tetrahydrocannabivarin (THCV), the following fee based on the greater of the number of acres planted or the weight of hemp or viable seed processed:

<u>Acres of Hemp Grown or Pounds of Hemp Processed or Viable Seed Cultivated Annually for Floral Material or Cannabinoids</u>	<u>Fee</u>
<u>Less than 0.5 acres or less than 500 pounds</u>	<u>\$100.00</u>
<u>0.5 to 9.9 acres or less than 10,000 pounds</u>	<u>\$500.00</u>
<u>10 to 50 acres or less than 50,000 pounds</u>	<u>\$1,000.00</u>
<u>Greater than 50 acres or greater than 50,000 pounds</u>	<u>\$3,000.00</u>

(4) for an application or renewal of registration to operate exclusively within an indoor facility in order to grow, process, or grow and process hemp commercially for floral material production, viable seed, or cannabinoids, including cannabidiolic acid (CBDA), cannabidiol (CBD), cannabinol (CBN), cannabigerol (CBG), cannabichromene (CBC), or tetrahydrocannabivarin (THCV), the following fee based on the size of the indoor facility:

(A) for a facility with an area of 500 square feet or less: \$1,000.00;  
and

(B) for a facility with an area greater than 500 square feet:  
\$2,000.00.

(5) for an application or renewal of registration as a laboratory certified to conduct testing of hemp and hemp products as part of the Agency's cannabis control program: \$1,500.00.

(b) A person registered to grow, process, or grow and process hemp for floral material production, viable seed, or cannabinoids shall not grow more acres of hemp per year than the amount identified in a registration without first notifying the Secretary and paying an additional registration fee if necessary under subsection (a) of this section.

(c) The registration fees collected under this section shall be deposited in the special fund created by subsection 364(e) of this title and shall be used for the administration of the requirements of this chapter.

## Sec. 2. TRANSITION; COLLECTION OF REGISTRATION FEE

Beginning on January 1, 2020, the Secretary of Agriculture, Food and Markets shall initiate collection under 6 V.S.A. § 570 of the registration fees to grow hemp, process hemp, grow and process hemp, or operate a certified laboratory to test hemp in the State. Prior to January 1, 2020, the Secretary of Agriculture, Food and Markets shall collect a registration fee of \$25.00 for any registration under 6 V.S.A. chapter 34 (State Hemp Program).

Sec. 3. 20 V.S.A. § 2730 is amended to read:

### § 2730. DEFINITIONS

(a) As used in this subchapter, "public building" means:

(1)(A) a building owned or occupied by a public utility, hospital, school, house of worship, convalescent center or home for elders or persons who have an infirmity or a disability, nursery, kindergarten, or child care;

(B) a building in which two or more persons are employed, or occasionally enter as part of their employment or are entertained, including private clubs and societies;

(C) a cooperative or condominium;

(D) a building in which people rent accommodations, whether overnight or for a longer term;

(E) a restaurant, retail outlet, office or office building, hotel, tent, or other structure for public assembly, including outdoor assembly, such as a grandstand;

(F) a building owned or occupied by the State of Vermont, a county, a municipality, a village, or any public entity, including a school or fire district; or

(G)(i) a building in which two or more persons are employed, or occasionally enter as part of their employment, and where the associated extraction of plant botanicals utilizing flammable, volatile, or otherwise unstable liquids, pressurized gases, or other substances capable of combusting or whose properties would readily support combustion or pose a deflagration hazard; and

(ii) notwithstanding subdivision (b)(3) of this section, a building on a working farm or farms that meets the criteria of subdivision (G)(i) of this subsection is a “public building.”

(2) Use of any portion of a building in a manner described in this subsection shall make the entire building a “public building” for purposes of this subsection. For purposes of this subsection, a “person” does not include an individual who is directly related to the employer and who resides in the employment-related building.

(b) The term “public building” does not include:

\* \* \*

(3) Farm buildings on a working farm or farms. For purposes of this subchapter and subchapter 3 of this chapter, the term “working farm or farms” means farms with fewer than the equivalent of 10 full-time employees who are not family members and who do not work more than 26 weeks a year. In addition, the term means a farm or farms:

(A) Whose owner is actively engaged in farming.

(B) If the farm or farms are owned by a partnership or a corporation, one that includes at least one partner or principal of the corporation who is actively engaged in farming.

(C) Where the farm or farms are leased, the lessee is actively engaged in farming. The term “farming” means:

(i) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops;

(ii) the raising, feeding, or management of livestock, poultry, equines, fish, or bees;

(iii) the production of maple syrup;

(iv) the operation of greenhouses;

(v) the on-site storage, preparation, and sale of agricultural products principally produced on the farm. Notwithstanding this definition of farming, housing provided to farm employees other than family members shall be treated as rental housing and shall be subject to the provisions of this chapter. In addition, any farm building that is open for public tours and for which a fee is charged for those tours shall be considered a public building.

(4) A single family residence with an accessory dwelling unit as permitted under 24 V.S.A. § 4406(4)(D).

\* \* \*

#### Sec. 4. POSITIONS; STATE HEMP PROGRAM

The establishment of the following new classified, full-time positions is authorized in fiscal year 2020 for purposes of implementing and administering the State Hemp Program under 6 V.S.A. chapter 34:

(1) In the Agency of Agriculture, Food and Markets—attorney counsel position.

(2) In the Agency of Agriculture, Food and Markets—laboratory and certification specialist.

(3) In the Agency of Agriculture, Food and Markets—enforcement specialist.

#### Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

### **S. 73**

An act relating to licensure of ambulatory surgical centers.

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

Sec. 1. 18 V.S.A. chapter 49 is added to read:

#### CHAPTER 49. AMBULATORY SURGICAL CENTERS

##### Subchapter 1. General Provisions

#### § 2141. DEFINITIONS



As used in this chapter:

(1) “Ambulatory surgical center” means any distinct entity that operates primarily for the purpose of providing surgical services to patients not requiring hospitalization and for which the expected duration of services would not exceed 24 hours following an admission. The term does not include:

(A) a facility that is licensed as part of a hospital; or

(B) a facility that is used exclusively as an office or clinic for the private practice of one or more licensed health care professionals, unless one or more of the following descriptions apply:

(i) the facility holds itself out to the public or to other health care providers as an ambulatory surgical center, surgical center, surgery center, surgicenter, or similar facility using a similar name or a variation thereof;

(ii) procedures are carried out at the facility using general anesthesia, except as used in oral or maxillofacial surgery or as used by a dentist with a general anesthesia endorsement from the Board of Dental Examiners; or

(iii) patients are charged a fee for the use of the facility in addition to the fee for the professional services of one or more of the health care professionals practicing at that facility.

(2) “Health care professional” means:

(A) a physician licensed pursuant to 26 V.S.A. chapter 23 or 33;

(B) an advanced practice registered nurse licensed pursuant to 26 V.S.A. chapter 28;

(C) a physician assistant licensed pursuant to 26 V.S.A. chapter 31;

(D) a podiatrist licensed pursuant to 26 V.S.A. chapter 7; or

(E) a dentist licensed pursuant to 26 V.S.A. chapter 12.

(3) “Patient” means a person admitted to or receiving health care services from an ambulatory surgical center.

## Subchapter 2. Licensure of Ambulatory Surgical Centers

### § 2151. LICENSE

No person shall establish, maintain, or operate an ambulatory surgical center in this State without first obtaining a license for the ambulatory surgical center in accordance with this subchapter.

§ 2152. APPLICATION; FEE

(a) An application for licensure of an ambulatory surgical center shall be made to the Department of Health on forms provided by the Department and shall include all information required by the Department. Each application for a license shall be accompanied by a license fee.

(b) The annual licensing fee for an ambulatory surgical center shall be \$600.00.

(c) Fees collected under this section shall be credited to the Hospital Licensing Fees Special Fund and shall be available to the Department of Health to offset the costs of licensing ambulatory surgical centers.

§ 2153. LICENSE REQUIREMENTS

(a) Upon receipt of an application for a license and the licensing fee, the Department of Health shall issue a license if it determines that the applicant and the ambulatory surgical center facilities meet the following minimum standards:

(1) The applicant shall demonstrate the capacity to operate an ambulatory surgical center in accordance with rules adopted by the Department.

(2) The applicant shall demonstrate that its facilities comply fully with standards for health, safety, and sanitation as required by State law, including standards set forth by the State Fire Marshal and the Department of Health, and municipal ordinance.

(3) The applicant shall have a clear process for responding to patient complaints.

(4) The applicant shall participate in the Patient Safety Surveillance and Improvement System established pursuant to chapter 43A of this title.

(5) The applicant shall maintain certification from the Centers for Medicare and Medicaid Services and shall accept Medicare and Medicaid patients for ambulatory surgical center facility services.

(6) The ambulatory surgical center facilities, including the buildings and grounds, shall be subject to inspection by the Department, its designees, and other authorized entities at all times.

(b) A license is not transferable or assignable and shall be issued only for the premises and persons named in the application.

#### § 2154. REVOCATION OF LICENSE; HEARING

The Department of Health, after notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter. Such notice shall be served by registered mail or by personal service, shall set forth the reasons for the proposed action, and shall set a date not less than 60 days from the date of the mailing or service on which the applicant or licensee shall be given opportunity for a hearing. After the hearing, or upon default of the applicant or licensee, the Department shall file its findings of fact and conclusions of law. A copy of the findings and decision shall be sent by registered mail or served personally upon the applicant or licensee. The procedure governing hearings authorized by this section shall be in accordance with the usual and customary rules provided for such hearings.

#### § 2155. APPEAL

Any applicant or licensee, or the State acting through the Attorney General, aggrieved by the decision of the Department of Health after a hearing may, within 30 days after entry of the decision as provided in section 2154 of this title, appeal to the Superior Court for the district in which the appellant is located. The court may affirm, modify, or reverse the Department's decision, and either the applicant or licensee or the Department or State may appeal to the Vermont Supreme Court for such further review as is provided by law. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.

#### § 2156. INSPECTIONS

The Department of Health shall make or cause to be made such inspections and investigations as it deems necessary. If the Department finds a violation as the result of an inspection or investigation, the Department shall post a report on the Department's website summarizing the violation and any corrective action required.

#### § 2157. RECORDS

(a) Information received by the Department of Health through filed reports, inspections, or as otherwise authorized by law shall:

(1) not be disclosed publicly in a manner that identifies or may lead to the identification of one or more individuals or ambulatory surgical centers;

(2) be exempt from public inspection and copying under the Public Records Act; and

(3) be kept confidential except as it relates to a proceeding regarding licensure of an ambulatory surgical center.

(b) The provisions of subsection (a) of this section shall not apply to the summary reports of violations required to be posted on the Department's website pursuant to section 2156 of this chapter.

#### § 2158. NONAPPLICABILITY

The provisions of chapter 42 of this title, Bill of Rights for Hospital Patients, do not apply to ambulatory surgical centers.

#### § 2159. RULES

The Department of Health shall adopt rules pursuant to 3 V.S.A. chapter 25 as needed to carry out the purposes of this chapter. The rules shall include requirements regarding:

(1) the ambulatory surgical center's maintenance of a transport agreement with at least one emergency medical services provider for emergency patient transportation;

(2) the ambulatory surgical center's maintenance of a publicly accessible policy for providing charity care to eligible patients; and

(3) the ambulatory surgical center's participation in quality reporting programs offered by the Centers for Medicare and Medicaid Services.

Sec. 2. 18 V.S.A. § 1909 is amended to read:

#### § 1909. INSPECTIONS

The licensing agency shall make or cause to be made such inspections and ~~investigation~~ investigations as it deems necessary. If the licensing agency finds a violation as the result of an inspection or investigation, the licensing agency shall post a report on the licensing agency's website summarizing the violation and any corrective action required.

Sec. 3. 18 V.S.A. § 1910 is amended to read:

#### § 1910. RECORDS

(a) Information received by the licensing agency through filed reports, inspection, or as otherwise authorized ~~under this by law,~~ shall:

(1) not be disclosed publicly in such a manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure that identifies or may lead to the identification of one or more individuals or hospitals;

(2) be exempt from public inspection and copying under the Public Records Act; and

(3) be kept confidential except as it relates to a proceeding regarding licensure of a hospital.

(b) The provisions of subsection (a) of this section shall not apply to the summary reports of violations required to be posted on the licensing agency's website pursuant to section 1909 of this chapter.

Sec. 3a. 18 V.S.A. § 9373 is amended to read:

§ 9373. DEFINITIONS

As used in this chapter:

\* \* \*

(18) "Net patient revenues" has the same meaning as in 33 V.S.A. § 1951.

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

(b) The Board shall have the following duties:

\* \* \*

(14)(A) Collect and review data from ambulatory surgical centers licensed pursuant to chapter 49 of this title, which shall include net patient revenues and which may include data on an ambulatory surgical center's scope of services, volume, utilization, payer mix, quality, coordination with other aspects of the health care system, and financial condition. The Board's processes shall be appropriate to ambulatory surgical centers' scale and their role in Vermont's health care system, and the Board shall consider ways in which ambulatory surgical centers can be integrated into systemwide payment and delivery system reform.

(B) The Board shall report to the House Committees on Health Care and on Ways and Means and the Senate Committees on Health and Welfare and on Finance annually, on or before January 15, each ambulatory surgical center's net patient revenues and, using claims data from the Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES), information regarding high-volume outpatient surgeries and procedures performed in ambulatory surgical center and hospital settings in Vermont, any changes in utilization over time, and a comparison of the commercial insurance rates paid for the same surgeries and procedures performed in ambulatory surgical centers and in hospitals in Vermont.

Sec. 5. 18 V.S.A. § 9405b is amended to read:

§ 9405b. HOSPITAL COMMUNITY REPORTS AND AMBULATORY  
SURGICAL CENTER QUALITY REPORTS

\* \* \*

(d) The Commissioner of Health shall publish or otherwise make publicly available on its website each ambulatory surgical center's performance results from quality reporting programs offered by the Centers for Medicare and Medicaid Services and shall update the information at least annually.

Sec. 6. EFFECTIVE DATES

(a) Sec. 1 (18 V.S.A. chapter 49) shall take effect on January 1, 2020, provided that any ambulatory surgical center in operation on that date shall have six months to complete the licensure process.

(b) Secs. 2 (18 V.S.A. § 1909) and 3 (18 V.S.A. § 1910) shall take effect on July 1, 2019.

(c) Sec. 4 (18 V.S.A. § 9375(b)) and this section shall take effect on passage.

(d) Sec. 5 (18 V.S.A. § 9405b) shall take effect on January 1, 2020.

**Proposal of amendment to House proposal of amendment to S. 73 to be  
offered by Senator Lyons**

Senator Lyons moves that the Senate concur in the House proposal of amendment with further proposals of amendment as follows:

First: By striking out Sec. 4, 18 V.S.A. § 9375(b), in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

**Sec. 4. AMBULATORY SURGICAL CENTER DATA; GREEN MOUNTAIN  
CARE BOARD; REPORTS**

(a) For the period from the effective date of this act through the end of calendar year 2022, the Green Mountain Care Board shall obtain and review annualized data from ambulatory surgical centers licensed pursuant to chapter 49 of this title, which shall include net patient revenues and which may include data on an ambulatory surgical center's scope of services, volume, payer mix, and coordination with other aspects of the health care system. The Board's processes shall be appropriate to ambulatory surgical centers' scale, their role in Vermont's health care system, and their administrative capacity, and the Board shall seek to minimize the administrative burden of data collection on ambulatory surgical centers. The Board shall also consider ways in which

ambulatory surgical centers can be integrated into systemwide payment and delivery system reform.

(b) In its annual reports pursuant to 18 V.S.A. § 9375(d) for 2021, 2022, and 2023, the Green Mountain Care Board shall describe its oversight of ambulatory surgical centers pursuant to subsection (a) of this section for the most recently concluded 12-month period of the Board’s review, including the amount of each ambulatory surgical center’s net patient revenues and, using claims data from the Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES), information regarding high-volume outpatient surgeries and procedures performed in ambulatory surgical center and hospital settings in Vermont, any changes in utilization over time, and a comparison of the commercial insurance rates paid for the same surgeries and procedures performed in ambulatory surgical centers and in hospitals in Vermont.

Second: In Sec. 6, effective dates, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Secs. 3a (18 V.S.A. § 9373) and 4 (ambulatory surgical center data; Green Mountain Care Board; reports) and this section shall take effect on passage.

## **S. 96**

An act relating to the provision of water quality services.

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

Sec. 1. 10 V.S.A. chapter 37, subchapter 5 is amended to read:

### Subchapter 5. ~~Aquatic Nuisance Control~~ Water Quality Restoration and Improvement

#### § 921. DEFINITIONS

As used in this subchapter:

(1) “Administrative cost” means program and project costs incurred by a clean water service provider or a grantee, including costs to conduct procurement, contract preparation, and monitoring, reporting, and invoicing.

(2) “Basin” means a watershed basin designated by the Secretary for use as a planning unit under subsection 1253(d) of this title.

(3) “Best management practice” or “BMP” means a schedule of activities, prohibitions, practices, maintenance procedures, green

infrastructure, or other management practices to prevent or reduce water pollution.

(4) “Clean water project” means a best management practice or other program designed to improve water quality to achieve a target established under section 922 of this title that:

(A) is not subject to a permit under chapter 47 of this title, is not subject to the requirements of 6 V.S.A. chapter 215, exceeds the requirements of a permit issued under chapter 47 of this title, or exceeds the requirements of 6 V.S.A chapter 215; and

(B) is within the following activities:

(i) developed lands, sub-jurisdictional practices related to developed lands including municipal separate storm sewers, operational stormwater discharges, municipal roads, and other developed lands discharges;

(ii) natural resource protection and restoration, including river corridor and floodplain restoration and protection, wetland protection and restoration, riparian and lakeshore corridor protection and restoration, and natural woody buffers associated with riparian, lakeshore, and wetland protection and restoration;

(iii) forestry; or

(iv) agriculture.

(5) “Co-benefit” means the additional benefit to local governments and the public provided by or associated with a clean water project, including flood resilience, ecosystem improvement, and local pollution prevention.

(6) “Design life” means the period of time that a clean water project is designed to operate according to its intended purpose.

(7) “Maintenance” means ensuring that a clean water project continues to achieve its designed pollution reduction value for its design life.

(8) “Standard cost” means the projected cost of achieving a pollutant load reduction per unit or per best management practice in a basin.

## § 922. WATER QUALITY IMPLEMENTATION PLANNING AND TARGETS

(a) After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall include in the implementation plan for the water a strategy for returning the water to compliance with the Vermont Water Quality Standards. With respect to a water that is impaired due to sources outside the State or if there is insufficient data or no data available to



quantify reductions required by this subchapter, the Secretary shall not be required to implement the requirements of this subchapter; however, the Secretary shall provide an alternate strategy for attaining water quality standards in the implementation plan for the water. For waters determined to be subject to this subchapter, the Secretary shall include the following in an implementation plan:

(1) An evaluation of whether implementation of existing regulatory programs will achieve water quality standards in the impaired water. If the Secretary determines that existing regulatory programs will not achieve water quality standards, the Secretary shall determine the amount of additional pollutant reduction necessary to achieve water quality standards in that water. When making this determination, the Secretary may express the pollutant reduction in a numeric reduction or through defining a clean water project that must be implemented to achieve water quality standards.

(2) An allocation of the pollutant reduction identified under subdivision (a)(1) of this section to each basin and the clean water service provider assigned to that basin pursuant to subsection 924(a) of this title. When making this allocation, the Secretary shall consider the sectors contributing to the water quality impairment in the impaired water's boundaries and the contribution of the pollutant from regulated and nonregulated sources within the basin. Those allocations shall be expressed in annual pollution reduction goals and five-year pollution reduction targets as checkpoints to gauge progress and adapt or modify as necessary.

(3) A determination of the standard cost per unit of pollutant reduction. The Secretary shall publish a methodology for determining standard cost pollutant reductions. The standard cost shall include the costs of project identification, project design, and project construction.

(b)(1) The Secretary shall conduct the analysis required by subsection (a) of this section for previously listed waters as follows:

(A) For phosphorous in the Lake Champlain watershed, not later than November 1, 2021.

(B) For phosphorous in the Lake Memphremagog watershed, not later than November 1, 2022.

(2) By not later than November 1, 2023, the Secretary shall adopt a schedule for implementing the requirements of this subchapter in all other previously listed impaired waters, including Lake Carmi, not set forth in subdivision (1) of this subsection.

(c) When implementing the requirements of this section, the Secretary shall follow the type 3 notice process established in section 7714 of this title.

§ 923. QUANTIFICATION OF POLLUTION REDUCTION; CLEAN WATER PROJECTS

(a) After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall publish a methodology for calculating pollution reduction values associated with a clean water project in that water. When establishing a pollutant reduction value, the Secretary shall consider pollution reduction values established in the TMDL; pollution reduction values established by other jurisdictions; pollution reduction values recommended by organizations that develop pollutant reduction values for a clean water project; applicable monitored data with respect to a clean water project, if available; modeled data, if available; or a comparison to other similar projects or programs if no other data on a pollution reduction value or design life exists. Pollution reduction values established by the Secretary shall be the exclusive method for determining the pollutant reduction value of a clean water project.

(b) After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall publish a methodology for establishing a design life associated with a clean water project. The design life of a clean water project shall be determined based on a review of values established in other jurisdictions, values recommended by organizations that regularly estimate the design life of clean water projects, actual data documenting the design life of a practice, or a comparison to other similar practices if no other data exists. A design life adopted by the Secretary shall be the exclusive method for determining the design life of a best management practice or other control.

(c)(1) If a person is proposing a clean water project for which no pollution reduction value or design life exists for a listed water, the Secretary shall establish a pollution reduction value or design life for that clean water project within 60 days following a request from the person proposing the clean water project. A pollution reduction value or design life established under this subdivision shall be based on a review of pollution reduction values established in the TMDL; pollution reduction values or design lives established by other jurisdictions; pollution reduction values or design lives recommended by organizations that develop pollutant reduction values or design lives for a clean water project; applicable monitored data with respect to a clean water project, if available; modeled data, if available; actual data documenting the design life of a clean water project; or a comparison to other similar projects or programs if no other data on a pollution reduction value or design life exists. Any estimate developed under this subsection by the Secretary shall be posted on the Agency of Natural Resources' website.

(2) Upon the request of a clean water service provider, the Secretary shall evaluate a proposed clean water project and issue a determination as to whether the proposed clean water project is eligible to receive funding as a part of a Water Quality Restoration Formula Grant awarded by the State pursuant to section 925 of this title.

(d)(1) The Secretary shall conduct the analysis required by subsections (a) and (b) of this section for clean water projects and design lives related to phosphorous not later than November 1, 2021.

(2) By not later than November 1, 2023, the Secretary shall adopt a schedule for implementing the requirements of subsections (a) and (b) of this section for clean water projects and design lives related to all other impairments not listed under subdivision (1) of this subsection.

(e) The Secretary shall periodically review pollution reduction values and design lives established under this section at least every five years to determine the adequacy or accuracy of a pollution reduction value or design life.

(f)(1) When implementing the requirements of subsections (a) and (b) of this section, the Secretary shall follow the type 3 notice process established in section 7714 of this title.

(2) When implementing the requirements of subsection (c) of this section, the Secretary shall follow the type 4 notice process in section 7715 of this title.

#### § 924. CLEAN WATER SERVICE PROVIDER; RESPONSIBILITY FOR CLEAN WATER PROJECTS

(a) Clean water service providers; establishment.

(1) On or before November 1, 2020, the Secretary shall adopt rules that assign a clean water service provider to each basin in the Lake Champlain and Lake Memphremagog watersheds for the purposes of achieving pollutant reduction values established by the Secretary for the basin and for identification, design, construction, operation, and maintenance of clean water projects within the basin. For all other impaired waters, the Secretary shall assign clean water service provider no later than six months prior to the implementation of the requirements of this subchapter scheduled by the Secretary under subdivision 922(b)(2) of this title. The rulemaking shall be done in consultation with regional planning commissions, natural resource conservation districts, watershed organizations, and municipalities located within each basin.

(2) An entity designated as a clean water service provider shall be required to identify, prioritize, develop, construct, verify, inspect, operate, and maintain clean water projects in accordance with the requirements of this subchapter.

(3) The Secretary shall adopt guidance on a clean water service provider's obligation with respect to implementation of this chapter. The Secretary shall provide notice to the public of the proposed guidance and a comment period of not less than 30 days. At a minimum, the guidance shall address the following:

(A) how the clean water service provider integrates prioritizes and selects projects consistent with the applicable basin plan, including how to account for the co-benefits provided by a project;

(B) minimum requirements with respect to selection and agreements with subgrantees;

(C) requirements associated with the distribution of administrative costs to the clean water service provider and subgrantees;

(D) Secretary's assistance to clean water service providers with respect to their maintenance obligations pursuant to subsection (c) of this section; and

(E) the Secretary's strategy with respect to accountability pursuant to subsection (f) of this section.

(4) In carrying out its duties, a clean water service provider shall adopt guidance for subgrants consistent with the guidance from the Secretary developed pursuant to subdivision (a)(3) of this section that establishes a policy for how the clean water service provider will issue subgrants to other organizations in the basin, giving due consideration to the expertise of those organizations and other requirements for the administration of the grant program. The subgrant guidance shall include how the clean water service provider will allocate administrative costs to subgrantees for project implementation and for the administrative costs of the basin water quality council. The subgrant guidance shall be subject to the approval of the Secretary and basin water quality council.

(5) When selecting clean water projects for implementation or funding, a clean water service provider shall prioritize projects identified in the basin plan for the area where the project is located and shall consider the pollutant targets provided by the Secretary and the recommendations of the basin water quality council.

(b) Project identification, prioritization, selection. When identifying, prioritizing, and selecting a clean water project to meet a pollutant reduction value, the clean water service provider shall consider the pollution reduction value associated with the clean water project, the co-benefits provided by the project, operation, and maintenance of the project, conformance with the tactical basin plan, and other water quality benefits beyond pollution reduction associated with that clean water project. All selected projects shall be entered into the watershed projects database.

(c) Maintenance responsibility. A clean water service provider shall be responsible for maintaining a clean water project or ensuring the maintenance for at least the design life of that clean water project. The Secretary shall provide funding for maintenance consistent with subdivision 1389(e)(1)(A) of this title.

(d) Water quality improvement work. If a clean water service provider achieves a greater level of pollutant reduction than a pollutant reduction goal or five-year target established by the Secretary, the clean water service provider may carry those reductions forward into a future year. If a clean water service provider achieves its pollutant reduction goal or five-year target and has excess grant funding available, a clean water service provider may:

- (1) carry those funds forward into the next program year;
- (2) use those funds for other eligible project;
- (3) use those funds for operation and maintenance responsibilities for existing constructed projects;
- (4) use those funds for projects within the basin that are required by federal or State law; or
- (5) use those funds for other work that improves water quality within the geographic area of the basin, including protecting river corridors, aquatic species passage, and other similar projects.

(e) Reporting. A clean water service provider shall report annually to the Secretary. The report from clean water service providers shall be integrated into the annual clean water investment report, including outcomes from the work performed by clean water service providers. The report shall contain the following:

- (1) a summary of all clean water projects completed that year in the basin;
- (2) a summary of any inspections of previously implemented clean water projects and whether those clean water projects continue to operate in accordance with their design;

- (3) all administrative costs incurred by the clean water service provider;
- (4) a list of all of the subgrants awarded by the clean water service provider in the basin; and
- (5) all data necessary for the Secretary to determine the pollutant reduction achieved by the clean water service provider during the prior year.
- (f) Accountability for pollution reduction goals. If a clean water service provider fails to meet its allocated pollution reduction goals or its five-year target or fails to maintain previously implemented clean water projects the Secretary shall take appropriate steps to hold the clean water service provider accountable for the failure to meet pollution reduction goals or its five-year target. The Secretary may take the following steps:
  - (1) enter a plan to ensure that the clean water service provider meets current and future year pollution reduction goals and five-year targets; or
  - (2) initiate rulemaking to designate an alternate clean water service provider as accountable for the basin.
- (g) Basin water quality council.
  - (1) A clean water service provider designated under this section shall establish a basin water quality council for each assigned basin. The purpose of a basin water quality council is to establish policy and make decisions for the clean water service provider regarding the most significant water quality impairments that exist in the basin and prioritizing the projects that will address those impairments based on the basin plan. A basin water quality council shall also participate in the basin planning process.
  - (2) A basin water quality council shall include, at a minimum, the following:
    - (A) two persons representing natural resource conservation districts in that basin, selected by the applicable natural resource conservation districts;
    - (B) two persons representing regional planning commissions in that basin, selected by the applicable regional planning commission;
    - (C) two persons representing local watershed protection organizations operating in that basin, selected by the applicable watershed protection organizations;
    - (D) one representative from an applicable local or statewide land conservation organization selected by the conservation organization in consultation with the clean water service provider; and

(E) two persons representing from each municipality within the basin, selected by the clean water service provider in consultation with municipalities in the basin.

(3) The designated clean water service provider and the Agency of Natural Resources shall provide technical staff support to the basin water quality council. The clean water service provider may invite support from persons with specialized expertise to address matters before a basin water quality council, including support from the University of Vermont Extension, staff of the Agency of Natural Resources, staff of the Agency of Agriculture, Food and Markets, staff of the Agency of Transportation, staff from the Agency of Commerce and Community Development, the Natural Resource Conservation Service, U.S. Department of Fish and Wildlife, and U.S. Forest Service.

#### § 925. CLEAN WATER SERVICE PROVIDER; WATER QUALITY RESTORATION FORMULA GRANT PROGRAM

The Secretary shall administer a Water Quality Restoration Formula Grant Program to award grants to clean water service providers to meet the pollutant reduction requirements under this subchapter. The grant amount shall be based on the annual pollutant reduction goal established for the clean water service provider multiplied by the standard cost for pollutant reduction including the costs of administration and reporting. Not more than 15 percent of the total grant amount awarded to a clean water service provider shall be used for administrative costs.

#### § 926. WATER QUALITY ENHANCEMENT GRANT PROGRAM

The Secretary shall administer a Water Quality Enhancement Grant Program. This program shall be a competitive grant program to fund projects that protect high quality waters, maintain or improve water quality in all waters, restore degraded or stressed waters, create resilient watersheds and communities, and support the public's use and enjoyment of the State's waters. When making awards under this program, the Secretary shall consider the geographic distribution of these funds. Not more than 15 percent of the total grant amount awarded shall be used for administrative costs.

#### § 927. DEVELOPED LANDS IMPLEMENTATION GRANT PROGRAM

The Secretary shall administer a Developed Lands Implementation Grant Program to provide grants or financing to persons who are required to obtain a permit to implement regulatory requirements that are necessary to achieve water quality standards. The grant or financing program shall only be available in basins where a clean water service provider has met its annual

goals or is making sufficient progress, as determined by the Secretary, towards those goals. This grant program shall fund or provide financing for projects related to the permitting of impervious surface of three acres or more under subdivision 1264(g)(3) of this title. Not more than 15 percent of the total grant amount awarded shall be used for administrative costs.

#### § 928. MUNICIPAL STORMWATER IMPLEMENTATION GRANT PROGRAM

The Secretary shall administer a Municipal Stormwater Implementation Grant Program to provide grants to any municipality required under section 1264 of this title to obtain or seek coverage under the municipal roads general permit, the municipal separate storm sewer systems permit, a permit for impervious surface of three acres or more, or a permit required by the Secretary to reduce the adverse impacts to water quality of a discharge or stormwater runoff. The grant program shall only be available in basins where a clean water service provider has met its annual goals or is making sufficient progress, as determined by the Secretary, towards those goals. Not more than 15 percent of the total grant amount awarded shall be used for administrative costs.

#### § 929. CLEAN WATER PROJECT TECHNICAL ASSISTANCE

The Secretary shall provide technical assistance upon the request of any person who, under this chapter, receives a grant or is a subgrantee of funds to implement a clean water project.

#### § 930. RULEMAKING

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

Sec. 2. 10 V.S.A. § 1253(d)(2) and (3) are amended to read:

(2) In developing a basin plan under this subsection, the Secretary shall:

(A) identify waters that should be reclassified outstanding resource waters or that should have one or more uses reclassified under section 1252 of this title;

(B) identify wetlands that should be reclassified as Class I wetlands;

(C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

(D) review the evaluations performed by the Secretary under subdivisions 922(a)(1) and (2) of this title and update those findings based on any new data collected as part of a basin plan;



(E) for projects in the basin that will result in enhancement of resources, including those that protect high quality waters of significant natural resources, the Secretary shall identify the funding needs beyond those currently funded by the Clean Water Fund;

(F) ensure that municipal officials, citizens, natural resources conservation districts, regional planning commissions, watershed groups, and other interested groups and individuals are involved in the basin planning process;

~~(E)~~(G) ensure regional and local input in State water quality policy development and planning processes;

~~(F)~~(H) provide education to municipal officials and citizens regarding the basin planning process;

~~(G)~~(I) develop, in consultation with the regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

~~(H)~~(J) provide for public notice of a draft basin plan; and

~~(I)~~(K) provide for the opportunity of public comment on a draft basin plan.

(3) The Secretary shall, contingent upon the availability of funding, negotiate and issue performance grants to the Vermont Association of Planning and Development Agencies or its designee, ~~and~~ the Natural Resources Conservation Council or its designee, and to Watersheds United Vermont or its designee to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection in a manner consistent with the authority of regional planning commissions under 24 V.S.A. chapter 117 and the authority of the natural resources conservation districts under chapter 31 of this title. When negotiating a scope of work with the Vermont Association of Planning and Development Agencies or its designee, ~~and~~ the Natural Resources Conservation Council or its designee, and Watersheds United Vermont or its designee to assist in or produce a basin plan, the Secretary may require the Vermont Association of Planning and Development Agencies, ~~or~~ the Natural Resources Conservation Council, or Watersheds United Vermont to:

(A) conduct any of the activities required under subdivision (2) of this subsection (d);

(B) provide technical assistance and data collection activities to inform municipal officials and the State in making water quality investment decisions;

(C) coordinate municipal planning and adoption or implementation of municipal development regulations better to meet State water quality policies and investment priorities; or

(D) assist the Secretary in implementing a project evaluation process to prioritize water quality improvement projects within the region to ensure cost-effective use of State and federal funds.

Sec. 3. 10 V.S.A. § 1387 is amended to read:

§ 1387. FINDINGS; PURPOSE; CLEAN WATER INITIATIVE

(a)(1) The State has committed to implementing a long-term Clean Water Initiative to provide mechanisms, staffing, and financing necessary to achieve and maintain compliance with the Vermont Water Quality Standards for all State waters.

(2) Success in implementing the Clean Water Initiative will depend largely on providing sustained and adequate funding to support the implementation of all of the following:

(A) the requirements of 2015 Acts and Resolves No. 64;

(B) federal or State required cleanup plans for individual waters or water segments, such as total maximum daily load plans;

(C) the Agency of Natural Resources' Combined Sewer Overflow Rule;

(D) the operations of clean water service providers under chapter 37, subchapter 5 of this title; and

(E) the permanent protection of land and waters from future development and impairment through conservation and water quality projects funded by the Vermont Housing and Conservation Trust Fund authorized by chapter 15 of this title.

(3) To ensure success in implementing the Clean Water Initiative, the State should commit to funding the Clean Water Initiative in a manner that ensures the maintenance of effort and that provides an annual appropriation for clean water programs in a range of \$50 million to \$60 million as adjusted for inflation over the duration of the Initiative.

(4) To avoid the future impairment and degradation of the State's waters, the State should commit to continued funding for the protection of land and waters through agricultural and natural resource conservation, including through permanent easements and fee acquisition.

(b) The General Assembly establishes in this subchapter a Vermont Clean Water Fund as a mechanism for financing the improvement of water quality in the State. The Clean Water Fund shall be used to:

(1) assist the State in ~~complying with water quality requirements and construction or implementation of water quality projects or programs~~ the implementation of the Clean Water Initiative;

(2) fund staff positions at the Agency of Natural Resources, Agency of Agriculture, Food and Markets, or Agency of Transportation when the positions are necessary to achieve or maintain compliance with water quality requirements and existing revenue sources are inadequate to fund the necessary positions; and

(3) provide funding to ~~nonprofit organizations, regional associations, and other entities for implementation and administration of community-based water quality programs or projects~~ clean water service providers to meet the obligations of chapter 37, subchapter 5 of this title.

Sec. 3a. 10 V.S.A. § 1388 is amended to read:

#### § 1388. CLEAN WATER FUND

(a) There is created a special fund to be known as the Clean Water Fund to be administered by the Secretary of Administration. The Fund shall consist of:

(1) revenues from the Property Transfer Tax surcharge established under 32 V.S.A. § 9602a;

(2) other gifts, donations, and impact fees received from any source, public or private, dedicated for deposit into the Fund and approved by the Secretary of Administration;

(3) the unclaimed beverage container deposits (escheats) remitted to the State under chapter 53 of this title; ~~and~~

(4) four percent of the revenues from the meals and rooms taxes imposed under 32 V.S.A. chapter 225; and

~~(4)~~(5) other revenues dedicated for deposit into the Fund by the General Assembly.

\* \* \*

Sec. 4. 10 V.S.A. § 1389 is amended to read:

#### § 1389. CLEAN WATER BOARD

(a) Creation.

(1) There is created the Clean Water Board that shall:

(A) be responsible and accountable for planning, coordinating, and financing of the remediation, improvement, and protection of the quality of State waters;

(B) recommend to the Secretary of Administration expenditures:

(i) appropriations from the Clean Water Fund according to the priorities established under subsection (e) of this section; and

(ii) clean water water quality programs or projects that provide water quality benefits, reduce pollution, protect natural areas, enhance water quality protections on agricultural land enhance flood and climate resilience, provide wildlife habitat, or promote and enhance outdoor recreation in support of rural community vitality to be funded by capital appropriations.

(2) The Clean Water Board shall be attached to the Agency of Administration for administrative purposes.

(b) Organization of the Board. The Clean Water Board shall be composed of:

(1) the Secretary of Administration or designee;

(2) the Secretary of Natural Resources or designee;

(3) the Secretary of Agriculture, Food and Markets or designee;

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

(5) the Secretary of Transportation or designee; and

(6) four members of the public, who are not legislators, with expertise in one or more of the following subject matters: public management, civil engineering, agriculture, ecology, wetlands, stormwater system management, forestry, transportation, law, banking, finance, and investment, to be appointed by the Governor.

\* \* \*

(d) Powers and duties of the Clean Water Board. The Clean Water Board shall have the following powers and authority:

\* \* \*

(3) The Clean Water Board shall:

(A) ~~establish a process by which watershed organizations, State agencies, and other interested parties may propose water quality projects or programs for financing from the Clean Water Fund;~~

~~(B)~~ develop an annual revenue estimate and proposed budget for the Clean Water Fund;

~~(C)~~(B) establish measures for determining progress and effectiveness of expenditures for clean water restoration efforts;

(C) if the Board determines that there are insufficient funds in the Clean Water Fund to issue all grants or financing required by sections 925–928 of this title, conduct all of the following:

(i) Direct the Secretary of Natural Resources to prioritize the work needed in every basin, adjust pollution allocations assigned to clean water service providers, and issue grants based on available funding.

(ii) Make recommendations to the Governor and General Assembly on additional revenue to address unmet needs.

(iii) Notify the Secretary of Natural Resources that there are insufficient funds in the Fund. The Secretary of Natural Resources shall consider additional regulatory controls to address water quality improvements that could not be funded.

(D) issue the annual Clean Water Investment Report required under section 1389a of this title; and

(E) solicit, consult with, and accept public comment from organizations interested in improving water quality in Vermont regarding recommendations under this subsection (d) for the allocation of funds from the Clean Water Fund; and

~~(F) establish a process under which a watershed organization, State agency, or other interested party may propose that a water quality project or program identified in a watershed basin plan receive funding from the Clean Water Fund recommend capital appropriations for the permanent protection of land and waters from future development through conservation and water quality projects.~~

(e) Priorities.

~~(1)~~ In making recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall prioritize as follows:

~~(A) funding to programs and projects that address sources of water pollution in waters listed as impaired on the list of waters established by 33 U.S.C. § 1313(d);~~

~~(B) funding to projects that address sources of water pollution~~

~~identified as a significant contributor of water quality pollution, including financial assistance to grant recipients at the initiation of a funded project;~~

(1) As a first priority, make recommendations regarding funding for the following grants and programs, which shall each be given equal priority:

(A) grants to clean water service providers to fund the reasonable costs associated with the inspection, verification, operation, and maintenance of clean water projects in a basin;

(B) the Water Quality Restoration Formula Grant under section 925 of this title;

(C) the Agency of Agriculture, Food and Markets' agricultural water quality programs; and

(D) the Water Quality Enhancement Grants under section 926 of this title at a funding level of at least 20 percent of the annual balance of the Clean Water Fund, provided that the maximum amount recommended under this subdivision (D) in any year shall not exceed \$ 5,000,000.00; and

(E) funding to partners for basin planning, basin water quality council participation, education, and outreach as provided in subdivision 1253(d)(3) of this title, provided funding shall be at least \$500,000.00.

(2) As the next priority after reviewing funding requests for programs identified under subdivision (1) of this subsection:

~~(C)~~(A) funding to programs or projects that address or repair riparian conditions that increase the risk of flooding or pose a threat to life or property;

~~(D)~~ assistance required for State and municipal compliance with stormwater requirements for highways and roads;

~~(E)~~(B) funding for education and outreach regarding the implementation of water quality requirements, including funding for education, outreach, demonstration, and access to tools for the implementation of the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation;

~~(F)~~(C) funding for the Municipal Stormwater Implementation Grant as provided in section 928 of this title;

(D) funding for innovative or alternative technologies or practices designed to improve water quality or reduce sources of pollution to surface waters, including funding for innovative nutrient removal technologies and community-based methane digesters that utilize manure, wastewater, and food residuals to produce energy; and

~~(G)(E)~~ funding to purchase agricultural land in order to take that land out of practice when the State water quality requirements cannot be remediated through agricultural Best Management Practices;

~~(H)~~ funding to municipalities for the establishment and operation of stormwater utilities; and

~~(I)~~ investment in watershed basin planning, water quality project identification screening, water quality project evaluation, and conceptual plan development of water quality projects.

~~(2)~~ In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Clean Water Board shall, during the first three years of its existence and within the priorities established under subdivision (1) of this subsection (e), prioritize awards or assistance to municipalities for municipal compliance with water quality requirements and to municipalities for the establishment and operation of stormwater utilities.

~~(3)~~ In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall, after satisfaction of the priorities established under subdivision (1) of this subsection (e), attempt to provide investment in all watersheds of the State based on the needs identified in watershed basin plans.

(3) As the next priority after reviewing funding requests under subdivisions (1) and (2) of this subsection, funding for the Developed Lands Implementation Grant Program as provided in section 927 of this title.

(f) Assistance. The Clean Water Board shall have the administrative, technical, and legal assistance of the Agency of Administration, the Agency of Natural Resources, the Agency of Agriculture, Food and Markets, the Agency of Transportation, and the Agency of Commerce and Community Development for those issues or services within the jurisdiction of the respective agency. The cost of the services provided by agency staff shall be paid from the budget of the agency providing the staff services.

Sec. 4a. 16 V.S.A. § 4025 is amended to read:

§ 4025. EDUCATION FUND

(a) The Education Fund is established to comprise the following:

\* \* \*

(4) 25 21 percent of the revenues from the meals and rooms taxes imposed under 32 V.S.A. chapter 225;

\* \* \*

Sec. 4b. REPEAL

Sec. G.8 (prewritten software accessed remotely) of 2015 Acts and Resolves No. 51 is repealed.

Sec. 5. 24 V.S.A. § 4345a is amended to read:

§ 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

A regional planning commission created under this chapter shall:

\* \* \*

(20) If designated as a clean water service provider under 10 V.S.A. § 924, provide for the identification, prioritization, development, construction, inspection, verification, operation, and maintenance of clean water projects in the basin assigned to the regional planning commission in accordance with the requirements of 10 V.S.A. chapter 37, subchapter 5.

Sec. 6. 10 V.S.A. § 704 is amended to read:

§ 704. POWERS OF COUNCIL

The State Natural Resources Conservation Council may employ an administrative officer and such technical experts and such other agents and employees as it may require. The Council may call upon the Attorney General of the State for such legal services as it may require, or may employ its own counsel. It shall have authority to delegate to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. If designated as a clean water service provider under section 924 of this title, provide for the identification, prioritization, development, construction, inspection, verification, operation, and maintenance of clean water projects in the basin assigned to a natural resources conservation district in accordance with the requirements of chapter 37, subchapter 5 of this title.

Sec. 7. RECOMMENDATIONS ON NUTRIENT CREDIT TRADING

On or before July 1, 2022, the Secretary of Natural Resources, after consultation with the Clean Water Board, shall submit to the Senate Committees on Appropriations, on Natural Resources and Energy, and on Finance and the House Committees on Appropriations, on Natural Resources, Fish, and Wildlife, and on Ways and Means recommendations regarding implementation of a market-based mechanism that allows the purchase of water quality credits by permittees under 10 V.S.A. chapter 47, and other entities. The report shall include information on the cost to develop and manage any recommended trading program.



## Sec. 8. TRANSITION

(a) Until November 1, 2021, the Secretary shall implement the existing ecosystem restoration funding delivery program and shall not make substantial modifications to the manner in which that program has been implemented. The Secretary may give increased priority to meeting legal obligations pursuant to a total maximum daily load when implementing that funding delivery program.

(b) Until the plan required by 10 V.S.A. § 923(d)(2) has been fully implemented, the Secretary shall provide additional weight to geographic areas of the State not receiving a grant pursuant to 10 V.S.A. § 925 when making funding decisions with respect to grants awarded pursuant to 10 V.S.A. § 926.

## Sec. 9. LAND AND WATER CONSERVATION STUDY

(a) The State's success in achieving and maintaining compliance with the Vermont Water Quality Standards for all State waters depends on avoiding the future degradation or impairment of surface waters. An important component of avoiding the future degradation or impairment of surface waters is the permanent protection of lands for multiple conservation purposes, including the protection of surface waters and associated natural resources, according to priorities for multiple conservation values, including water quality benefits, natural areas, flood and climate resilience, wildlife habitat, and outdoor recreation.

(b) The State's success in achieving and maintaining compliance with the Vermont Water Quality Standards depends in part on strategic land conservation. To assist the State in enhancing the benefit of strategic land conservation, the Secretary of Natural Resources shall convene a Land and Water Conservation Study Stakeholder Group to develop a recommended framework for statewide land conservation. On or before January 15, 2020, the Secretary shall submit the Stakeholder Group's recommended framework for statewide land conservation to the General Assembly. The recommended framework shall include:

(1) recommendations for maximizing both water quality benefits and other state priorities from land conservation projects, including agricultural uses, natural area and headwaters protection, flood and climate resilience, wildlife habitat, outdoor recreation, and rural community development; and

(2) recommended opportunities to leverage federal and other nonstate funds for conservation projects.

(c)(1) The Land and Water Conservation Study Stakeholder Group shall include the following individuals or their designees:

- (A) the Secretary of Natural Resources;
- (B) the Secretary of Agriculture, Food and Markets;
- (C) the Executive Director of the Vermont Housing and Conservation Board;
- (D) the President of the Vermont Land Trust;
- (E) the Vermont and New Hampshire Director of the Trust for Public Land; and
- (F) the Director of the Nature Conservancy for the State of Vermont.

(2) The Secretary of Natural Resources shall invite the participation in the Stakeholder Group by the U.S. Department of Agriculture's Natural Resources Conservation Service, representatives of farmer's watershed alliances, representatives of landowner organizations, and other interested parties.

Sec. 10. 10 V.S.A. § 1389a is amended to read:

§ 1389a. CLEAN WATER INVESTMENT REPORT

(a) Beginning on January 15, 2017, and annually thereafter, the Secretary of Administration shall publish the Clean Water Investment Report. The Report shall summarize all investments, including their cost-effectiveness, made by the Clean Water Board and other State agencies for clean water restoration over the prior fiscal year. The Report shall include expenditures from the Clean Water Fund, the General Fund, the Transportation Fund, and any other State expenditures for clean water restoration, regardless of funding source.

(b) The Report shall include:

(1) Documentation of progress or shortcomings in meeting established indicators for clean water restoration.

(2) A summary of additional funding sources pursued by the Board, including whether those funding sources were attained; if it was not attained, why it was not attained; and where the money was allocated from the Fund.

(3) A summary of water quality problems or concerns in each watershed basin of the State, a list of water quality projects identified as necessary in each basin of the State, and how identified projects have been prioritized for implementation. The water quality problems and projects identified under this subdivision shall include programs or projects identified across State government and shall not be limited to projects listed by the Agency of Natural Resources in its watershed projects database.

(4) A summary of any changes to applicable federal law or policy related to the State's water quality improvement efforts, including any changes to requirements to implement total maximum daily load plans in the State.

(5) A summary of available federal funding related to or for water quality improvement efforts in the State.

(6) Beginning January 2023, a summary of the administration of the grant programs established under sections 925–928 of this title, including whether these grant programs are adequately funding implementation of the Clean Water Initiative and whether the funding limits for the Water Quality Enhancement Grants under subdivision 1389(e)(1)(D) of this title should be amended to improve State implementation of the Clean Water Initiative.

(c) The Report may also provide an overview of additional funding necessary to meet objectives established for clean water restoration and recommendations for additional revenue to meet those restoration objectives. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report required by this section.

(d)(1) The Secretary of Administration shall develop and use a results-based accountability process in publishing the annual report required by subsection (a) of this section.

(2) The Secretary of Administration shall develop user-friendly issue briefs, tables, or executive summaries that make the information required under subdivision (b)(3) available to the public separately from the report required by this section.

(3) On or before September 1 of each year, the Secretary of Administration shall submit to the Joint Fiscal Committee an interim report regarding the information required under subdivision (b)(5) of this section relating to available federal funding.

Sec. 10a. REPORT OF SECRETARY OF ADMINISTRATION;  
WATER QUALITY PROJECTS ON FARMS

On or before January 15, 2020, the Secretary of Administration, as the chair of the Clean Water Board, shall, after consultation with the Secretary of Natural Resources and the Secretary of Agriculture, Food and Markets, submit to the House Committees on Natural Resources, Fish, and Wildlife and on Agriculture and Forestry and the Senate Committees on Natural Resources and Energy and on Agriculture a report regarding the administration and funding of water quality projects on farms as part of the Clean Water Initiative. The report shall include recommendations on:

(1) how farmers can maximize access to funding for water quality projects on farms, including funding available through grants authorized under 10 V.S.A chapter 37, subchapter 5;

(2) how the Agency of Agriculture, Food and Markets should be involved in water quality projects on farms, including how the Agency of Agriculture, Food and Markets would give approval of, be notified of, or participate in water quality projects on farms funded by a clean water service provided under 10 V.S.A. chapter 37, subchapter 5;

(3) how to minimize duplication of effort, administration, and oversight between the Agency of Agriculture, Food and Markets and clean water service providers regarding water quality projects on farms; and

(4) how to most efficiently and effectively fund water quality projects on farms, including how to ensure the continued functionality of projects after construction or implementation.

#### Sec. 11. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

#### **S. 112**

An act relating to earned good time.

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

#### Sec. 1. FINDINGS; INTENT

(a) The General Assembly finds that:

(1) For nearly 40 years, Vermont had a system of statutory good time that permitted offenders to receive reductions in their sentences for maintaining good behavior and participating in programming while in the custody of the Commissioner of Corrections. This good time system was repealed in 2005.

(2) In 2018, the General Assembly directed the Commissioner of Corrections, in consultation with the Chief Superior Judge, the Attorney General, the Executive Director of the Department of Sheriffs and State's Attorneys, and the Defender General, to submit a report (the Report) to the Legislature on the advisability and feasibility of reinstituting a system of earned good time for persons under Department of Corrections supervision. The Report was filed on November 15, 2018.

(3) In the Report, the Commissioner found that:

(A) empirical studies show that earned good time is effective at prison population management, has little to no community impact or effect on public safety, and is perceived by correctional administrators as having a positive impact on facility control;

(B) earned good time reduces incarceration costs by an amount ranging from \$1,800.00 to \$5,500.00 per inmate, depending on the number of days an inmate's sentence is reduced; and

(C) although research is mixed, studies show that earned good time can result in a crime rate reduction of 1–3.5 percent.

(4) On the basis of the Report's findings, the Commissioner concluded that the Department should "reinstitute a program of earned good time for sentenced inmates and individuals on furlough."

(5) In order to reduce the State's prison population by reintegrating offenders into the community while maintaining public safety, a system of earned good time should be reinstituted in Vermont as soon as possible.

(b) It is the intent of the General Assembly that the earned good time program established pursuant to 28 V.S.A. § 818:

(1) be a simple and straightforward program that as much as possible minimizes complexities in implementation and management;

(2) relies on easily ascertainable and objective standards and criteria for awarding good time rather than subjectivity and the application of discretion by the Department of Corrections; and

(3) recognizes that there is a role in the correctional system for providing inmates with an incentive to reduce their sentences by adhering to Department of Corrections requirements.

Sec. 2. 28 V.S.A. § 818 is added to read:

§ 818. EARNED GOOD TIME; REDUCTION OF TERM

(a) On or before July 1, 2020, the Department of Corrections shall file a proposed rule pursuant to 3 V.S.A. chapter 25 implementing an earned good time program.

(b) The earned good time program implemented pursuant to this section shall comply with the following standards:

(1) The program shall be available for all sentenced offenders, including furloughed offenders, provided that the program shall not be available to offenders on probation or parole, to offenders eligible for a reduction of term pursuant to 28 V.S.A. § 811, or to offenders sentenced to life without parole.

(2) Offenders shall earn a reduction of five days in the minimum and maximum sentence for each month during which the offender:

(A) is not adjudicated of a major disciplinary rule violation; and

(B) is not reincarcerated from the community for a violation of release conditions, provided that an offender who loses a residence for a reason other than fault on the part of the offender shall not be deemed reincarcerated under this subdivision.

(3) An offender who receives post-adjudication treatment in a residential setting for a substance use disorder shall earn a reduction of one day in the minimum and maximum sentence for each day that the offender receives the inpatient treatment. While a person is in residential substance abuse treatment, he or she shall not be eligible for good time except as provided in this subsection.

(4) The Department shall provide timely notice no less frequently than every 90 days to the offender and to any victim of record any time the offender receives a reduction in his or her term of supervision pursuant to this section, and the Department shall maintain a system that documents and records all such reductions in each offender's permanent record.

(5) The program shall become effective upon the Department's adoption of final proposed rules pursuant to 3 V.S.A. § 843.

Sec. 3. 28 V.S.A. § 819 is added to read:

§ 819. MERITORIOUS GOOD TIME

(a) Notwithstanding any other provision of law, the Commissioner may, in his or her discretion, award a reduction of up to 30 days in an offender's minimum and maximum sentence if the Commissioner determines that the offender has:

(1) acted to protect the life or safety of another person;

(2) performed an act that put the inmate in harm's way in order to protect or preserve the life of another person; or

(3) performed an act of heroism during an emergency.

(b) An award of meritorious good time under this section may be made to an inmate:

(1) sentenced or committed to the custody of the commissioner as defined in 28 V.S.A. § 701;

(2) furloughed as defined in 28 V.S.A. § 808;

(3) on parole as defined in 28 V.S.A. § 402; or

(4) on supervised community sentence as defined in 28 V.S.A. § 351.

(c) Within 30 days after an award of meritorious good time pursuant to this section, the Department's Victim Services Unit shall provide notice of the award and the newly effective minimum and maximum release dates to any victim of record.

Sec. 4. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

\* \* \*

(b) The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which the person is received at the correctional facility for service of the sentence. The court shall give the person credit toward service of his or her sentence for any days spent in custody as follows:

(1) The period of credit for concurrent and consecutive sentences shall include all days served from the date of arraignment or the date of the earliest detention for the offense, whichever occurs first, and end on the date of the sentencing. Only a single credit shall be awarded in cases of consecutive sentences, and no credit for one period of time shall be applied to a later period.

(2) In sentencing a violation of probation, the court shall give the person credit for any days spent in custody from the time the violation is filed or the person is detained on the violation, whichever occurs first, until the violation is sentenced. In a case in which probation is revoked and the person is ordered to serve the underlying sentence, the person shall receive credit for all time previously served in connection with the offense.

(3) A defendant who has received pre-adjudication treatment in a residential setting for a substance use disorder after the charge has been filed shall earn a reduction of one day in the offender's minimum and maximum sentence for each day that the offender receives the inpatient treatment.

\* \* \*

Sec. 5. APPLICABILITY OF EARNED GOOD TIME; REPORT

On or before December 15, 2019, the Commissioner of Corrections, in consultation with the Chief Superior Judge, the Attorney General, the Executive Director of the Department of Sheriffs and State's Attorneys, the Defender General, and the Executive Director of the Center for Crime Victim's

Services shall report to the Senate and House Committees on Judiciary, the Senate Committee on Institutions, and the House Committee on Corrections and Institutions a proposal for the availability of earned good time. The proposal required by this section shall recommend whether the earned good time program required by 28 V.S.A. § 818 should, in addition to being available to offenders sentenced on or after the date the program becomes effective, also be available to offenders in the custody of the Commissioner of Corrections who were sentenced before the effective date of the program.

#### Sec. 6. PRESUMPTIVE PAROLE; REPORT

(a) On or before December 15, 2019, the Department of Corrections and the Parole Board shall report to the House Committee on Corrections and Institutions and the House and Senate Committees on Judiciary a proposal for implementing a system of presumptive parole for inmates in the custody of the Commissioner of Corrections.

(b) The proposal developed pursuant to this section shall:

(1) address who is eligible for presumptive parole;

(2) address how presumptive parole would affect good time;

(3) provide a presumption that an eligible inmate who is serving a sentence of imprisonment shall be released on parole upon completion of the inmate's minimum sentence; and

(4) describe how the Department of Corrections may rebut the presumption of parole and what standard the Parole Board would use to decide whether parole should be granted.

(c) The Department of Corrections and the Parole Board shall consult with the Attorney General and the Defender General in developing the proposal required by this section.

(d) The Department of Corrections and the Parole Board shall provide regular interim reports to the Joint Legislative Justice Oversight Committee on its progress toward developing the proposal required by this section.

#### Sec. 7. SUNSET; MERITORIOUS GOOD TIME; REPORT

(a) 28 V.S.A. § 819 (meritorious good time) shall be repealed on July 1, 2021.

(b)(1) On or before December 15, 2020, the Department of Corrections shall provide a report on the meritorious good time program established pursuant to 28 V.S.A. § 819 to the House Committee on Corrections and Institutions and the House and Senate Committees on Judiciary.



(2) The report required by this subsection shall include:

(A) the number of offenders who have been awarded a meritorious good time sentence reduction and the basis for each reduction; and

(B) an evaluation of the program and any recommended changes.

#### Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.

#### **Proposal of amendment to House proposal of amendment to S. 112 to be offered by Senators Sears, Baruth, Benning, Nitka and White**

Senators Sears, Baruth, Benning, Nitka and White move that the Senate concur with the House proposal of amendment, with a further proposal of amendment as follows:

By striking out all after the enacting clause and inserting in lieu thereof the following:

#### Sec. 1. FINDINGS; INTENT

(a) The General Assembly finds that:

(1) For nearly 40 years, Vermont had a system of statutory good time that permitted offenders to receive reductions in their sentences for maintaining good behavior and participating in programming while in the custody of the Commissioner of Corrections. This good time system was repealed in 2005.

(2) In 2018, the General Assembly directed the Commissioner of Corrections, in consultation with the Chief Superior Judge, the Attorney General, the Executive Director of the Department of Sheriffs and State's Attorneys, and the Defender General, to submit a report (the Report) to the Legislature on the advisability and feasibility of reinstituting a system of earned good time for persons under Department of Corrections supervision. The Report was filed on November 15, 2018.

(3) In the Report, the Commissioner found that:

(A) empirical studies show that earned good time is effective at prison population management, has little to no community impact or effect on public safety, and is perceived by correctional administrators as having a positive impact on facility control;

(B) earned good time reduces incarceration costs by an amount ranging from \$1,800.00 to \$5,500.00 per inmate, depending on the number of days an inmate's sentence is reduced; and

(C) although research is mixed, studies show that earned good time can result in a crime rate reduction of 1–3.5 percent.

(4) On the basis of the Report’s findings, the Commissioner concluded that the Department should “reinstitute a program of earned good time for sentenced inmates and individuals on furlough.”

(5) In order to reduce the State’s prison population by reintegrating offenders into the community while maintaining public safety, a system of earned good time should be reinstituted in Vermont as soon as possible.

(b) It is the intent of the General Assembly that the earned good time program established pursuant to 28 V.S.A. § 818:

(1) be a simple and straightforward program that as much as possible minimizes complexities in implementation and management;

(2) relies on easily ascertainable and objective standards and criteria for awarding good time rather than subjectivity and the application of discretion by the Department of Corrections; and

(3) recognizes that there is a role in the correctional system for providing inmates with an incentive to reduce their sentences by adhering to Department of Corrections requirements.

Sec. 2. 28 V.S.A. § 818 is added to read:

§ 818. EARNED GOOD TIME; REDUCTION OF TERM

(a) On or before July 1, 2020, the Department of Corrections shall file a proposed rule pursuant to 3 V.S.A. chapter 25 implementing an earned good time program.

(b) The earned good time program implemented pursuant to this section shall comply with the following standards:

(1) The program shall be available for all sentenced offenders, including furloughed offenders, provided that the program shall not be available to offenders on probation or parole, to offenders eligible for a reduction of term pursuant to 28 V.S.A. § 811, or to offenders sentenced to life without parole.

(2) Offenders shall earn a reduction of five days in the minimum and maximum sentence for each month during which the offender:

(A) is not adjudicated of a major disciplinary rule violation;

(B) is not reincarcerated from the community for a violation of release conditions, provided that an offender who loses a residence for a reason other than fault on the part of the offender shall not be deemed reincarcerated under this subdivision; and

(C) complies with a merit-based system designed to incentivize offenders to meet milestones identified by the Department that prepare offenders for reentry, if the offender has received a sentence of greater than one year.

(3) An offender who receives post-adjudication treatment in a residential setting for a substance use disorder shall earn a reduction of one day in the minimum and maximum sentence for each day that the offender receives the inpatient treatment. While a person is in residential substance abuse treatment, he or she shall not be eligible for good time except as provided in this subsection.

(4) The Department shall provide timely notice no less frequently than every 90 days to the offender and to any victim of record any time the offender receives a reduction in his or her term of supervision pursuant to this section, and the Department shall maintain a system that documents and records all such reductions in each offender's permanent record.

(5) The program shall become effective upon the Department's adoption of final proposed rules pursuant to 3 V.S.A. § 843.

Sec. 3. 28 V.S.A. § 819 is added to read:

§ 819. EXTRAORDINARY GOOD TIME

(a) Notwithstanding any other provision of law, the Commissioner may, in his or her discretion, award a reduction of up to 30 days in an offender's minimum and maximum sentence if the Commissioner determines that the offender has:

(1) acted to protect the life or safety of another person;

(2) performed an act that put the inmate in harm's way in order to protect or preserve the life of another person; or

(3) performed an act of heroism during an emergency.

(b) An award of extraordinary good time under this section may be made to an inmate:

(1) sentenced or committed to the custody of the commissioner as defined in 28 V.S.A. § 701;

(2) furloughed as defined in 28 V.S.A. § 808;

(3) on parole as defined in 28 V.S.A. § 402; or

(4) on supervised community sentence as defined in 28 V.S.A. § 351.

(c) Within 30 days after an award of extraordinary good time pursuant to this section, the Department's Victim Services Unit shall provide notice of the award and the newly effective minimum and maximum release dates to any victim of record.

Sec. 4. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

\* \* \*

(b) The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which the person is received at the correctional facility for service of the sentence. The court shall give the person credit toward service of his or her sentence for any days spent in custody as follows:

(1) The period of credit for concurrent and consecutive sentences shall include all days served from the date of arraignment or the date of the earliest detention for the offense, whichever occurs first, and end on the date of the sentencing. Only a single credit shall be awarded in cases of consecutive sentences, and no credit for one period of time shall be applied to a later period.

(2) In sentencing a violation of probation, the court shall give the person credit for any days spent in custody from the time the violation is filed or the person is detained on the violation, whichever occurs first, until the violation is sentenced. In a case in which probation is revoked and the person is ordered to serve the underlying sentence, the person shall receive credit for all time previously served in connection with the offense.

(3) A defendant who has received pre-adjudication treatment in a residential setting for a substance use disorder after the charge has been filed shall earn a reduction of one day in the offender's minimum and maximum sentence for each day that the offender receives the inpatient treatment.

\* \* \*

Sec. 5. APPLICABILITY OF EARNED GOOD TIME; REPORT

On or before December 15, 2019, the Commissioner of Corrections, in consultation with the Chief Superior Judge, the Attorney General, the Executive Director of the Department of Sheriffs and State's Attorneys, the Defender General, and the Executive Director of the Center for Crime Victim's Services shall report to the Senate and House Committees on Judiciary, the Senate Committee on Institutions, and the House Committee on Corrections and Institutions a proposal for the availability of earned good time. The

proposal required by this section shall recommend whether the earned good time program required by 28 V.S.A. § 818 should, in addition to being available to offenders sentenced on or after the date the program becomes effective, also be available to offenders in the custody of the Commissioner of Corrections who were sentenced before the effective date of the program.

#### Sec. 6. PRESUMPTIVE PAROLE; REPORT

(a) On or before December 15, 2019, the Department of Corrections and the Parole Board shall report to the House Committee on Corrections and Institutions and the House and Senate Committees on Judiciary a proposal for implementing a system of presumptive parole for inmates in the custody of the Commissioner of Corrections.

(b) The proposal developed pursuant to this section shall:

(1) address who is eligible for presumptive parole;

(2) address how presumptive parole would affect good time;

(3) provide a presumption that an eligible inmate who is serving a sentence of imprisonment shall be released on parole upon completion of the inmate's minimum sentence; and

(4) describe how the presumption of parole may be rebutted and what standard would be used to decide whether parole should be granted.

(c) The Department of Corrections and the Parole Board shall consult with the Attorney General and the Defender General in developing the proposal required by this section.

(d) The Department of Corrections and the Parole Board shall provide regular interim reports to the Joint Legislative Justice Oversight Committee on its progress toward developing the proposal required by this section.

#### Sec. 7. SUNSET; EXTRAORDINARY GOOD TIME; REPORT

(a) 28 V.S.A. § 819 (extraordinary good time) shall be repealed on July 1, 2021.

(b)(1) On or before December 15, 2020, the Department of Corrections shall provide a report on the extraordinary good time program established pursuant to 28 V.S.A. § 819 to the House Committee on Corrections and Institutions and the House and Senate Committees on Judiciary.

(2) The report required by this subsection shall include:

(A) the number of offenders who have been awarded an extraordinary good time sentence reduction and the basis for each reduction; and

(B) an evaluation of the program and any recommended changes.

Sec. 8. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE; 2019 INTERIM MEETINGS

Notwithstanding 2 V.S.A. § 801(d), the Joint Legislative Justice Oversight Committee may meet up to 10 times during adjournment between the 2019 and 2020 legislative sessions.

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

**S. 131**

An act relating to insurance and securities.

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

\* \* \* Insurance Regulatory Sandbox; Sunset \* \* \*

Sec. 1. 8 V.S.A. § 15a is added to read:

§ 15a. INSURANCE REGULATORY SANDBOX; INNOVATION  
WAIVER; SUNSET

(a) Subject to the limitations specified in subsection (g) of this section, the Commissioner may grant a variance or waiver (innovation waiver or waiver) with respect to the specific requirements of any insurance law, regulation, or bulletin if a person subject to that law, regulation, or bulletin demonstrates to the Commissioner's satisfaction that:

(1) the application of the law, regulation, or bulletin would prohibit the introduction of an innovative or more efficient insurance product or service that the applicant intends to offer during the period for which the proposed waiver is granted;

(2) the public policy goals of the law, regulation, or bulletin will be or have been achieved by other means;

(3) the waiver will not substantially or unreasonably increase any risk to consumers; and

(4) the waiver is in the public interest.

(b) An application for an innovation waiver shall include the following information:

(1) the identity of the person applying for the waiver;

(2) a description of the product or service to be offered if the waiver is granted, including how the product or service functions and the manner and terms on which it will be offered;

(3) an explanation of the potential benefits to consumers of the product or service;

(4) an explanation of the potential risks to consumers posed by the product or service and how the applicant proposes to mitigate such risks;

(5) an identification of the statutory or regulatory provision that prohibits the introduction, sale, or offering of the product or service; and

(6) any additional information required by the Commissioner.

(c)(1) An innovation waiver shall be granted for an initial period of up to 12 months, as deemed appropriate by the Commissioner.

(2) Prior to the end of the initial waiver period, the Commissioner may grant a one-time extension for up to an additional 12 months. An extension request shall be made to the Commissioner at least 30 days prior to the end of the initial waiver period and shall include the length of the extension period requested and specific reasons why the extension is necessary. The Commissioner shall grant or deny an extension request before the end of the initial waiver period.

(d) An innovation waiver shall include any terms, conditions, and limitations deemed appropriate by the Commissioner, including limits on the amount of premium that may be written in relation to the underlying product or service and the number of consumers that may purchase or utilize the underlying product or service; provided that in no event shall a product or service subject to an innovation waiver be purchased or utilized by more than 10,000 Vermont consumers.

(e) A product or service offered pursuant to an innovation waiver shall include the following written disclosures to consumers in clear and conspicuous form:

(1) the name and contact information of the person providing the product or service;

(2) that the product or service is authorized pursuant to an innovation waiver for a temporary period of time and may be discontinued at the end of the waiver period, the date of which shall be specified;

(3) contact information for the Department, including how a consumer may file a complaint with the Department regarding the product or service; and

(4) any additional disclosures required by the Commissioner.

(f) The Commissioner's decision to grant or deny a waiver or extension shall not be subject to the contested-case provisions of the Vermont Administrative Procedures Act.

(g)(1) Pursuant to the authority granted by this section, the Commissioner shall not grant a waiver with respect to any of the following:

(A) Any law, regulation, bulletin, or other provision that is not subject to the Commissioner's jurisdiction under Title 8;

(B) section 3304, 3366, or 6004(a)–(b) of this title or any other requirement as to the minimum amount of paid-in capital or surplus required to be possessed or maintained by any person;

(C) chapter 107 (concerning health insurance), 112 (concerning the Vermont Life and Health Insurance Guaranty Association Act), 117 (concerning workers' compensation insurance), 129 (concerning insurance trade practices), or 131 (concerning licensing requirements), and chapter 154 (concerning long-term care insurance) of this title or any regulations or bulletins directly relating thereto;

(D) section 4211 (concerning volunteer drivers) of this title;

(E) any law, regulation, or bulletin required for the Department to maintain its accreditation by the National Association of Insurance Commissioners unless said law or regulation permits variances or waivers;

(F) the application of any taxes or fees; and

(G) any other law or regulation deemed ineligible by the Commissioner.

(2) The authority granted to the Commissioner under this section shall not be construed to allow the Commissioner to grant or extend a waiver that would abridge the recovery rights of Vermont policyholders.

(h) A person who receives a waiver under this section shall be required to make a deposit of cash or marketable securities with the State Treasurer in an amount subject to such conditions and for such purposes as the Commissioner determines necessary for the protection of consumers.



(i)(1) At least 30 days prior to granting an innovation waiver, the Commissioner shall provide public notice of the draft waiver by publishing the following information:

(A) the specific statute, regulation, or bulletin to which the draft waiver applies;

(B) the proposed terms, conditions, and limitations of the draft waiver;

(C) the proposed duration of the draft waiver; and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(j)(1) If a waiver is granted pursuant to this section, the Commissioner shall provide public notice of the existence of the waiver by providing the following information:

(A) the specific statute, regulation, or bulletin to which the waiver applies;

(B) the name of the person who applied for and received the waiver;

(C) the duration of and any other terms, conditions, or limitations of the waiver; and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(k) The Commissioner, by regulation, shall adopt uniform procedures for the submission, granting, denying, monitoring, and revocation of petitions for a waiver pursuant to this section. The procedures shall set forth requirements for the ongoing monitoring, examination, and supervision of, and reporting by, each person granted a waiver under this section and shall permit the Commissioner to attach reasonable conditions or limitations on the conduct permitted pursuant to a waiver. The procedures shall provide for an expedited application process for a product or service that is substantially similar to one for which a waiver has previously been granted by the Commissioner. The procedures shall include an opportunity for public comment on draft waivers under consideration by the Commissioner.

(l) Upon expiration of an innovation waiver, the person who obtained the waiver shall cease all activities that were permitted only by the waiver and comply with all generally applicable laws and regulations.

(m) The ability to grant a waiver under this section shall not be interpreted to limit or otherwise affect the authority of the Commissioner to exercise discretion to waive or enforce requirements as permitted under any other section of this title or any regulation or bulletin adopted pursuant thereto.

(n) Biannually, beginning on January 15, 2020, the Commissioner shall submit a report to the General Assembly providing the following information:

(1) the total number of petitions for waivers that have been received, granted, and denied by the Commissioner;

(2) for each waiver granted by the Commissioner, the information specified under subsection (f) of this section;

(3) a list of any regulations or bulletins that have been adopted or amended as a result of or in connection with a waiver granted under this section;

(4) with respect to each statute to which a waiver applies, the Commissioner's recommendation as to whether such statute should be continued, eliminated, or amended in order to promote innovation and establish a uniform regulatory system for all regulated entities; and

(5) a list of any waivers that have lapsed or been revoked and, if revoked, a description of other regulatory or disciplinary actions, if any, that resulted in, accompanied, or resulted from such revocation.

(o) No new waivers or extensions shall be granted after July 1, 2021.

(p) This section shall be repealed on July 1, 2023.

\* \* \* Capital and Surplus Requirements \* \* \*

Sec. 2. [Deleted.]

Sec. 3. 8 V.S.A. § 3366 is amended to read:

§ 3366. ASSETS OF COMPANIES

(a)(1) ~~Such~~ A foreign or alien insurer authorized to do business in this State shall possess and thereafter maintain unimpaired paid-in capital or basic surplus of not less than \$2,000,000.00 and, when first so authorized, shall possess and maintain free surplus of not less than \$3,000,000.00. ~~Such~~

(2) The capital and surplus shall be in the form of cash or marketable securities, a portion of which may be held on deposit with the State Treasurer,

such securities as designated by the insurer and approved by the Commissioner, in an amount and subject to such conditions determined by the Commissioner. ~~Such~~ The conditions shall include a requirement that any interest or other earnings attributable to such cash or marketable securities shall inure to the benefit of the insurer until such time as the Commissioner determines that the deposit must be used for the benefit of the policyholders of the insurer or some other authorized public purpose relating to the regulation of the insurer.

(3) The Commissioner may prescribe additional capital or surplus for all insurers authorized to transact the business of insurance based upon the type, volume, and nature of insurance business transacted. The Commissioner may reduce or waive the capital and surplus amounts required by this section pursuant to a plan of dissolution for the company approved by the Commissioner.

(b) The express purpose of subsection (a) of this section and the Commissioner's power to require the deposit of cash or marketable securities set forth therein is to protect the interests of Vermont policyholders in the event of the insolvency of the insurer. Except to the extent it would contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be deemed to control the funds on deposit and to have a lien on the funds for the benefit of the Vermont policyholders affected by the insolvency. The lien so created shall be superior to any lien filed by a general creditor of the insurer.

\* \* \* Domestic Surplus Lines Insurer; Home State Surplus Lines  
Premium Taxation \* \* \*

Sec. 4. 8 V.S.A. § 5022 is amended to read:

§ 5022. DEFINITIONS

\* \* \*

(b) As used in this chapter:

(1) "Admitted insurer" means an insurer possessing a certificate of authority licensed to transact business in this State issued by the Commissioner pursuant to section 3361 of this title. For purposes of this chapter, "admitted insurer" shall not include a domestic surplus lines insurer.

\* \* \*

(3) "Domestic insurer" means any insurer that has been chartered by, incorporated, organized, or constituted within or under the laws of this State.

~~(4)~~ “Domestic risk” means a subject of insurance ~~which~~ that is resident, located, or to be performed in this State.

~~(5)~~ “Domestic surplus lines insurer” means a domestic insurer with which insurance coverage may be placed under this chapter.

~~(4)(6)~~ “To export” means to place surplus lines insurance with a non-admitted insurer.

~~(5)(7)~~ “Home state” means, with respect to an insured:

(A)(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located outside the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term “home state” means the home state, as determined pursuant to subdivision (A) of this subdivision ~~(5)(7)~~, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

~~(6)(8)~~ “NAIC” means the National Association of Insurance Commissioners.

~~(7)(9)~~ “Surplus lines broker” means an individual licensed under this chapter and chapter 131 of this title.

~~(8)(10)~~ “Surplus lines insurance” means coverage not procurable from admitted insurers.

~~(9)(11)~~ “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.

Sec. 5. 8 V.S.A. § 5023a is added to read:

§ 5023a. DOMESTIC SURPLUS LINES INSURER; AUTHORIZED

(a) Surplus lines insurance may be procured from a domestic surplus lines insurer if all of the following criteria are met:

(1) The board of directors of the insurer has adopted a resolution seeking certification as a domestic surplus lines insurer and the Commissioner has approved such certification.

(2) The insurer is already eligible to offer surplus lines insurance in at least one other state besides Vermont.

(3) The insurer meets the requirements of section 5026 of this title.

(4) All other requirements of this chapter are met.

(b) The requirements of 8 V.S.A. § 80 shall not apply to domestic surplus lines insurers. A domestic surplus lines insurer shall be deemed to be a non-admitted insurer for purposes of chapter 138 of this title.

Sec. 6. 8 V.S.A. § 5024 is amended to read:

§ 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

(a) Insurance coverage, except as described in section 5025 of this chapter, shall not be placed with a ~~non-admitted~~ surplus lines insurer unless the full amount of insurance required is not reasonably procurable from admitted insurers actually transacting that kind and class of insurance in this State; and the amount of insurance exported shall be only the excess over the amount procurable from admitted insurers actually transacting and insuring that kind and class of insurance.

\* \* \*

Sec. 7. 8 V.S.A. § 5026 is amended to read:

§ 5026. SOLVENT INSURERS REQUIRED

(a) Where Vermont is the home state of the insured, surplus lines brokers shall not knowingly place or continue surplus lines insurance with ~~non-admitted~~ surplus lines insurers who are insolvent or unsound financially, and in no event shall any surplus lines broker place any insurance with a non-admitted insurer unless such insurer:

\* \* \*

(b) Notwithstanding the capital and surplus requirements of this section, a ~~non-admitted~~ surplus lines insurer may receive approval upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital, and surplus of any parent company, company underwriting profit and investment-income trends, market availability, and company record and reputation within the industry. In no event, however, shall the Commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4,500,000.00.

\* \* \*

Sec. 8. [Deleted.]

\* \* \*

Sec. 9. 8 V.S.A. § 5028 is amended to read:

§ 5028. INFORMATION REQUIRED ON CONTRACT

Where Vermont is the home state of the insured, each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number, and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped or written conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any, “The company issuing this policy ~~has not been licensed by the State of Vermont~~ is a surplus lines insurer and the rates charged have not been approved by the Commissioner of Financial Regulation. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association.”

Sec. 10. 8 V.S.A. § 5029 is amended to read:

§ 5029. SURPLUS LINES INSURANCE VALID

(a) Insurance contracts procured as surplus lines insurance from ~~non-~~admitted surplus lines insurers in accordance with this chapter shall be valid and enforceable to the same extent as insurance contracts procured from admitted insurers.

(b) The insurance trade practices provisions of sections 4723 and 4724(1)–(7) and (9)–(18) of this title, and the cancellation provisions of sections 3879–3883 (regarding fire and casualty policies) and 4711–4715 (regarding commercial risk policies) of this title shall apply to surplus lines insurers, both domestic and foreign.

(c) Other provisions of this title not specifically applicable to surplus lines insurers shall not apply.

Sec. 11. 8 V.S.A. § 5030 is amended to read:

§ 5030. LIABILITY OF ~~NON-ADMITTED~~ SURPLUS LINES INSURER  
FOR LOSSES AND UNEARNED PREMIUMS

If a ~~non-admitted~~ surplus lines insurer has assumed a surplus lines coverage through the intervention of a licensed surplus lines broker of this State, and if the premium for that coverage has been received by that broker, then in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received that premium and the insurer shall be liable to the insured for losses covered by such insurance and for any return premiums due on that insurance to the insured whether or not the broker is indebted to the insurer for such insurance or for any other cause.

Sec. 12. 8 V.S.A. § 5035 is amended to read:

§ 5035. SURPLUS LINES TAX

(a) Where Vermont is the home state of the insured, gross premiums charged, less any return premiums, for surplus lines coverages placed with ~~non-admitted~~ surplus lines insurers are subject to a premium receipts tax of three percent, which shall be collected from the insured by the surplus lines broker at the time of delivery of policy or other confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance shall be returned to the policyholder by the surplus lines broker. Nothing contained in this section will preclude a surplus lines broker from charging a fee to the purchaser of the contract sufficient to recover the amount of this tax. ~~Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this State, the sum payable shall be computed based on gross premiums charged, less any return premiums, as follows:~~

~~(1) An amount equal to three percent on that portion of the premiums applicable to properties, risks, or exposures located or to be performed in Vermont; plus~~

~~(2) An amount equal to a percentage on that portion of the premiums applicable to properties, risks, or exposures located or to be performed outside Vermont. Such percentage shall be determined based on the laws of the jurisdiction within which the property, risk, or exposure is located or to be performed.~~

\* \* \*

Sec. 13. 8 V.S.A. § 5036 is amended to read:

§ 5036. DIRECT PLACEMENT OF INSURANCE

\* \* \*

~~(b) If any such insurance also covers a subject located or to be performed outside this State, a proper pro rata portion of the entire premium shall be allocated to the subjects of insurance located or to be performed in this State.~~

~~(c) Any insurance with a non-admitted insurer procured through negotiations or by application in whole or in part made within this State, where this State is the home state of the insured, or for which premium in whole or in part is remitted directly or indirectly from within this State, shall be deemed insurance subject to subsection (a) of this section.~~

~~(d)~~(c) A tax at the rate of three percent of the gross amount of premium, less any return premium, ~~in respect of risks located in this State~~, shall be levied upon an insured who procures insurance subject to subsection (a) of this section. Before March 1 of the year after the year in which the insurance was procured, continued, or renewed, the insured shall remit to the Commissioner the amount of the tax. The Commissioner before June 1 of each year shall certify and transmit to the Commissioner of Taxes the sums so collected.

~~(e)~~(d) The tax shall be collectible from the insured by civil action brought by the Commissioner.

Sec. 14. 8 V.S.A. § 5038 is amended to read:

§ 5038. ACTIONS AGAINST INSURER; SERVICE OF PROCESS

\* \* \*

(b) Each ~~non-admitted~~ surplus lines insurer ~~assuming that assumes~~ a surplus lines coverage shall be deemed thereby to have subjected itself to this chapter.

\* \* \*

\* \* \* HIV-Related Tests \* \* \*

Sec. 15. 8 V.S.A. § 4724 is amended to read:

§ 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR  
DECEPTIVE ACTS OR PRACTICES DEFINED

The following are hereby defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance:

\* \* \*

(7) Unfair discrimination; arbitrary underwriting action.

\* \* \*

(C)(i) Inquiring or investigating, directly or indirectly as to an applicant's, an insured's or a beneficiary's sexual orientation, or gender identity in an application for insurance coverage, or in an investigation conducted by an insurer, reinsurer, or insurance support organization in connection with an application for such coverage, or using information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation or gender identity;

\* \* \*



(iii) Making adverse underwriting decisions because medical records or a report from an insurance support organization reveal that an applicant or insured has demonstrated ~~AIDS-related~~ HIV-related concerns by seeking counseling from health care professionals;

\* \* \*

(20) HIV-related tests. Failing to comply with the provisions of this subdivision regarding HIV-related tests. "HIV-related test" means a test approved by the United States Food and Drug Administration ~~and the Commissioner,~~ included in the current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens, used to determine the existence of HIV antibodies or antigens in the blood, ~~urine, or oral mucosal transudate (OMT).~~

\* \* \*

(B)(i) No person shall request or require that an individual submit to an HIV-related test unless he or she has first obtained the individual's written informed consent to the test. Before written, informed consent may be granted, the individual shall be informed, by means of a printed information statement ~~which~~ that shall have been read aloud to the individual by any agent of the insurer at the time of application or later and then given to the individual for review and retention, of the following:

(I) an explanation of the test or tests to be given, including: the tests' relationship to AIDS, the insurer's purpose in seeking the test, potential uses and disclosures of the results, limitations on the accuracy of and the meaning of the test's results, the importance of seeking counseling about the individual's test results after those results are received, and the availability of information from and the telephone numbers of the Vermont Department of Health ~~AIDS hotline~~ and the Centers for Disease Control and Prevention; and

(II) an explanation that the individual is free to consult, at personal expense, with a personal physician or counselor or the ~~State~~ Vermont Department of Health, which shall remain confidential, or to obtain an anonymous test at the individual's choice and personal expense, before deciding whether to consent to testing and that such delay will not affect the status of any application or policy; and

\* \* \*

(ii) In addition, before drawing blood ~~or obtaining a sample of the urine or OMT for the HIV-related test or tests,~~ the person doing so shall give the individual to be tested an informed consent form containing the information required by the provisions of this subdivision (B), and shall then

~~obtain the individual's written informed consent. If an OMT test is administered in the presence of the agent or broker, the individual's written informed consent need only be obtained prior to administering the test, in accordance with the provisions of this subdivision (B).~~

~~(C)(i) The forms for informed consent, information disclosure, and test results disclosure used for HIV-related testing shall be filed with and approved by the Commissioner pursuant to section 3541 of this title; and~~

~~(ii) Any testing procedure shall be filed and approved by the Commissioner in consultation with the Commissioner of Health.~~

~~(D) No laboratory may be used by an insurer or insurance support organization for the processing of HIV-related tests unless it is approved by the Vermont Department of Health. Any requests for approval under this subdivision shall be acted upon within 120 days. The Department may approve a laboratory without on-site inspection or additional proficiency data if the laboratory has been certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a or if it meets the requirements of the federal Health Care Financing Administration under the Clinical Laboratory Improvement Amendments.~~

~~(E) The test protocol shall be considered positive only if test results are two positive ELISA tests, and a Western Blot test confirms the results of the two ELISA tests, or upon approval of any equally or more reliable confirmatory test or test protocol which has been approved by the Commissioner and the U.S. Food and Drug Administration. If the result of any test performed on a sample of urine or OMT is positive or indeterminate, the insurer shall provide to the individual, no later than 30 days following the date of the first urine or OMT test results, the opportunity to retest once, and the individual shall have the option to provide either a blood sample, a urine sample, or an OMT sample for that retest. This retest shall be in addition to the opportunities for retest provided in subdivisions (F) and (G) of this subdivision (20).~~

~~(F) If an individual has at least two positive ELISA tests but an indeterminate Western Blot test result, the Western Blot test may be repeated on the same sample. If the Western Blot test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits, or rates under any separate policy or policies held by the individual may be based upon such indeterminacy. If action on an application is delayed due to indeterminacy as described herein, the insurer shall provide the individual the opportunity to retest once after six but not later than eight months following the date of the first indeterminate test result. If the retest~~

~~Western Blot test result is again indeterminate or is negative, the test result shall be considered as negative, and a new application for coverage shall not be denied by the insurer based upon the results of either test. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing a retest which had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.~~

(D) HIV-related tests required by insurers or insurance support organizations must be processed in a laboratory certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a, or that meets the requirements of the federal Health Care Financing Administration under the Clinical Laboratory Improvement Amendments.

(E) The test protocol shall be considered positive only if testing results meet the most current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm or more reliable confirmatory test or test protocol that has been approved by the United States Food and Drug Administration.

(F) If the HIV-1/2 antibody differentiation test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits, or rates under any separate policy or policies held by the individual shall be based upon such indeterminacy. If the HIV-1 NAT test result is negative, a new application for coverage shall not be denied by the insurer. If the HIV-1 NAT test is invalid, the full testing algorithm shall be repeated. No application for coverage shall be denied based on an indeterminate or invalid result. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing any previous HIV-related testing that had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.

(G)(i) Upon the written request of an individual for a retest, an insurer shall retest, at the insurer's expense, any individual who was denied insurance, or offered insurance on any other than a standard basis, because of the positive results of an HIV-related test:

\* \* \*

(II) in any event, upon the approval by the Commissioner of an alternative test or test protocol for the presence of HIV antibodies or antigens updates to the Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens.

\* \* \*

Sec. 16. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

\* \* \*

(d) Laboratory certification and approval	Annual fee shall be:
Drug laboratory approval	\$500.00
Drug laboratory alternate approval	\$300.00
Drug laboratory approval renewal	\$300.00
HIV laboratory approval	\$300.00
HIV laboratory alternate approval	\$100.00
HIV laboratory approval renewal	\$100.00
HIV laboratory (insurance) approval	\$500.00
HIV laboratory (insurance) alternate approval	\$300.00
HIV laboratory (insurance) approval renewal	\$300.00

\* \* \*

\* \* \* Financial Services Education and Victim Restitution  
Special Fund \* \* \*

Sec. 17. REPEAL; FINANCIAL SERVICES EDUCATION AND  
TRAINING SPECIAL FUND

9 V.S.A. § 5601(e), establishing the Financial Services Education and Training Special Fund, is repealed.

Sec. 17a. 9 V.S.A. § 5616 is added to read:

§ 5616. VERMONT FINANCIAL SERVICES EDUCATION AND VICTIM  
RESTITUTION SPECIAL FUND

(a) Purpose. The purpose of this section is to provide:

(1) funds for the purposes specified in subsection 5601(d) of this title;  
and

(2) restitution assistance to victims of securities violations who:

(A) were awarded restitution in a final order issued by the Commissioner or were awarded restitution in the final order in a legal action initiated by the Commissioner;

(B) have not received the full amount of restitution ordered before the application for restitution assistance is due; and

(C) demonstrate to the Commissioner's satisfaction that there is no reasonable likelihood that they will receive the full amount of restitution in the future.

(b) Definitions. As used in this section,

(1) "Claimant" means a person who files an application for restitution assistance under this section on behalf of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the named party in a restitution award in a final order, the executor of a named party in a restitution award in a final order, and the heirs and assigns of a named party in a restitution award in a final order.

(2) "Final order" means a final order issued by the Commissioner or a final order in a legal action initiated by the Commissioner.

(3) "Fund" means the Vermont Financial Services Education and Victim Restitution Special Fund created by this section.

(4) "Securities violation" means a violation of this chapter and any related administrative rules.

(5) "Victim" means a person who was awarded restitution in a final order.

(6) "Vulnerable person" means:

(A) a person who meets the definition of vulnerable person under 33 V.S.A. § 6902(14); or

(B) a person who is at least 60 years of age.

(c) Eligibility.

(1) A natural person who was a resident of Vermont at the time of the alleged fraud is eligible for restitution assistance.

(2) The Commissioner shall not award securities restitution assistance under this section:

(A) to more than one claimant per victim;

(B) unless the person ordered to pay restitution has not paid the full amount of restitution owed to the victim before the application for restitution assistance from the fund is due;

(C) if there was no award of restitution in the final order; or

(D) to a claimant who has not exhausted his or her appeal rights.

(d) Denial of assistance. The Commissioner shall not award restitution assistance if the victim:

(1) sustained the monetary injury as a result of:

(A) participating or assisting in the securities violation; or

(B) attempting to commit or committing the securities violation;

(2) profited or would have profited from the securities violation; or

(3) is an immediate family member of the person who committed the securities violation.

(e) Application for restitution assistance and maximum amount of restitution assistance award.

(1) The Commissioner may adopt procedures and forms for application for restitution assistance under this section.

(2) An application must be received by the Commissioner within two years after the deadline for payment of restitution established in the final order.

(3) Except as provided in subdivision (4) of this subsection, the maximum award from the Fund for each claimant shall be the lesser of \$25,000.00 or 25 percent of the amount of unpaid restitution awarded in a final order.

(4) If the claimant is a vulnerable person, the maximum award from the Fund shall be the lesser of \$50,000.00 or 50 percent of the amount of unpaid restitution awarded in the final order.

(f) Vermont Financial Services Education and Victim Restitution Special Fund. The Vermont Financial Services Education and Victim Restitution Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to provide funds for the purposes specified in this section and in subsection 5601(d) of this title. All monies received by the State for use in financial services education initiatives pursuant to subsection 5601(d) of this title or in providing uncompensated victims restitution pursuant to this section shall be deposited into the Fund. The Commissioner may direct a party to deposit a sum not to exceed 15 percent of the total settlement amount into the Fund in conjunction with settling a State securities law enforcement matter. Interest earned on the Fund shall be retained in the Fund.

(g) Award not subject to execution, attachment, or garnishment. An award made by the Commissioner under this section is not subject to execution, attachment, garnishment, or other process.

(h) State's liability for award. The Commissioner shall have the discretion to suspend applications and awards based on the solvency of the Fund. The State shall not be liable for any determination made under this section.

(i) Subrogation of rights of State.

(1) The State is subrogated to the rights of the person awarded restitution under this chapter to the extent of the award.

(2) The subrogation rights are against the person who committed the securities violation or a person liable for the pecuniary loss.

(j) Rulemaking authority. The Commissioner may adopt rules to implement this section.

(k) Bulletin. The Commissioner shall publish a bulletin defining the term "immediate family member" for purposes of this section.

\* \* \* New England Equity Crowdfunding \* \* \*

Sec. 18. 9 V.S.A. § 5305 is amended to read:

§ 5305. SECURITIES REGISTRATION FILINGS

\* \* \*

(b) A person filing a registration statement shall pay a filing fee of \$600.00. A person filing a registration statement in connection with the New England Crowdfunding Initiative shall be exempt from the filing fee requirement. Open-end investment companies shall pay a registration fee and an annual renewal fee for each portfolio as long as the registration of those securities remains in effect. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under section 5306 of this title, the Commissioner shall retain the fee.

\* \* \*

\* \* \* Surplus Lines Insurance Compact; Repeal \* \* \*

Sec. 19. REPEAL

8 V.S.A. chapter 138A (Surplus Lines Insurance Multi-state Compliance Compact) is repealed.

\* \* \* Insurance Producers; Licensing Requirements; Definitions \* \* \*

Sec. 20. 8 V.S.A. § 4791 is amended to read:

## § 4791. DEFINITIONS

As used in this chapter:

\* \* \*

(3) “Adjuster” means any person who investigates claims ~~and~~ or negotiates settlement of claims arising under policies of insurance in behalf of insurers under such policies, or who advertises or solicits business from insurers as an adjuster. Lawyers settling claims of clients shall not be considered an adjuster. A license as an adjuster shall not be required of an official or employee of a domestic fire or casualty insurance company or of a duly licensed resident insurance producer of a domestic or duly licensed foreign insurer who is authorized by such insurer to appraise losses under policies issued by such insurer.

(4) “Public adjuster” means any person who investigates claims ~~and~~ or negotiates settlement of claims arising under policies of insurance in behalf of the insured under such policies or who advertises or solicits business as such adjuster. Lawyers settling claims of clients shall not be deemed to be insurance public adjusters.

\* \* \*

\* \* \* Fair Credit Reporting; Definition of Credit Report \* \* \*

Sec. 21. 9 V.S.A. § 2480a(3) is amended to read:

(3) “Credit report” means ~~a consumer report, as defined in 15 U.S.C. § 1681a, that is used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer’s eligibility for credit for personal, family, or household purposes~~ any written, oral, or other communication of any information by a credit reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, including an investigative credit report. The term does not include:

(A) a report containing information solely as to transactions or experiences between the consumer and the person making the report; or

(B) an authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

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

## Sec. 22. EFFECTIVE DATE

This act shall take effect on July 1, 2019.



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

### **H. 518**

An act relating to fair and impartial policing

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

By striking out Sec. 2 in its entirety and by renumbering the remaining sections to be numerically correct.

### **NOTICE CALENDAR**

#### **Second Reading**

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

### **H. 63.**

An act relating to the time frame for return of unclaimed beverage container deposits.

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

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

\* \* \* Weatherization; Building Energy Labeling and Benchmarking \* \* \*

#### **Sec. 1. FINDINGS**

The General Assembly finds that for the purposes of Secs. 1–7 of this act:

(1) Pursuant to 10 V.S.A. § 578, it is the goal of Vermont to reduce greenhouse gas emissions from the 1990 baseline by 50 percent by January 1, 2028, and, if practicable, by 75 percent by January 1, 2050. Pursuant to 10 V.S.A. § 581, it is also the goal of Vermont to improve the energy fitness of at least 20 percent (approximately 60,000 units) of the State's housing stock by 2017, and 25 percent (approximately 80,000 units) by 2020, thereby reducing fossil fuel consumption and saving Vermont families a substantial amount of money.

(2) The State is failing to achieve these goals. For example, Vermont's greenhouse gas emissions have increased 16 percent compared to the 1990 baseline.

(3) Approximately 24 percent of the greenhouse gas emissions within Vermont stem from residential and commercial heating and cooling usage. Much of Vermont's housing stock is old, inadequately weatherized, and

therefore not energy efficient.

(4) The Regulatory Assistance Project recently issued a report recommending two strategies to de-carbonize Vermont and address climate change. First, electrifying the transportation sector. Second, focusing on substantially increasing the rate of weatherization in Vermont homes and incentivizing the adoption of more efficient heating technologies such as cold climate heat pumps.

(5) Although the existing Home Weatherization Assistance Program assists Vermonters with low income to weatherize their homes and reduce energy use, the Program currently weatherizes approximately 850 homes a year. This rate is insufficient to meet the State's statutory greenhouse gas reduction and weatherization goals.

(6) Since 2009, proceeds from the Regional Greenhouse Gas Initiative (RGGI) and the Forward Capacity Market (FCM) have been used to fund thermal efficiency and weatherization initiatives by Efficiency Vermont, under the oversight of the Public Utility Commission (PUC). Approximately 800 Vermont homes and businesses are weatherized each year under a market-based approach that utilizes 50 participating contractors. Efficiency Vermont and the contractors it works with have the capacity to substantially increase the number of projects undertaken each year.

(7) A multipronged approach is necessary to address these issues. The first part will establish a statewide voluntary program for rating and labeling the energy performance of buildings to make energy use and costs visible for buyers, sellers, owners, lenders, appraisers, and real estate professionals. The second part will allow Efficiency Vermont to use unspent funds to weatherize more homes and buildings. The third part will ask the Public Utility Commission to undertake a proceeding to examine whether to recommend to the General Assembly the creation of an all-fuels energy efficiency program, the expansion of the services that efficiency utilities may provide, and related issues.

Sec. 2. 30 V.S.A. chapter 2, subchapter 2 is added to read:

Subchapter 2. Building Energy Labeling and Benchmarking

§ 61. DEFINITIONS

As used in this subchapter:

(1) "Benchmarking" means measuring the energy performance of a single building or portfolio of buildings over time in comparison to other similar buildings or to modeled simulations of a reference building built to a specific standard such as an energy code.

(2) “Commercial Working Group” means the Commercial and Multiunit Building Energy Labeling Working Group established by subsection 62(b) of this title.

(3) “Commission” means the Public Utility Commission.

(4) “Department” means the Department of Public Service.

(5) “Distribution company” means a company under the jurisdiction of the Commission that distributes electricity or natural gas for consumption by end users.

(6) “Energy efficiency utility” means an energy efficiency entity appointed under subdivision 209(d)(2) of this title.

(7) “Energy label” means the visual presentation in a consistent format of an energy rating for a building and any other supporting and comparative information. The label may be provided as a paper certificate or made available online, or both.

(8) “Energy rating” means a simplified mechanism to convey a building’s energy performance. The rating may be based on the operation of the building or modeled based on the building’s assets.

(9) “Home energy assessor” means an individual who assigns buildings a home energy performance score using a scoring system based on the energy rating.

(10) “Multiunit building” means a building that contains more than one independent dwelling unit or separate space for independent commercial use, or both.

(11) “Residential Working Group” means the Residential Building Energy Labeling Working Group established by subsection 62(a) of this title.

(12) “Unit holder” means the tenant or owner of an independent dwelling unit or separate space for independent commercial use within a multiunit building.

## § 62. BUILDING ENERGY WORKING GROUPS

(a) Residential Working Group. There is established the Residential Building Energy Labeling Working Group.

(1) The Residential Working Group shall consist of the following:

(A) the Commissioner of Public Service (Commissioner) or designee;

(B) an expert in the design, implementation, and evaluation of programs and policies to promote investments in energy efficiency who is not a member of an organization described elsewhere in this subsection, appointed by the Commissioner;

(C) a representative of each energy efficiency utility, chosen by that efficiency utility;

(D) the Director of the State Office of Economic Opportunity or designee;

(E) a representative of Vermont's community action agencies appointed by the Vermont Community Action Partnership;

(F) a representative, with energy efficiency expertise, of the Vermont Housing and Conservation Board, appointed by that Board;

(G) a building performance professional, appointed by the Building Performance Professionals Association;

(H) a representative of the real estate industry, appointed by the Vermont Association of Realtors; and

(I) such other members with expertise in energy efficiency, building design, energy use, or the marketing and sale of real property as the Commissioner may appoint.

(2) The Residential Working Group shall advise the Commissioner in the development of informational materials pursuant to section 63 of this title.

(b) Commercial Working Group. There is established the Commercial and Multiunit Building Energy Labeling Working Group.

(1) The Commercial Working Group shall consist of the following:

(A) the Commissioner or designee;

(B) an expert in the design, implementation, and evaluation of programs and policies to promote investments in energy efficiency who is not a member of an organization described elsewhere in this subsection, appointed by the Commissioner;

(C) a representative of each energy efficiency utility, chosen by that efficiency utility;

(D) the Director of the State Office of Economic Opportunity or designee;

(E) a representative of Vermont's community action agencies, appointed by the Vermont Community Action Partnership;

(F) a representative, with energy efficiency expertise, of the Vermont Housing and Conservation Board, appointed by that Board; and

(G) such other members with expertise in energy efficiency, building design, energy use, or the marketing and sale of real property as the Commissioner may appoint.

(2) The Commercial Working Group shall advise the Commissioner in the development of forms pursuant to section 64 of this title.

(c) Co-chairs. Each working group shall elect two co-chairs from among its members.

(d) Meetings. Meetings of each working group shall be at the call of a co-chair or any three of its members. The meetings shall be subject to the Vermont Open Meeting Law and 1 V.S.A. § 172.

(e) Vacancy. When a vacancy arises in a working group created under this section, the appointing authority shall appoint a person to fill the vacancy.

(f) Responsibilities. The Working Groups shall advise the Commissioner on the following:

(1) requirements for home assessors, including any endorsements, licensure, and bonding required;

(2) programs to train home energy assessors;

(3) requirements for reporting building energy performance scores given by home energy assessors and the establishment of a system for maintaining such information;

(4) requirements to standardize the information on a home energy label; and

(5) other matters related to benchmarking, energy rating, or energy labels for residential, commercial, and multiunit buildings.

#### § 63. DISCLOSURE OF INFORMATIONAL MATERIAL; SINGLE-FAMILY DWELLINGS

(a) Disclosure. For a contract for the conveyance of real property that is a single-family dwelling, executed on or after January 1, 2020, the seller shall, within 72 hours of the execution, provide the buyer with informational materials developed by the Department in consultation with the Residential Working Group. These materials shall include information on:

(1) resources for determining home energy use and costs for Vermont homes and opportunities for energy savings;

(2) available voluntary tools for energy rating and energy labels; and

(3) available programs and services in Vermont related to energy efficiency, building energy performance, and weatherization.

(b) Marketability of title. Noncompliance with the requirements of this section shall not affect the marketability of title of a property.

(c) Penalty; liability. Liability for failure to provide the informational materials required by this section shall be limited to a civil penalty, imposed by the Public Utility Commission under section 30 of this title, of not less than \$25.00 and not more than \$250.00 for each violation.

#### § 64. MULTIUNIT BUILDINGS; ACCESS TO AGGREGATED DATA

(a) Obligation; aggregation and release of data. On request of the owner of a multiunit building or the owner's designated agent, each distribution company and energy efficiency utility shall aggregate monthly energy usage data in its possession for the unit holders in the building and release the aggregated data to the owner or agent. The aggregated data shall be anonymized.

(1) Under this section, the obligation to aggregate and release data shall accrue when the owner or agent:

(A) Certifies that the request is made for the purpose of benchmarking or preparing an energy label for the building.

(B) With respect to a multiunit building that has at least four unit holders, provides documentation certifying that, at least 14 days prior to submission of the request, each unit holder was notified that the energy usage data of the holder was to be requested and that this notice gave each unit holder an opportunity to opt out of the energy use aggregation. The owner or agent shall identify to the distribution company or energy efficiency utility requesting the data each unit holder that opted out.

(C) With respect to a multiunit building that has fewer than four unit holders, provides an energy usage data release authorization from each unit holder.

(2) A unit holder may authorize release of the holder's energy usage data by signature on a release authorization form or clause in a lease signed by the unit holder. The provisions of 9 V.S.A. § 276 (recognition of electronic records and signatures) shall apply to release authorization forms under this subsection.

(3) After consultation with the Commercial Working Group, the Commissioner of Public Service shall prescribe forms for requests and release authorizations under this subsection. The request form shall include the required certification.

(b) Response period. A distribution company or energy efficiency utility shall release the aggregated energy use data to the building owner or designated agent within 30 days of its receipt of a request that meets the requirements of subsection (a) of this section.

(1) The aggregation shall exclude energy usage data for each unit holder who opted out or, in the case of a multiunit building with fewer than four unit holders, each unit holder for which a signed release authorization was not received.

(2) A distribution company may refer a complete request under subsection (a) of this section to an energy efficiency utility that possesses the requisite data, unless the data is to be used for a benchmarking program to be conducted by the company.

Sec. 3. 27 V.S.A. § 617 is added to read:

§ 617. DISCLOSURE OF ENERGY INFORMATIONAL MATERIAL;  
SINGLE-FAMILY DWELLINGS

The provisions of 30 V.S.A. § 63 shall apply when a contract is executed for the conveyance of real property that is a single-family dwelling.

Sec. 4. WORKING GROUPS; CONTINUATION

(a) The Residential Energy Labeling Working Group and Commercial Energy Labeling Working Group convened by the Department of Public Service in response to 2013 Acts and Resolves No. 89, Sec. 12, as each group existed on February 1, 2019, shall continue in existence respectively as the Residential Building Energy Labeling Working Group and the Commercial and Multiunit Building Energy Labeling Working Group created under Sec. 2 of this act, 30 V.S.A. § 62. Those persons who were members of such a working group as of that date may continue as members and, in accordance with 30 V.S.A. § 62, the appointing authorities shall fill vacancies in the working group as they arise.

(b) Within 60 days of this section's effective date, the Commissioner of Public Service shall make appointments to each working group created under Sec. 2 of this act to fill each membership position newly created by Sec. 2, 30 V.S.A. § 62.

Sec. 5. REPORT; COMMERCIAL AND MULTIUNIT BUILDING  
ENERGY

(a) On or before January 15, 2021, the Commissioner of Public Service (the Commissioner), in consultation with the Commercial and Multiunit Building Energy Labeling Working Group created under Sec. 2 of this act, shall file a report and recommendations on each of the following:

(1) each issue listed under “unresolved issues” on page 45 of the report to the General Assembly in response to 2013 Acts and Resolves No. 89, Sec. 12, entitled “Development of a Voluntary Commercial/Multifamily/Mixed-Use Building Energy Label” and dated December 15, 2014; and

(2) the appropriateness and viability of publicly disclosing the results of benchmarking as defined in 30 V.S.A. § 61.

(b) The Commissioner shall file the report and recommendations created under subsection (a) of this section with the House Committee on Energy and Technology and the Senate Committees on Finance and on Natural Resources and Energy.

\* \* \* Efficiency Vermont; Public Utility Commission Proceeding \* \* \*

Sec. 6. EFFICIENCY VERMONT; FUNDS FOR ADDITIONAL  
THERMAL ENERGY EFFICIENCY SERVICES

(a) Notwithstanding any provision of law to the contrary, Efficiency Vermont may use the following funds in 2019 and 2020 for thermal energy and process fuel energy efficiency services in accordance with 30 V.S.A. § 209(e)(1), with priority to be given to weatherization services for residential customers, including those at income levels of 80–140 percent of the Area Median Income (AMI), and projects that may result in larger greenhouse gas (GHG) reductions:

(1) any balances in the Electric Efficiency Fund that are allocated to Efficiency Vermont and that are carried forward from prior calendar years pursuant to 30 V.S.A. § 209(d)(3)(A); and

(2) any funds that are allocated to Efficiency Vermont and that, as a result of operational efficiencies, are not spent on, or committed to, another project or purpose in calendar years 2019 and 2020.

(b) Funds used pursuant to subsection (a) of this section shall not be used to supplant existing programs and services and shall only be used to supplement existing programs and services.

(c) Efficiency Vermont shall report to the Public Utility Commission on:



(1) how funds were spent pursuant to subsection (a) of this section; and

(2) the costs and benefits of the programs and services delivered.

#### Sec. 7. PUBLIC UTILITY COMMISSION PROCEEDING

(a) The Public Utility Commission shall open a proceeding, or continue an existing proceeding, to consider the following:

(1) Creation of an all-fuels energy efficiency program. The Commission shall consider whether to recommend that one or more entities should be appointed to provide for the coordinated development, implementation, and monitoring of efficiency, conservation, and related programs and services as to all regulated fuels, unregulated fuels, and fossil fuels as defined in 30 V.S.A. § 209(e)(3). The Commission shall consider all information it deems appropriate and make recommendations as to:

(A) whether the appointment of an all-fuels efficiency entity or entities to deliver the comprehensive and integrated programs and services necessary to establish an all-fuels energy efficiency and conservation program would, while continuing to further the objectives set forth in 30 V.S.A. § 209(d)(3)(B):

(i) help achieve the State goals set forth in 10 V.S.A. §§ 578, 580, and 581;

(ii) further the recommendations contained in the State Comprehensive Energy Plan;

(iii) further the objectives set forth in 30 V.S.A. § 8005(a)(3);

(iv) develop and utilize a full cost-benefit, full life cycle accounting method for analyzing energy policy and programs; and

(v) employ metrics that assess positive and negative externalities, including health impacts on individuals and the public.

(B) the best model to accomplish the goals set forth in subdivision (1)(A) of this subsection (a), including whether to recommend:

(i) the appointment of one or more new entities; or

(ii) the appointment of one or more entities that are currently providing efficiency and conservation programs pursuant to 30 V.S.A. § 209(d)(2) and distribution utilities that are currently providing programs and services pursuant to 30 V.S.A. § 8005(a)(3).

(2) Expansion of the programs and services that efficiency utilities may provide. The Commission shall consider whether to recommend that

efficiency programs and services, whether provided by entities currently providing efficiency and conservation programs pursuant to 30 V.S.A. § 209(d)(2), distribution utilities currently providing programs and services pursuant to 30 V.S.A. § 8005(a)(3), or a new entity or entities recommended pursuant to subdivision (1) of this subsection (a), should incorporate additional technologies, services, and strategies, including:

- (A) demand response;
- (B) flexible load management;
- (C) energy storage;
- (D) reduction of fossil fuel use through electrification and the use of renewable fuels and energy; and
- (E) building shell improvement and weatherization.

(3) Funding.

(A) The Commission shall consider and recommend how best to provide consistent, adequate, and equitable funding for efficiency, conservation, and related programs and services, including:

(i) how to use existing or new funding sources to better support existing efficiency and conservation programs and services, including those described in Sec. 6 of this act, during the period the Commission is conducting the proceeding pursuant to this subsection;

(ii) how to use existing or new funding sources to provide sufficient funds to implement and support the Commission's recommendations made pursuant to subdivisions (1) and (2) of this subsection (a); and

(iii) whether Thermal Renewable Energy Certificates (T-RECs) can be used to provide for the proper valuation of thermal load reduction investments, to create a revenue stream to support thermal load reduction work, and to evaluate the role of such work within the overall suite of energy programs designed to reduce greenhouse gas (GHG) emissions and generate savings for Vermonters.

(B) In reaching its recommendations pursuant to subdivision (A) of this subdivision (3), the Commission shall consider how any recommendation may affect the financial and economic well-being of Vermonters.

(b) Process. The Commission shall schedule workshops and seek written filings from all interested stakeholders and ensure that all stakeholders have an opportunity to provide input. The Commission may use contested case procedures if it deems appropriate.

(c) Reports. On or before:

(1) January 15, 2020, the Commission shall submit a preliminary report to the House Committee on Energy and Technology and the Senate Committee on Natural Resources and Energy concerning its progress and any preliminary findings and recommendations as to subsection (a) of this section, including recommendations as to subdivision (a)(3)(A) of this section; and

(2) January 15, 2021, the Commission shall submit a final written report to the House Committee on Energy and Technology and the Senate Committee on Natural Resources and Energy with its findings and detailed recommendations as to subsection (a) of this section, including recommendations for legislative action.

\* \* \* Beverage Containers; Escheats \* \* \*

Sec. 8. 10 V.S.A. § 1530 is amended to read:

§ 1530. ~~ABANDONED BEVERAGE CONTAINER DEPOSITS; DEPOSIT TRANSACTION ACCOUNT; BEVERAGE REDEMPTION FUND~~

(a) As used in this section, “deposit initiator” means the first distributor or manufacturer to collect the deposit on a beverage container sold to any person within the State.

~~(b) A deposit initiator shall open a separate interest-bearing account to be known as the deposit transaction account in a Vermont branch of a financial institution. The deposit initiator shall keep the deposit transaction account separate from all other revenues and accounts.~~

~~(c) Beginning on October 1, 2019, each deposit initiator shall deposit in its deposit transaction account the refund value established by section 1522 of this title for all beverage containers sold by the deposit initiator. The deposit initiator shall deposit the refund value for each beverage container in the deposit transaction account not more than three business days after the date on which the beverage container is sold. All interest, dividends, and returns earned on the deposit transaction account shall be paid directly to the account. The deposit initiator shall pay all refunds on returned beverage containers from the deposit transaction account.~~

(d) Beginning on January 1, 2020, and quarterly thereafter, every deposit initiator shall report to the Secretary of Natural Resources and the Commissioner of Taxes concerning transactions affecting the deposit initiator’s deposit transaction account in the preceding quarter. The report shall be submitted on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December each year. The deposit initiator shall submit the report on a form provided by the Commissioner of Taxes. The report shall include:

~~(1) the balance of the deposit transaction account at the beginning of the preceding quarter;~~

~~(2) the number of beverage containers sold in the preceding quarter and the number of beverage containers returned in the preceding quarter;~~

~~(3)(2) the amount of beverage container deposits received by the deposit initiator and deposited into the deposit transaction account;~~

~~(4)(3) the amount of refund payments made from the deposit transaction account in the preceding quarter; and~~

~~(5) any income earned on the deposit transaction account in the preceding quarter;~~

~~(6) any other transactions, withdrawals, or service charges on the deposit transaction account from the preceding quarter; and~~

~~(7)(4) any additional information required by the Commissioner of Taxes.~~

~~(e)(c)(1) On or before January 1, 2020, and quarterly thereafter, at the time a report is filed pursuant to subsection (d) of this section, each deposit initiator shall remit from its deposit transaction account to the Commissioner of Taxes any abandoned beverage container deposits from the preceding quarter. The amount of abandoned beverage container deposits for a quarter is the amount equal to the amount of deposits that should be in the deposit transaction account less the sum of:~~

~~(A) income earned on amounts on the deposit transaction account during that quarter; and~~

~~(B) the total amount of refund value paid out by the deposit initiator for beverage containers during that quarter the deposit initiator collected in the quarter less the amount of the total refund value paid out by the deposit initiator for beverage containers during the quarter.~~

(2) In any calendar quarter, the deposit initiator may submit to the Commissioner of Taxes a request for reimbursement of refunds paid under this chapter that exceed the funds that are or should be in the deposit initiator's deposit transaction account amount of deposits collected in the quarter. The Commissioner of Taxes shall pay a request for reimbursement under this subdivision from the funds remitted to the Commissioner under subdivision (1) of this subsection, provided that:

(A) the Commissioner determines that the funds in the deposit initiator's deposit transaction account deposits collected by the deposit initiator are insufficient to pay the refunds on returned beverage containers; and

(B) a reimbursement paid by the Commissioner to the deposit initiator shall not exceed the amount paid by the deposit initiator under subdivision (1) of this subsection ~~(e) during the preceding 12 months~~ (c) less amounts paid to the initiator pursuant to this subdivision (2) during that same 12-month period in the previous four quarterly filings.

(3) Except as expressly provided otherwise in this chapter, all the administrative provisions of 32 V.S.A. chapter 151, including those relating to collection, enforcement, interest, and penalty charges, shall apply to the remittance of abandoned beverage container deposits.

(4) A deposit initiator may, within 60 days after the date of mailing of a notice of deficiency, the date of a full or partial denial of a request for reimbursement, or the date of an assessment, petition the Commissioner of Taxes in writing for a hearing and determination on the matter. The hearing shall be subject to and governed by 3 V.S.A. chapter 25. Within 30 days after a determination, an aggrieved deposit initiator may appeal a determination by the Commissioner of Taxes to the Washington Superior Court or the Superior Court of the county in which the deposit initiator resides or has a place of business.

(5) Notwithstanding any appeal, upon finding that a deposit initiator has failed to remit the full amount required by this chapter, the Commissioner of Taxes may treat any refund payment owed by the Commissioner to a deposit initiator as if it were a payment received and may apply the payment in accordance with 32 V.S.A. § 3112.

~~(f)(d)~~ The Secretary of Natural Resources may prohibit the sale of a beverage that is sold or distributed in the State by a deposit initiator who fails to comply with the requirements of this chapter. The Secretary may allow the sale of a beverage upon the deposit initiator's coming into compliance with the requirements of this chapter.

(e) Data reported to the Secretary of Natural Resources and the Commissioner of Taxes by a deposit initiator under this section shall be confidential business information exempt from public inspection and copying under 1 V.S.A. § 317(c)(9), provided that the Commissioner of Taxes may use and disclose such information in summary or aggregated form that does not directly or indirectly identify individual deposit initiators.

Sec. 9. 10 V.S.A. § 8003(a) is amended to read:

(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:

\* \* \*

(7) 10 V.S.A. chapter 53, relating to beverage containers, provided that the Secretary may not take action to enforce the provisions of section 1530 of this title that are enforceable by the Commissioner of Taxes;

\* \* \*

Sec. 10. 10 V.S.A. § 8503(a)(1)(G) is amended to read:

(G) chapter 53 (beverage containers; deposit-redemption system), except for those acts or decisions of the Commissioner of Taxes under section 1530 of this title;

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

Sec. 11. EFFECTIVE DATES

(a) This section and Secs. 8–10 (beverage container; escheats) shall take effect on passage.

(b) Secs. 1–7 (weatherization) shall take effect on July 1, 2019.

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

An act relating to weatherization, building labeling and benchmarking, a Public Utility Commission proceeding, and unclaimed beverage container deposits.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 13, 2019, pages 159-162)

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

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

By striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Efficiency Vermont; Public Utility Commission Proceeding \* \* \*

Sec. 1. EFFICIENCY VERMONT; FUNDS FOR ADDITIONAL  
THERMAL ENERGY EFFICIENCY SERVICES

(a) Notwithstanding any provision of law to the contrary, Efficiency Vermont may use the following funds in 2019 and 2020 for thermal energy and process fuel energy efficiency services in accordance with 30 V.S.A.

§ 209(e)(1), with priority to be given to weatherization services for residential customers, including those at income levels of 80–140 percent of the Area Median Income (AMI), and projects that may result in larger greenhouse gas (GHG) reductions:

(1) up to \$2,250,000.00 of any balances in the Electric Efficiency Fund that are allocated to Efficiency Vermont and that are carried forward from prior calendar years pursuant to 30 V.S.A. § 209(d)(3)(A); and

(2) any funds that are allocated to Efficiency Vermont and that, as a result of operational efficiencies, are not spent on, or committed to, another project or purpose in calendar years 2019 and 2020.

(b) Funds used pursuant to subsection (a) of this section shall not be used to supplant existing programs and services and shall only be used to supplement existing programs and services.

(c) Efficiency Vermont shall report to the Public Utility Commission on:

(1) how funds were spent pursuant to subsection (a) of this section; and

(2) the costs and benefits of the programs and services delivered.

## **Sec. 2. PUBLIC UTILITY COMMISSION PROCEEDING**

(a) The Public Utility Commission shall open a proceeding, or continue an existing proceeding, to consider the following:

(1) Creation of an all-fuels energy efficiency program. The Commission shall consider whether to recommend that one or more entities should be appointed to provide for the coordinated development, implementation, and monitoring of efficiency, conservation, and related programs and services as to all regulated fuels, unregulated fuels, and fossil fuels as defined in 30 V.S.A. § 209(e)(3). The Commission shall consider all information it deems appropriate and make recommendations as to:

(A) whether the appointment of an all-fuels efficiency entity or entities to deliver the comprehensive and integrated programs and services necessary to establish an all-fuels energy efficiency and conservation program would, while continuing to further the objectives set forth in 30 V.S.A. § 209(d)(3)(B):

(i) accelerate progress toward the State goals set forth in 10 V.S.A. §§ 578, 580, and 581;

(ii) accelerate progress toward the recommendations contained in the State Comprehensive Energy Plan;

(iii) further the objectives set forth in 30 V.S.A. § 8005(a)(3);

(iv) develop and utilize a full cost-benefit, full life cycle accounting method for analyzing energy policy and programs; and

(v) employ metrics that assess positive and negative externalities, including health impacts on individuals and the public.

(B) the best model to accomplish the goals set forth in subdivision (1)(A) of this subsection (a), including whether to recommend:

(i) the appointment of one or more new entities; or

(ii) the appointment of one or more entities that are currently providing efficiency and conservation programs pursuant to 30 V.S.A. § 209(d)(2) and distribution utilities that are currently providing programs and services pursuant to 30 V.S.A. § 8005(a)(3).

(2) Expansion of the programs and services that efficiency utilities may provide. The Commission shall consider whether to recommend that efficiency programs and services, whether provided by entities currently providing efficiency and conservation programs pursuant to 30 V.S.A. § 209(d)(2), distribution utilities currently providing programs and services pursuant to 30 V.S.A. § 8005(a)(3), or a new entity or entities recommended pursuant to subdivision (1) of this subsection (a), should incorporate additional technologies, services, and strategies, including:

(A) demand response;

(B) flexible load management;

(C) energy storage;

(D) reduction of fossil fuel use through electrification and the use of renewable fuels and energy; and

(E) building shell improvement and weatherization.

(3) Funding.

(A) The Commission shall consider and recommend how best to provide consistent, adequate, and equitable funding for efficiency, conservation, and related programs and services, including:

(i) how to use existing or new funding sources to better support existing efficiency and conservation programs and services, including those described in Sec. 6 of this act, during the period the Commission is conducting the proceeding pursuant to this subsection;

(ii) how to use existing or new funding sources to provide sufficient funds to implement and support the Commission's recommendations made pursuant to subdivisions (1) and (2) of this subsection (a); and



(iii) whether Thermal Renewable Energy Certificates (T-RECs) can be used to provide for the proper valuation of thermal load reduction investments, to create a revenue stream to support thermal load reduction work, and to evaluate the role of such work within the overall suite of energy programs designed to reduce greenhouse gas (GHG) emissions and generate savings for Vermonters.

(B) In reaching its recommendations pursuant to subdivision (A) of this subdivision (3), the Commission shall consider how any recommendation may affect the financial and economic well-being of Vermonters.

(b) The existing Energy Efficiency Utility Orders of Appointment issued by the Public Utility Commission shall not be altered or revoked in the proceeding pursuant to subsection (a) of this section.

(c) Process. The Commission shall schedule workshops and seek written filings from all interested stakeholders and ensure that all stakeholders have an opportunity to provide input. The Commission may use contested case procedures if it deems appropriate.

(d) Reports. On or before:

(1) January 15, 2020, the Commission shall submit a preliminary report to the House Committee on Energy and Technology and the Senate Committee on Natural Resources and Energy concerning its progress and any preliminary findings and recommendations as to subsection (a) of this section, including recommendations as to subdivision (a)(3)(A) of this section, and any findings and recommendations that may influence the scope and focus of Efficiency Vermont's 2021-23 Demand Resources Plan Proceeding; and

(2) January 15, 2021, the Commission shall submit a final written report to the House Committee on Energy and Technology and the Senate Committee on Natural Resources and Energy with its findings and detailed recommendations as to subsection (a) of this section, including recommendations for legislative action.

\* \* \* Carbon Emissions Reduction Committee \* \* \*

Sec. 3. 2 V.S.A. chapter 17 is amended to read:

#### CHAPTER 17: JOINT ENERGY CARBON EMISSIONS REDUCTION COMMITTEE

##### § 601. CREATION OF COMMITTEE

(a) There is created a Joint Energy Carbon Emissions Reduction Committee whose membership shall be appointed each biennial session of the General Assembly. The Committee shall consist of ~~four~~ five Representatives,

at least one from ~~each major party~~ the Committees on Appropriations, on Commerce and Economic Development, on Energy and Technology, and on Transportation, to be appointed by the Speaker of the House, and ~~four~~ five members of the Senate, at least one from ~~each major party~~ the Committees on Appropriations, on Finance, on Natural Resources and Energy, and on Transportation, to be appointed by the Committee on Committees.

(b) The Committee shall elect a chair, and vice chair, ~~and clerk and shall adopt rules of procedure.~~ The Chair shall rotate biennially between the House and the Senate members. The Committee may meet during a session of the General Assembly at the call of the Chair ~~or a majority of the members of the Committee and with the approval of the Speaker of the House and the President Pro Tempore of the Senate.~~ The Committee may meet up to five times during adjournment ~~subject to approval of the Speaker of the House and the President Pro Tempore of the Senate.~~ A majority of the membership shall constitute a quorum.

(c) The Office of Legislative Council shall provide legal, professional, and administrative assistance to the Committee.

(d) For attendance at a meeting when the General Assembly is not in session, members of the Committee shall be entitled to the same per diem compensation and expense reimbursement as provided members of standing committees pursuant to section 406 of this title.

#### § 602. EMPLOYEES; RULES

(a) ~~The Joint Energy Committee shall meet following the appointment of its membership to organize and begin the conduct of its business.~~

(b) ~~The staff of the Office of Legislative Council shall provide professional and clerical assistance to the Joint Committee.~~

(c) ~~For attendance at a meeting when the General Assembly is not in session, members of the Joint Energy Committee shall be entitled to the same per diem compensation and reimbursement for necessary expenses as provided members of standing committees under section 406 of this title.~~

(d) ~~The Joint Energy Committee shall keep minutes of its meetings and maintain a file thereof. [Repealed.]~~

#### § 603. FUNCTIONS DUTIES

The Joint Energy Carbon Emissions Reduction Committee shall:

(1) ~~carry on a continuing review of all energy matters in the State and in the northeast region of the United States, including energy sources, energy distribution, energy costs, energy planning, energy conservation, and pertinent~~

related subjects;

~~(2) work with, assist, and advise other committees of the General Assembly, the Executive, and the public in energy-related matters within their respective responsibilities provide oversight when the General Assembly is not in session of State policies and activities concerning and affecting carbon emissions from Vermont's electric, residential and commercial buildings, and transportation sectors.~~

\* \* \* VLITE and the Home Weatherization Assistance Fund \* \* \*

Sec. 4. 33 V.S.A. § 2501 is amended to read:

§ 2501. HOME WEATHERIZATION ASSISTANCE FUND

(a) There is created in the State Treasury a fund to be known as the Home Weatherization Assistance Fund to be expended by the Director of the State Office of Economic Opportunity in accordance with federal law and this chapter.

(b) The Fund shall be composed of the receipts from the gross receipts tax on retail sales of fuel imposed by section 2503 of this title, such funds as may be allocated from the Oil Overcharge Fund, such funds as may be allocated from the federal Low Income Energy Assistance Program, such funds as may be deposited or transferred into the Fund by the Vermont Low Income Trust for Electricity, and such other funds as may be appropriated by the General Assembly.

\* \* \*

Sec. 5. HOME WEATHERIZATION ASSISTANCE PROGRAM;  
VERMONT LOW INCOME TRUST FOR ELECTRICITY

(a) The General Assembly finds that:

(1) It is the energy policy of the State to substantially increase the number of homes weatherized each year in order to meet the goals set forth in 10 V.S.A. § 581 and in the State Comprehensive Energy Plan.

(2) In its January 2019 report prepared for the General Assembly, *An Analysis of Decarbonization Methods in Vermont*, Resources for the Future stated that Vermont's Greenhouse Gas emissions are concentrated in two areas, heating and transportation. The Regulatory Assistance Project (RAP), in its related report, *Economic Benefits and Energy Savings Through Low-Cost Carbon Management*, issued in February 2019, found that energy efficiency initiatives, including home insulation and weatherization, are key to meeting Vermont's climate goals. As a result, the RAP recommended expanding the Home Weatherization Assistance Program pursuant to 33 V.S.A. chapter 25.

(3) The mission of the Vermont Low Income Trust for Electricity (VLITE) is to fund projects that further the State's energy policy and that assist Vermonters with low-income. VLITE uses dividends from Vermont Electric Power Company (VELCO) stock that it owns to fund such projects.

(4) VLITE investing the dividends from its VELCO stock in the Home Weatherization Assistance Program will implement the RAP recommendation to expand this Program, help the State achieve its carbon reduction goals pursuant to statute and the Comprehensive Energy Plan, and also assist Vermonters with low-income to reduce fossil fuel use and save money.

(b) The General Assembly finds that investing the dividends from VLITE's VELCO stock in the Home Weatherization Assistance Program is consistent with VLITE's mission and furthers the State's energy plan and Greenhouse Gas reduction goals. As a result, the General Assembly encourages VLITE to invest the dividends from its VELCO stock into the Home Weatherization Assistance Fund pursuant to 33 V.S.A. § 2501.

\* \* \* Supplemental Weatherization Funding \* \* \*

#### Sec. 6. SUPPLEMENTAL WEATHERIZATION FUNDING

In fiscal year 2020, \$350,000.00 is appropriated from the General Fund to Efficiency Vermont for weatherization programs and services pursuant to subsection (a) of Sec. 6 of this act.

\* \* \* Beverage Containers; Escheats \* \* \*

Sec. 7. 10 V.S.A. § 1530 is amended to read:

#### ~~§ 1530. ABANDONED BEVERAGE CONTAINER DEPOSITS; DEPOSIT TRANSACTION ACCOUNT; BEVERAGE REDEMPTION FUND~~

(a) As used in this section, "deposit initiator" means the first distributor or manufacturer to collect the deposit on a beverage container sold to any person within the State.

~~(b) A deposit initiator shall open a separate interest-bearing account to be known as the deposit transaction account in a Vermont branch of a financial institution. The deposit initiator shall keep the deposit transaction account separate from all other revenues and accounts.~~

~~(c) Beginning on October 1, 2019, each deposit initiator shall deposit in its deposit transaction account the refund value established by section 1522 of this title for all beverage containers sold by the deposit initiator. The deposit initiator shall deposit the refund value for each beverage container in the deposit transaction account not more than three business days after the date on which the beverage container is sold. All interest, dividends, and returns~~

~~earned on the deposit transaction account shall be paid directly to the account. The deposit initiator shall pay all refunds on returned beverage containers from the deposit transaction account.~~

(d) Beginning on January 1, 2020, and quarterly thereafter, every deposit initiator shall report to the Secretary of Natural Resources and the Commissioner of Taxes ~~concerning transactions affecting the deposit initiator's deposit transaction account in the preceding quarter.~~ The report shall be submitted on or before the 25th day of the calendar month succeeding the quarter ending on the last day of March, June, September, and December each year. The deposit initiator shall submit the report on a form provided by the Commissioner of Taxes. The report shall include:

~~(1) the balance of the deposit transaction account at the beginning of the preceding quarter;~~

~~(2) the number of beverage containers sold in the preceding quarter and the number of beverage containers returned in the preceding quarter;~~

~~(3)~~(2) the amount of beverage container deposits received by the deposit initiator ~~and deposited into the deposit transaction account;~~

~~(4)~~(3) the amount of refund payments made ~~from the deposit transaction account in the preceding quarter; and~~

~~(5) any income earned on the deposit transaction account in the preceding quarter;~~

~~(6) any other transactions, withdrawals, or service charges on the deposit transaction account from the preceding quarter; and~~

~~(7)~~(4) any additional information required by the Commissioner of Taxes.

~~(e)(c)(1) On or before January 1, 2020, and quarterly thereafter, at the time a report is filed pursuant to subsection (d) of this section, each deposit initiator shall remit from its deposit transaction account to the Commissioner of Taxes any abandoned beverage container deposits from the preceding quarter. The amount of abandoned beverage container deposits for a quarter is the amount equal to the amount of deposits that should be in the deposit transaction account less the sum of:~~

~~(A) income earned on amounts on the deposit transaction account during that quarter; and~~

~~(B) the total amount of refund value paid out by the deposit initiator for beverage containers during that quarter~~ the deposit initiator collected in the quarter less the amount of the total refund value paid out by the deposit initiator for beverage containers during the quarter.

(2) In any calendar quarter, the deposit initiator may submit to the Commissioner of Taxes a request for reimbursement of refunds paid under this chapter that exceed the ~~funds that are or should be in the deposit initiator's deposit transaction account~~ amount of deposits collected in the quarter. The Commissioner of Taxes shall pay a request for reimbursement under this subdivision from the funds remitted to the Commissioner under subdivision (1) of this subsection, provided that:

(A) ~~the Commissioner determines that the funds in the deposit initiator's deposit transaction account~~ deposits collected by the deposit initiator are insufficient to pay the refunds on returned beverage containers; and

(B) a reimbursement paid by the Commissioner to the deposit initiator shall not exceed the amount paid by the deposit initiator under subdivision (1) of this subsection ~~(e) during the preceding 12 months (c) less amounts paid to the initiator pursuant to this subdivision (2) during that same 12-month period~~ in the previous four quarterly filings.

(3) Except as expressly provided otherwise in this chapter, all the administrative provisions of 32 V.S.A. chapter 151, including those relating to collection, enforcement, interest, and penalty charges, shall apply to the remittance of abandoned beverage container deposits.

(4) A deposit initiator may within 60 days after the date of mailing of a notice of deficiency, the date of a full or partial denial of a request for reimbursement, or the date of an assessment petition the Commissioner of Taxes in writing for a hearing and determination on the matter. The hearing shall be subject to and governed by 3 V.S.A. chapter 25. Within 30 days after a determination, an aggrieved deposit initiator may appeal a determination by the Commissioner of Taxes to the Washington Superior Court or the Superior Court of the county in which the deposit initiator resides or has a place of business.

(5) Notwithstanding any appeal, upon finding that a deposit initiator has failed to remit the full amount required by this chapter, the Commissioner of Taxes may treat any refund payment owed by the Commissioner to a deposit initiator as if it were a payment received and may apply the payment in accordance with 32 V.S.A. § 3112.

~~(f)~~(d) The Secretary of Natural Resources may prohibit the sale of a beverage that is sold or distributed in the State by a deposit initiator who fails to comply with the requirements of this chapter. The Secretary may allow the sale of a beverage upon the deposit initiator's coming into compliance with the requirements of this chapter.

(e) Data reported to the Secretary of Natural Resources and the Commissioner of Taxes by a deposit initiator under this section shall be confidential business information exempt from public inspection and copying under 1 V.S.A. § 317(c)(9), provided that the Commissioner of Taxes may use and disclose such information in summary or aggregated form that does not directly or indirectly identify individual deposit initiators.

Sec. 8. 10 V.S.A. § 8003(a) is amended to read:

(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:

\* \* \*

(7) 10 V.S.A. chapter 53, relating to beverage containers, provided that the Secretary may not take action to enforce the provisions of section 1530 of this title that are enforceable by the Commissioner of Taxes;

\* \* \*

Sec. 9. 10 V.S.A. § 8503(a)(1)(G) is amended to read:

(G) chapter 53 (beverage containers; deposit-redemption system), except for those acts or decisions of the Commissioner of Taxes under section 1530 of this title;

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

Sec. 10. EFFECTIVE DATES

(a) This section and Secs. 7–9 (beverage container; escheats) shall take effect on passage.

(b) Secs. 1–6 (Efficiency Vermont, Public Utility Commission Proceeding, Carbon Emissions Reduction Committee, VLITE and Home Weatherization Assistance Fund, and supplemental weatherization funding) shall take effect on July 1, 2019.

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

An act relating to weatherization, a Public Utility Commission proceeding, and unclaimed beverage container deposits.

(Committee vote: 5-1-1)

## H. 107.

An act relating to paid family and medical leave.

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

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

### Sec. 1. PURPOSE

It is the intent of the General Assembly that:

(1) the Family and Medical Leave Insurance Program established by this act shall provide employees with affordable Family and Medical Leave Insurance benefits;

(2) the Commissioner of Financial Regulation shall seek a private insurance carrier to provide the benefits required under the Program;

(3) if the Commissioner is able to identify an insurance carrier that can provide the required benefits in a more cost-effective manner than would be possible if benefits were provided by the State, the Commissioner shall enter into a contract with that insurance carrier to administer the Program and provide the benefits required by this act beginning in October of 2020; and

(4) if the Commissioner is unable to identify a suitable insurance carrier, the Program shall be administered by the Department of Labor in coordination with the Departments of Financial Regulation and of Taxes, and benefits shall become available beginning in July of 2021.

Sec. 2. 21 V.S.A. chapter 5, subchapter 13 is added to read:

### Subchapter 13. Family and Medical Leave Insurance

#### § 571. DEFINITIONS

As used in this subchapter:

(1) "Average weekly wage" means the employee's total wages from his or her two highest-earning quarters in the last four completed calendar quarters divided by 26.

(2) "Bonding leave" means a leave of absence from employment by an employee for:

(A) the employee's pregnancy;



(B) the birth of the employee's child; or

(C) the initial placement of a child 18 years of age or younger with the employee for the purpose of adoption or foster care.

(3) "Domestic partner" has the same meaning as in 17 V.S.A. § 2414.

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

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

(6) "Family care leave" means a leave of absence from employment by an employee for a serious illness of the employee's family member.

(7) "Family member" means:

(A) the employee's child or foster child;

(B) a step child or ward who lives with the employee;

(C) the employee's spouse, domestic partner, or civil union partner;

(D) the employee's parent or the parent of the employee's spouse, domestic partner, or civil union partner;

(E) the employee's sibling;

(F) the employee's grandparent; or

(G) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.

(8) "In loco parentis" means a child for whom the employee has day-to-day responsibilities to care for and financially support, or, in the case of the employee, an individual who had such responsibility for the employee when he or she was a child.

(9) "Qualified employee" means an employee who has:

(A) earned wages from which contributions were withheld pursuant to section 574 of this subchapter during at least two of the last four completed calendar quarters; and

(B) earned wages from which contributions were withheld pursuant to section 574 of this subchapter during the last four completed calendar quarters in an amount that is equal to or greater than 1,040 hours at the minimum wage established pursuant to section 384 of this chapter.

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

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

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

(11) “Vermont average weekly wage” means the most recent average weekly wage for Vermont as calculated by the U.S. Bureau of Labor Statistics.

(12) “Wages” means payments that are included in the definition of wages set forth in 26 U.S.C. § 3401.

§ 572. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM;  
ADMINISTRATION

(a) The Family and Medical Leave Insurance Program is established in the Department of Labor for the provision of Family and Medical Leave Insurance benefits to eligible employees pursuant to this section.

(b)(1) The Commissioner of Financial Regulation shall endeavor to identify and contract with a suitable insurance company to provide paid family and medical leave insurance in accordance with this subchapter.

(2)(A) On or before July 1, 2019, the Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall develop and issue a request for information related to the provision of family and medical leave insurance by a private insurance carrier on behalf of the State that satisfies the requirements of this subchapter. The request for information shall also seek input regarding the cost and administrative feasibility of the insurance carrier administering the collection of contributions on behalf of the Department of Taxes pursuant to section 574 of this subchapter.

(B) Responses to the request for information shall be due on or before August 15, 2019.

(3) On or before September 1, 2019, the Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall develop and issue a request for proposals for an

insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter. An insurance carrier shall not be selected unless it can demonstrate that it would be able to provide the required family and medical leave insurance benefits and comply with the provisions of this subchapter in a more cost-effective manner than if the Family and Medical Leave Insurance Program were administered by the State.

(4) The Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall evaluate the proposals received in response to the request for proposals and shall select, on or before November 15, 2019, the proposal that the Commissioner determines:

(A) best satisfies the requirements of this subchapter;

(B) will provide the required family and medical leave insurance benefits and comply with the provisions of this subchapter in a more cost-effective manner than if the Family and Medical Leave Insurance Program were administered by the State; and

(C) delivers the greatest value to the State and Vermont's employees and employers.

(5) An agreement with an insurance carrier to provide family and medical leave insurance pursuant to this subsection shall include a clause that permits the Commissioner of Financial Regulation to terminate the agreement for noncompliance with this chapter.

(6)(A) An agreement with an insurance carrier pursuant to this subsection shall be for a period of not more than four years.

(B) Not later than six months prior to the expiration on the agreement pursuant to this subsection, the Commissioner of Financial Regulation shall determine whether to renew the agreement for an additional period of not more than four years or to issue a new request for proposals for an insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter.

(7) The insurance carrier shall have its books and financial records related to the provision of family and medical leave insurance pursuant to this subsection audited annually and shall provide a copy of the annual audit to the Commissioner of Financial Regulation.

(c)(1) In the event that the Commissioner of Financial Regulation is unable to secure a suitable insurance carrier pursuant to subsection (b) of this section, the Paid Family and Medical Leave Insurance Program shall be administered by the Department of Labor pursuant to the provisions of this subchapter.

(2) In the event that the Paid Family and Medical leave Insurance Program is administered by the Department of Labor, the Commissioner of Labor may contract with a third-party administrator for actuarial support, fund administration, the processing of benefits claims and payments, and the initial determination of appeals.

#### § 573. CONTRIBUTIONS

(a) An employer that does not elect to meet its obligations under this subchapter as provided pursuant to section 577 shall remit the contributions required by subsection (b) of this section to the Commissioner of Taxes on a quarterly basis as provided pursuant to 32 V.S.A. § 5842(a)(1) beginning with the calendar quarter that starts on April 1, 2020.

(b)(1) Contributions shall be equal to 0.20 percent of each employee's covered wages.

(2)(A) One-half of the contribution required pursuant subdivision (1) of this subsection shall be deducted and withheld by an employer from an employee's covered wages, and one-half shall be paid by the employee's employer.

(B) In lieu of deducting and withholding the full amount of the contributions due from the employee's covered wages pursuant to subdivision (A) of this subdivision (2), an employer may elect to pay all or a portion of the contributions due from the employee's covered wages.

(c) As used in this section, the term "covered wages" shall include all wages paid to an employee up to the amount of the maximum Social Security Taxable Wage.

(d)(1) The General Assembly shall annually review and, if necessary, adjust the rate of contribution established pursuant to subsection (b) of this section for the next fiscal year. The rate shall equal the amount necessary to provide Family and Medical Leave Insurance benefits pursuant to this subchapter, to administer the Family and Medical Leave Insurance Program during the next fiscal year, and, if a reserve is necessary, to ensure that it is adequately funded.

(2) On or before February 1 of each year, the Commissioner of Financial Regulation, in consultation with the insurance carrier that the State has contracted with, if any, and the Commissioners of Labor and of Taxes, shall report to the General Assembly the rate of contribution necessary to provide Family and Medical Leave Insurance benefits pursuant to this subchapter, to administer the Program during the next fiscal year, and, if a reserve is necessary, to ensure that it is adequately funded.

#### § 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

(a) The Commissioner of Taxes shall collect all contributions required pursuant to section 573 of this subchapter and deposit them into the Family and Medical Leave Insurance Special Fund.

(b)(1) The Commissioner of Taxes shall require the withholding of the contributions required pursuant to section 573 of this subchapter from wages paid by any employer, as if the contributions were an additional Vermont income tax subject to the withholding requirements of 32 V.S.A. § 5841(a). The administrative and enforcement provisions of 32 V.S.A. chapter 151, subchapter 4 shall apply to the withholding requirement under this section as if the contributions withheld were a Vermont income tax.

(2) An employer that has received approval from the Commissioner of Financial Regulation for an alternative insurance or benefit plan pursuant to the provisions of section 577 shall not be required to withhold contributions pursuant to this section.

(c)(1) The Commissioner of Taxes may enter into a memorandum of understanding with the private insurance carrier contracted with by the Commissioner of Financial Regulation pursuant to section 572 of this subchapter, the Commissioner of Financial Regulation, or the Commissioner of Labor as the Commissioner of Taxes determines is necessary to carry out the provisions of this section.

(2) The Commissioner of Taxes may contract with the private insurance carrier contracted with by the Commissioner of Financial Regulation pursuant to section 572 of this subchapter to administer the collection of contributions pursuant to this section.

#### § 575. BENEFITS

(a)(1) A qualified employee shall be permitted to receive a total of not more than 12 weeks of Family and Medical Leave Insurance benefits in a calendar year, which may include:

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

(B) up to six weeks of benefits for family care leave taken by the employee.

(2) Notwithstanding subdivision (1)(B) of this subsection, with respect to a serious illness of an individual who is a sibling or grandparent of one or more qualified employees, the qualified employees who are a sibling or grandchild of that individual shall be permitted to receive a combined total of not more than six weeks of Parental and Family Leave Insurance benefits in a 12-month period for family care leave related to that individual.

(b)(1) The weekly benefit amount for a qualified employee awarded Family and Medical Leave Insurance benefits under this section shall be determined as follows:

(A) the portion of the qualified employee's average weekly wage that is less than or equal to 55 percent of the Vermont average weekly wage shall be replaced at a rate of 90 percent; and

(B) the portion of the qualified employee's average weekly wage that is greater than 55 percent of the Vermont average weekly wage shall be replaced at a rate of 55 percent.

(2) Notwithstanding subdivision (1) of this subsection, no qualified employee may receive Parental and Family Leave Insurance benefits that exceed the Vermont average weekly wage.

(c)(1) After the occurrence of a family care leave event, a qualified employee shall wait for a period of one week for which he or she shall not be eligible to receive Family and Medical Leave Insurance benefits.

(2) A qualified employee shall only have one waiting period in a calendar year.

(3) No waiting period shall be required before a qualified employee is eligible to receive Family and Medical Leave Insurance benefits in relation to a bonding leave.

(d) A qualified employee may receive Family and Medical Leave Insurance benefits for an intermittent leave or leave for a portion of a week. The benefit amount for an intermittent leave or leave for a portion of a week shall be calculated in increments of one full day or one fifth of the qualified employee's weekly benefit amount.

(e) A bonding leave or family care leave for which benefits are paid pursuant to this subchapter shall run concurrently with a leave taken pursuant to section 472 of this title or the federal Family and Medical Leave Act, 29 U.S.C. §§ 2611–2654.

(f)(1) A qualified employee shall not be permitted to receive Family and Medical Leave Insurance benefits for any day for which he or she is receiving:

(A) wages;

(B) payment for the use of vacation leave, sick leave, or other accrued paid leave;

(C) payment pursuant to a disability insurance plan;

(D) unemployment insurance benefits pursuant to 21 V.S.A. chapter 17 or the law of any other state; or

(E) compensation for temporary partial disability or temporary total disability pursuant to 21 V.S.A. chapter 9, the workers' compensation law of any state, or any similar law of the United States.

(2) Notwithstanding subdivision (1) of this subsection, an employer may provide its employees with additional income to supplement the amount of the benefits provided pursuant to this section provided that the sum of the additional income and the benefits provided pursuant to this section does not exceed the employee's average weekly wage.

§ 576. APPLICATION FOR BENEFITS; PAYMENT; TAX  
WITHHOLDING

(a) A qualified employee, or his or her agent, shall file an application for Family and Medical Leave Insurance benefits under this subchapter on a form approved by the Commissioner of Labor. The determination of whether the qualified employee is eligible to receive Family and Medical Leave Insurance benefits shall be based on the following criteria:

(1) The claim is for a bonding leave or a family care leave and the need for the leave is adequately documented.

(2) The claimant satisfies the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this subchapter.

(3) The claimant has specified the anticipated start date and duration of the leave.

(b)(1) A determination shall be made in relation to each claim within not more than five business days after the date the claim is filed. The time to make a determination on a claim may be extended by not more than 15 business days if necessary to obtain documents or information that are needed to make the determination.

(2) An application for Family and Medical Leave Insurance benefits may be filed:

(A) up to 60 days before an anticipated leave; or

(B) in the event of a premature birth or an unanticipated serious illness, within 60 days after the leave begins.

(3)(A) Benefits shall be paid to a qualified employee for the time period beginning on the day his or her leave began.

(B) The first benefit payment shall be sent to the qualified employee within 14 days after the leave begins or the claim is approved, whichever is later, and subsequent payments shall be sent biweekly.

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

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

(2) All procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the withholding of income tax shall be followed in relation to the payment of Family and Medical Leave Insurance benefits.

(d) As used in this section, "agent" means an individual who holds a valid power of attorney for the employee or other legal authorization to act on the employee's behalf that is acceptable to the Commissioner of Labor.

#### § 577. EMPLOYER OPTION; ALTERNATIVE INSURANCE OR BENEFITS

(a) As an alternative to and in lieu of participating in the Family and Medical Leave Insurance Program, an employer may, upon approval by the Commissioner of Financial Regulation, comply with the requirements of this subchapter through the use of an alternative insurance plan or benefit plan that provides to all of its employees benefits for bonding and family care leave that are equivalent to or more generous than the benefits provided pursuant to this subchapter. An employer may elect to provide such benefits by:

(1) establishing and maintaining to the satisfaction of the Commissioner of Financial Regulation self-insurance necessary to provide equivalent or greater benefits;

(2) purchasing insurance coverage for the payment of equivalent or greater benefits from any insurance carrier authorized to provide family and medical leave insurance in this State;

(3) establishing an employee benefits plan that provides equivalent or greater benefits; or



(4) any combination of subdivisions (1) through (3) of this subsection.

(b)(1) The Commissioner of Financial Regulation may approve an alternative insurance or benefit plan under this section upon making a determination that it provides benefits that are equivalent to or more generous than the benefits provided pursuant to this subchapter.

(2)(A) Nothing in this section shall be construed to required that the benefits provided by an alternative insurance or benefit plan be identical to the benefits provided pursuant to this subchapter.

(B) The Commissioner shall determine whether the benefits provided by a proposed alternative insurance or benefit plan are equivalent to or more generous than the benefits provided pursuant to this subchapter by weighing the relative value of the alternative plan's length of leave, wage replacement, and cost to employees against the provisions of this subchapter.

(c)(1) Except as otherwise provided pursuant to subdivision (4) of this subsection, an alternative insurance or benefit plan shall only be permitted to become effective on January 1 following its approval and shall remain in effect until it is discontinued pursuant to subdivision (3) of this subsection.

(2)(A) An employer shall submit an application to the Commissioner of Financial Regulation for approval of a new or modified alternative insurance or benefit plan on or before October 15 of the calendar year prior to when it shall take effect.

(B) The Commissioner shall make a determination and notify the employer of whether its application has been approved on or before December 1. If the application is approved, the Commissioner shall also provide a copy of the notice to the Commissioners of Labor and of Taxes on or before December 1.

(3) An employer may discontinue its alternative insurance or benefit plan on January 1 of any year by filing notice of its intent to discontinue the plan with the Commissioners of Financial Regulation, of Labor, and of Taxes on or before November 1 of the prior year.

(4)(A) Notwithstanding any provisions of subdivisions (1) and (2) of this subsection to the contrary, for calendar year 2020, an employer shall submit an application for a new alternative insurance or benefit plan on or before February 1.

(B) The Commissioner shall make a determination and notify the employer of whether its application has been approved on or before March 15. If the application is approved, the Commissioner shall also provide a copy of the notice to the Commissioners of Labor and of Taxes on or before March 15.

(C) Beginning on April 1, 2020, an employer that receives approval for an alternative insurance or benefit plan pursuant to this subdivision (4) shall be exempt from withholding contributions as provided pursuant to subdivision 574(b)(2) of this subchapter.

(d) Nothing in this subchapter shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or paid time off policy that provides more generous benefits than the benefits provided pursuant to this subchapter.

#### § 578. DISQUALIFICATIONS

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

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

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

#### § 579. APPEALS

(a) An employer or employee aggrieved by a decision under section 576 or 578 of this subchapter may file an initial appeal of the decision with the insurance carrier that the State has contracted with.

(b) Within 20 days after receiving notice of the insurance carrier's decision on the initial appeal, the employer or employee may appeal the decision to an administrative law judge as provided pursuant to sections 1348 and 1351–1357 of this title.

(c) Within 30 days after receiving notice of the administrative law judge's decision, either party may appeal that decision to the Supreme Court.

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

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

§ 581. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

(a) The employer of an employee who receives Family and Medical Leave Insurance benefits under this subchapter shall reinstate the employee at the conclusion of his or her bonding leave or family care leave, provided the employee does not take bonding leave or family care leave for a combined total of more than 12 weeks in a calendar year. The employee shall be reinstated in the first available suitable position given the position he or she held at the time his or her leave began.

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

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

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

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

(B) the employer can demonstrate by clear and convincing evidence that during the leave, or prior to the employee's reinstatement, the employee's position would have been terminated or the employee laid off for reasons unrelated to the leave or the reason for which the employee took the leave;

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

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

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

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

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

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

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

#### § 582. PROTECTION FROM RETALIATION OR INTERFERENCE

(a) An employer shall not discharge or in any other manner retaliate against an employee who exercises or attempts to exercise his or her rights under this subchapter. The provisions against retaliation in subdivision 495(a)(8) of this title shall apply to this subchapter.

(b) An employer shall not interfere with, restrain, or otherwise prevent an employee from exercising or attempting to exercise his or her rights pursuant to this subchapter.

(c) An employee aggrieved by a violation of the provisions of this subchapter may bring an action in Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

#### § 583. CONFIDENTIALITY OF INFORMATION

(a) Information obtained from an employer or individual in the administration of this subchapter and determinations of an individual's right to receive benefits that reveal an employer's or individual's identity in any manner shall be kept confidential and, to the extent that such information is obtained by the State, shall be exempt from public inspection and copying under the Public Records Act. Such information shall not be admissible as evidence in any action or proceeding other than one brought pursuant to the provisions of this subchapter.

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

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

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

#### § 584. RULEMAKING

(a) The Commissioner of Taxes shall adopt rules as necessary to implement the provisions of section 574 of this subchapter. The rules adopted by the Commissioner of Taxes shall include:

(1) procedures for the collection of contributions; and

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

(b) The Commissioner of Financial Regulation shall adopt rules as necessary to implement the provisions of section 577 of this subchapter. The rules adopted by the Commissioner of Financial Regulation shall include requirements and criteria for the approval of an employer's alternative insurance or benefit plan pursuant to section 577 of this subchapter and for determining whether a proposed plan provides benefits that are equivalent to or more generous than the benefits provided pursuant to this subchapter.

(c)(1) The Commissioner of Labor shall adopt rules as necessary to implement all other provisions of this subchapter. The rules adopted by the Commissioner of Labor shall include:

(A) acceptable documentation for demonstrating eligibility for benefits;

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

(C) requirements for obtaining authorization for an individual's health care provider to disclose information necessary to make a determination of the individual's eligibility for benefits;

(D) procedures for appeals pursuant to subsection 579(b) of this subchapter; and

(E) rules to permit an employee to authorize the Department, in compliance with all applicable provisions of federal law, to disclose unemployment insurance information to the insurance carrier as necessary to determine if the employee meets the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this chapter.

(2) The Commissioner of Labor shall create a form that will permit an employee to provide informed consent for the Department to disclose unemployment insurance information to the insurance carrier as necessary to determine if the employee meets the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this chapter. The form shall satisfy all applicable requirements under federal law.

#### § 585. FAMILY AND MEDICAL LEAVE INSURANCE SPECIAL FUND

The Family and Medical Leave Insurance Special Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund shall consist of contributions

collected from employers pursuant to section 574 of this subchapter. The Fund may be expended by the Commissioners of Financial Regulation, of Labor, and of Taxes for the payment of premiums for and the administration of the Family and Medical Leave Insurance Program. All interest earned on Fund balances shall be credited to the Fund.

Sec. 3. 21 V.S.A. § 586 is added to read:

§ 586. OVERPAYMENT OF BENEFITS; COLLECTION

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

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

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

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

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

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

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

(d) In addition to the remedy provided pursuant to this section, an individual who intentionally misrepresented or failed to disclose a material fact

with respect to his or her claim for benefits may be subject to the penalties provided pursuant to section 580 of this title.

#### Sec. 4. ADOPTION OF RULES

(a) On or before January 1, 2020, the Commissioner of Taxes shall adopt rules necessary to implement the provisions of 21 V.S.A. § 574, which shall include:

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

(b) On or before January 1, 2020, the Commissioner of Financial Regulation shall adopt rules as necessary to implement the provisions of section 577 of this subchapter. The rules adopted by the Commissioner of Financial Regulation shall include requirements and criteria for the approval of an employer's alternative insurance or benefit plan pursuant to 21 V.S.A. § 577 and for determining whether a proposed plan provides benefits that are equivalent to or more generous than the benefits provided pursuant to 21 V.S.A. chapter 5, subchapter 13.

(c) On or before June 1, 2020, the Commissioner of Labor shall adopt rules necessary to implement all other provisions of 21 V.S.A. chapter 5, subchapter 13, which shall include:

- (1) acceptable documentation for demonstrating eligibility for benefits;
- (2) requirements for providing certification from a health care provider of the need for family leave that are modeled on the federal rules governing certification of a serious health condition under the Family and Medical Leave Act;
- (3) requirements for obtaining authorization for an individual's health care provider to disclose information necessary to make a determination of the individual's eligibility for benefits;
- (4) procedures for appealing a decision pursuant to 21 V.S.A. § 579(b)(2);
- (5) the establishment of the existence of an in loco parentis relationship between an employee and another individual; and
- (6) rules to permit an employee to authorize the Department, in compliance with all applicable provisions of federal law, to disclose unemployment insurance information to the insurance carrier as necessary to determine if the employee meets the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this chapter.

Sec. 5. EDUCATION AND OUTREACH

On or before June 1, 2020, the Commissioner of Labor shall develop and make available on the Department of Labor's website information and materials to educate and inform employers and employees about the Family and Medical Leave Insurance Program established pursuant to 21 V.S.A. chapter 5, subchapter 13.

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

The Commissioner of Finance and Management may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from the Family and Medical Leave Insurance Special Fund necessary to establish the Family and Medical Leave Insurance Program in anticipation of the receipt on or after April 1, 2020 of contributions submitted pursuant to 21 V.S.A. §§ 573 and 574.

Sec. 7. ADEQUACY OF RESERVES; REPORT

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

Sec. 8. 21 V.S.A. § 471 is amended to read:

§ 471. DEFINITIONS

As used in this subchapter:

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

\* \* \*



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

(A) the serious illness of the employee; ~~or~~

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

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

~~(C) the employee’s pregnancy;~~

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

~~(B)(E)~~ (E) the initial placement of a child ~~16~~ 18 years of age or younger with the employee for the purpose of adoption or foster care.

(4) “Family member” means:

(A) the employee’s child or foster child;

(B) a step child or ward who lives with the employee;

(C) the employee’s spouse, domestic partner, or civil union partner;

(D) the employee’s parent or the parent of the employee’s spouse, domestic partner, or civil union partner;

(E) the employee’s sibling;

(F) the employee’s grandparent; or

(G) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.

\* \* \*

(6) “Commissioner” means the Commissioner of Labor.

(7) “Domestic partner” has the same meaning as in 17 V.S.A. § 2414.

(8) “In loco parentis” means a child for whom the employee has day-to-day responsibilities to care for and financially support, or, in the case of the employee, an individual who had such responsibility for the employee when he or she was a child.

Sec. 9. 21 V.S.A. § 472 is amended to read:

§ 472. FAMILY LEAVE

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

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

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

(3) within a year following the initial placement of a child 16 18 years of age or younger with the employee for the purpose of adoption- or foster care;

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

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

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

\* \* \*

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

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

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

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

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

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

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

\* \* \*

(h) Except for serious illness of the employee, an employee who does not return to employment with the employer who provided the family leave shall return to the employer the value of any compensation paid to or on behalf of the employee during the leave, except payments of Family and Medical Leave Insurance benefits and payments for accrued sick leave or vacation leave. An employer may elect to waive the rights provided pursuant to this subsection.

Sec. 10. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

\* \* \*

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

\* \* \*

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

\* \* \*

Sec. 11. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;  
DISCLOSURE TO SUCCESSOR ENTITY

(a)(1) The Commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

\* \* \*

(G) The individual was employed by that employer as a result of another employee taking leave under chapter 5, subchapter 13 of this title, and the individual's employment was terminated as a result of the reinstatement of the other employee following his or her leave under chapter 5, subchapter 13 of this title.

\* \* \*

#### Sec. 12. SELF-EMPLOYED INDIVIDUAL; OPT-IN; REPORT

On or before January 15, 2021, the Commissioner of Labor, in consultation with the insurance carrier that the State has contracted with, if any, and the Commissioners of Financial Regulation and of Taxes, shall submit a written report to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential for permitting self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program. In particular, the report shall examine the experience of other states that allow self-employed individuals to obtain coverage under their family and medical leave insurance programs, and the potential impact of permitting self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program on the Program, contribution rates, and administrative costs. The report shall also include a recommendation for legislative action necessary to permit self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program.

#### Sec. 13. POTENTIAL TRANSITION TO STATE-OPERATED FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM; REPORT

On or before January 15, 2023, the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation and of Taxes, shall report to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential for transitioning the Family and Medical Leave Insurance Program to a program that is fully administered and operated by the State. The report shall identify the potential costs to the State of such a transition and the amount of time necessary to successfully accomplish the transition, as well as the expected impacts on contribution rates, administrative efficiency, and the experience of employers and employees. The report shall also examine and contrast the potential benefits and drawbacks of ensuring the solvency of a program that is fully administered and operated by the State by either maintaining a reserve or obtaining reinsurance. The report shall include a recommendation regarding whether the Family and Medical Leave Insurance Program should transition to a program that is fully administered and operated by the State.

Sec. 14. 3 V.S.A. § 638 is added to read:

§ 638. FAMILY AND MEDICAL LEAVE INSURANCE

(a) All State employees shall be provided with family and medical leave insurance that satisfies the requirements of 21 V.S.A. chapter 5, subchapter 13.

(b) The State shall bargain with the appropriate collective bargaining representative for each bargaining unit of State employees to determine:

(1) whether State employees will be covered by the Family and Medical Leave Insurance Program or an alternative insurance or benefit plan established pursuant to 21 V.S.A. § 577;

(2) if the State employees will be covered by the Family and Medical Leave Insurance Program, the portion of the contribution rate established pursuant to 21 V.S.A. § 573 that the State and the employees will be responsible for; and

(3) if the State employees will be covered by an alternative insurance or benefit plan established pursuant to 21 V.S.A. § 577, the cost of the program to the employees, and the length of leave and level of wage replacement that the employees will be eligible for.

(c)(1) The contribution rate determined pursuant to subdivision (b)(2) of this section or the cost of the plan to the employees determined pursuant to subdivision (b)(3) of this section shall be the same for all State employees, regardless of whether the employees are permitted to collectively bargain pursuant to 3 V.S.A. chapter 27 or 28.

(2) The length of leave and level of wage replacement determined pursuant to subdivision (b)(3) of this section shall be the same for all State employees, regardless of whether the employees are permitted to collectively bargain pursuant to 3 V.S.A. chapter 27 or 28.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, the sworn Vermont State Police Officers below the rank of Lieutenant shall not be required to have the same rate of contribution or the same cost of the plan, length of leave, and level of wage replacement as other State employees.

Sec. 15. REQUEST FOR INFORMATION; REQUEST FOR PROPOSALS;  
REPORTS

(a) On or before July 15, 2019, the Commissioner of Financial Regulation shall submit a copy of the request for information to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

(b) On or before September, 1, 2019, the Commissioner of Finance shall submit a brief summary of the responses to the request for information together with copies of all the responses to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance. The Commissioner of Financial Regulation may redact confidential business information from the copies of the responses to the request for information before submitting them.

(c) On or before September 15, 2019, the Commissioner of Financial Regulation shall submit a copy of the request for proposals to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

(d) On or before December 15, 2019, the Commissioner of Financial Regulation shall submit a written report summarizing the outcome of the request for proposal process to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

Sec. 16. PLAN FOR STATE OPERATION OF FAMILY AND MEDICAL  
LEAVE INSURANCE PROGRAM; REPORT

In the event that the Commissioner of Financial Regulation is unable to secure a suitable insurance company to provide paid family and medical leave insurance pursuant to the provisions of 21 V.S.A. § 572(b), the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation and of Taxes, shall, on or before January 15, 2020, submit a written report outlining a plan for the State to operate the Family and Medical Leave Insurance Program to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance. The report shall include a detailed explanation of how the State will implement Family and Medical Leave Insurance Program and carry out the requirements of 21 V.S.A. chapter 5, subchapter 13, including specific details and requirements related to staffing, information technology development, the development of rules and procedures, ensuring adequate reserves in the Family and Medical Leave Insurance Special Fund, and, if appropriate, the utilization of one or more third-party administrators. The report shall also include a recommendation for any legislative action necessary for the State to successfully implement the Family and Medical Leave Insurance Program.

Sec. 17. APPROPRIATIONS; POSITIONS

(a)(1) The sum of \$1,000,000.00 is appropriated from the Family and Medical Leave Insurance Special Fund to the Department of Taxes in fiscal year 2020 for temporary staffing needs related to the adoption of rules, the development of information technology systems necessary to implement the provisions of 21 V.S.A. § 574, and, if applicable, to contract with the private insurance carrier selected pursuant to 21 V.S.A. § 572 to administer the collection of Family and Medical Leave Insurance contributions.

(2) The sum of \$217,900.00 is appropriated from the Family and Medical Leave Insurance Special Fund to the Department of Labor for staffing needs related to the adoption of rules and for the development of forms, procedures, and outreach and education materials related to the Family and Medical Leave Insurance Program established pursuant to 21 V.S.A. chapter 5, subchapter 13.

(b) The establishment of one new administrator position in the Department of Labor is authorized in fiscal year 2020.

Sec. 18. 32 V.S.A. § 3102 is amended to read:

§ 3102. CONFIDENTIALITY OF TAX RECORDS

\* \* \*

(d) The Commissioner shall disclose a return or return information:

\* \* \*

(7) to the Joint Fiscal Office pursuant to subsection 10503(e) of this title and subject to the conditions and limitations specified in that subsection; and

(8) to the Commissioner of Financial Regulation, the Commissioner of Labor, or the private insurance carrier contracted with by the Commissioner of Financial Regulation pursuant to 21 V.S.A. § 572, provided the information is related to the administration of the Family and Medical Leave Insurance Program created pursuant to 21 V.S.A. chapter 5, subchapter 13.

\* \* \*

Sec. 19. 21 V.S.A. § 1314 is amended to read:

§ 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;  
DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT  
EMPLOYMENT INFORMATION; DISCLOSURE OF  
INFORMATION TO OTHER STATE AGENCIES TO  
INVESTIGATE MISCLASSIFICATION OR MISCODING

\* \* \*

(e)(1) Subject to such restrictions as the Board may ~~by regulation~~ prescribe by rule, information from unemployment insurance records may be made available to any public officer or public agency of this or any other state or the federal government dealing with the administration or regulation of relief, public assistance, unemployment compensation, a system of public employment offices, wages and hours of employment, workers' compensation, misclassification or miscoding of workers, occupational safety and health, or a public works program for purposes appropriate to the necessary operation of those offices or agencies. The Commissioner may also make information available to colleges, universities, and public agencies of the State for use in connection with research projects of a public service nature, and to the Vermont Economic Progress Council with regard to the administration of 32 V.S.A. chapter 105, subchapter 2; but no person associated with those institutions or agencies may disclose that information in any manner that would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by the Commissioner.

\* \* \*

(8)(A) The Department of Labor shall disclose, upon request, to the insurance carrier that the Commissioner of Financial Regulation has contracted with to operate the Family and Medical Leave Insurance Program pursuant to section 572 of this title, any information in its records related to an identified individual that is necessary for the purpose of determining the individual's eligibility for Family and Medical Leave Insurance benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(B) The Commissioner shall enter into an agreement with the insurance carrier that governs the use of the disclosed information and complies with all requirements of 20 C.F.R. § 603.10.

(C) The information requested shall not be released unless the individual to whom the requested information relates has signed a consent form, approved by the Commissioner, that permits the release of the requested information.

(D) The requested information shall not be released unless the insurance carrier agrees to reimburse the Department of Labor for the costs involved in furnishing the requested information.

\* \* \*



Sec. 20. EFFECTIVE DATES

(a) This section and Secs. 1, 2, 4, 5, 6, 12, 13, 14, 15, 16, 17, 18, and 19 shall take effect on passage.

(b) Secs. 3 and 7 shall not take effect until December 1, 2019, and shall not take effect at all if the Commissioner of Financial Regulation secures a suitable insurance company to provide paid family and medical leave insurance pursuant to the provisions of 21 V.S.A. § 572(b).

(c) Secs. 8, 9, 10, and 11 shall take effect on October 1, 2020.

(d)(1)(A) If the Commissioner of Financial Regulation secures a private insurance carrier pursuant to 21 V.S.A. § 572, contributions shall begin being paid pursuant to 21 V.S.A. §§ 573 and 574 on April 1, 2020, and, beginning on October 1, 2020, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(B) If the Commissioner of Financial Regulation is unable to secure a private insurance carrier pursuant to 21 V.S.A. § 572, contributions shall begin being paid pursuant to 21 V.S.A. §§ 573 and 574 on July 1, 2020, and, beginning on July 1, 2021, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(2) An employer that is subject to a collective bargaining agreement shall not be required to pay contributions or be subject to the provisions of 21 V.S.A. chapter 5, subchapter 13 until either the effective date of the next collective bargaining agreement after April 1, 2020, or the effective date of a supplement to or provision of an existing collective bargaining agreement that specifically addresses the provisions of 21 V.S.A. chapter 5, subchapter 13, in order to permit the employer and the collective bargaining representative to negotiate regarding the employer and employee shares of the contribution rate or whether the employer will provide benefits through an alternative plan established pursuant to 21 V.S.A. § 577.

(Committee vote: 4-1-0)

(For House amendments, see House Journal for April 4, 2019, pages 742-801)

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

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Economic Development, Housing and General Affairs with the following amendment thereto:

In Sec. 2, 21 V.S.A. § 575, by striking out subdivision (c)(1) in its entirety and inserting in lieu thereof a new subdivision (c)(1) to read as follows:

(c)(1)(A) Each qualified employee shall complete a waiting period before he or she may receive benefits for a family care leave.

(B) The waiting period shall consist of the first five calendar days in a calendar year for which the qualified employee would otherwise be eligible to receive benefits for a family care leave.

(C) Family and Medical Leave Insurance benefits shall not be payable for any day in the waiting period.

(Committee vote: 6-1-0)

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

(Committee voted: 6-0-1)

### **H. 351.**

An act relating to workers' compensation, unemployment insurance, and ski tramway amendments.

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

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

By striking out Secs. 1 through 6 and their reader assistance headings in their entirety and inserting in lieu thereof new Secs. 1 through 6 and their reader assistance heading to read as follows:

\* \* \* Deleted Sections \* \* \*

Sec. 1. [Deleted.]

Sec. 2. [Deleted.]

Sec. 3. [Deleted.]

Sec. 4. [Deleted.]

Sec. 5. [Deleted.]

Sec. 6. [Deleted.]

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 20, 2019, pages 564-570)

## H. 512.

An act relating to miscellaneous court and Judiciary related amendments.

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

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

Sec. 1. 12 V.S.A. § 5 is amended to read:

### § 5. DISSEMINATION OF ELECTRONIC CASE RECORDS

(a) The Court shall not permit public access via the Internet to criminal, ~~or family, or probate~~ case records. The Court may permit criminal justice agencies, as defined in 20 V.S.A. § 2056a, Internet access to criminal case records for criminal justice purposes, as defined in section 2056a.

\* \* \*

Sec. 2. 12 V.S.A. § 5169 is amended to read:

### § 5169. JUDGMENT FOR PLAINTIFF; COMMISSIONERS; WAIVER

(a) When the issue is determined in favor of the plaintiff, or if the person interested defaults, the court shall render judgment that partition be made and appoint three disinterested residents of the county as commissioners. The commissioners shall make partition of the estate and set off each share of the several persons interested, according to their respective titles, and shall award to the plaintiff reasonable costs against the adverse party.

(b) Notwithstanding subsection (a) of this section, the parties may, with the approval of the court, waive the use of commissioners and have all matters decided by the court at a bench trial.

Sec. 3. 15A V.S.A. § 1-110 is amended to read:

### § 1-110. NOTICE OF INTENT TO RETAIN PARENTAL RIGHTS

\* \* \*

(b) ~~Each probate division of the superior court~~ Probate Division of the Superior Court shall forward maintain a notice filed with that court under subsection (a) of this section, ~~to the probate division of the superior court in the district of Chittenden, which~~ within an electronic database that shall serve as a central repository for all such notices.

Sec. 4. 33 V.S.A. § 5117 is amended to read:

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

\* \* \*

(c)(1) Upon motion of a party in a divorce or parentage proceeding related to parental rights and responsibilities for a child or parent-child contact, the ~~Court~~ court may order that ~~Court~~ court records in a juvenile proceeding involving the same child or children be released to the parties in the divorce proceeding.

(2) Upon the court's own motion in a probate proceeding involving adoption, guardianship, or termination of parental rights, the court may order that court records in a juvenile proceeding involving the same child or children be released to the Probate Division. When the court orders release of records pursuant to this subdivision, the court shall notify the parties that it intends to consider confidential juvenile case information and shall provide the parties with access to the information in a manner that preserves its confidentiality.

(3) Files inspected under this subsection shall be marked: UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE OF UP TO \$2,000.00. The public shall not have access to records from a juvenile proceeding that are filed with the ~~Court~~ court or admitted into evidence in the divorce or parentage proceeding or in the probate proceeding.

\* \* \*

Sec. 5. 33 V.S.A. § 5119 is amended to read:

§ 5119. SEALING OF RECORDS

\* \* \*

(h)(1) In matters relating to a person who was charged with a criminal offense or was the subject of a delinquency petition on or after July 1, 2006, and prior to the person attaining the age of majority, the files and records of the ~~Court~~ court applicable to the proceeding shall be sealed immediately if the case is dismissed.

\* \* \*

Sec. 6. 15 V.S.A. § 752 is amended to read:

§ 752. MAINTENANCE

(a) In an action under this chapter, the court may order either spouse to make maintenance payments, either rehabilitative or ~~permanent~~ long term in nature, to the other spouse if it finds that the spouse seeking maintenance:

(1) lacks sufficient income or property, or both, including property apportioned in accordance with section 751 of this title, to provide for his or her reasonable needs; and

(2) is unable to support himself or herself through appropriate employment at the standard of living established during the civil marriage or is the custodian of a child of the parties.

(b) The maintenance order shall be in such amounts and for such periods of time as the court deems just, after considering all relevant factors, including:

(1) the financial resources of the party seeking maintenance, the property apportioned to the party, the party's ability to meet his or her needs independently, and the extent to which a provision for support of a child living with the party contains a sum for that party as custodian;

(2) the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(3) the standard of living established during the civil marriage;

(4) the duration of the civil marriage;

(5) the age and the physical and emotional condition of each spouse;

(6) the ability of the spouse from whom maintenance is sought to meet his or her reasonable needs while meeting those of the spouse seeking maintenance;

(7) inflation with relation to the cost of living; and

(8) the impact of both parties reaching the age of eligibility to receive full retirement benefits under Title II of the federal Social Security Act or the parties' actual retirement, including any expected discrepancies in federal Social Security Retirement benefits; and

~~(8)~~(9) the following guidelines:

Length of marriage	% of the difference between parties' gross incomes	Duration of alimony award as % length of marriage
0 to <5 years	0- <del>20</del> <u>16</u> %	No alimony or short-term alimony up to one year
5 to <10 years	<del>15-35</del> <u>12-29</u> %	20-50% (1-5 yrs)
10 to <15 years	<del>20-40</del> <u>16-33</u> %	40-60% ( <del>34</del> -9 yrs)

15 to <20 years	<del>24-45</del> <u>20-37</u> %	40-70% (6-14 yrs)
20+ years	<del>30-50</del> <u>24-41</u> %	45% (9-20+ yrs)

(c) In each order awarding maintenance, the court shall state whether and how maintenance payments will be impacted by either party reaching the age of eligibility to receive full retirement benefits under Title II of the federal Social Security Act or the parties' actual retirement will impact payments.

Sec. 7. Vermont Rule of Criminal Procedure 3(k) is amended to read:

(k) Temporary Release. ~~Either a~~ A law enforcement officer arresting a person ~~or the prosecuting attorney~~ shall contact a judicial officer for determination of temporary release pursuant to Rule 5(b) of these rules without unnecessary delay. The law enforcement officer ~~or prosecuting attorney~~ shall provide the judicial officer with an affidavit or sworn statement as required by Rule 4(a) of these rules, and information upon which the determination as to temporary release may be made. The affidavit or sworn statement must indicate the ~~charge(s) the prosecuting attorney intends to file~~ crimes to be charged by the arresting officer.

Sec. 8. 18 V.S.A. § 4472 is amended to read:

§ 4472. DEFINITIONS

As used in this subchapter:

\* \* \*

(14) "Possession limit" means the amount of marijuana collectively possessed between the registered patient and the patient's registered caregiver that is ~~no~~ not more than two mature marijuana plants, seven immature plants, and two ounces of usable marijuana. Any marijuana harvested from the plants shall not count toward the two-ounce possession limit, provided it is stored in an indoor facility on the property where the marijuana was cultivated and reasonable precautions are taken to prevent unauthorized access to the marijuana.

\* \* \*

Sec. 9. 18 V.S.A. § 4474c is amended to read:

§ 4474c. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS  
REGARDING THE USE OF MARIJUANA FOR SYMPTOM  
RELIEF

\* \* \*

~~(c) A registered patient or registered caregiver who elects to grow marijuana to be used for symptom relief by the patient may do so only if the marijuana is cultivated in a single, secure indoor facility~~ Personal cultivation of marijuana by a patient or caregiver on behalf of a patient shall only occur:

(1) on property lawfully in possession of the cultivator or with the written consent of the person in lawful possession of the property; and

(2) in an enclosure that is screened from public view and is secure so that access is limited to the cultivator and persons 21 years of age or older who have permission from the cultivator.

\* \* \*

Sec. 10. 18 V.S.A. § 4474n is added to read:

§ 4474n. USE OF U.S. FOOD AND DRUG ADMINISTRATION-  
APPROVED DRUGS CONTAINING ONE OR MORE  
CANNABINOIDS

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

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

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

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

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

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

(b) Upon approval by the U.S. Food and Drug Administration of one or more prescription drugs containing one or more cannabinoids, the Department of Health shall amend its rules to conform to the provisions of subsection (a) of this section.

Sec. 11. REPEAL

2017 Act and Resolves No. 62, Sec. 8 (use of U.S. Food and Drug Administration-approved drugs containing cannabidiol) is repealed.

Sec. 12. 32 V.S.A. § 5894 is amended to read:

§ 5894. LIABILITY FOR FAILURE OR DELINQUENCY

\* \* \*

(f) Violations from income derived from illegal activity. An individual, fiduciary, officer, or employee of any corporation or a partner or employee of any partnership who violates subsections (a)-(e) of this section based on income derived from illegal activity shall be imprisoned not more than three years or fined not more than \$10,000.00 or not more than \$100,000.00 if the violation was based on income derived from the unlawful sale of a regulated drug in violation of 18 VSA chapter 84, or both. The penalty provided in this subsection shall be in addition to any other civil or criminal penalties provided by law.

Sec. 13. TASK FORCE ON CAMPUS SEXUAL HARM; REPORT

(a) Creation. There is created the Task Force on Campus Sexual Harm to examine issues relating to responses to sexual harm, dating and intimate partner violence, and stalking on campuses of postsecondary educational institutions in Vermont.

(b) Membership. The Task Force shall be composed of the following 19 members:

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

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

(3) two survivors of campus sexual assault, domestic violence, or stalking incidents, appointed by Vermont Center for Crime Victim Services;

(4) the Executive Director of the Vermont Network Against Domestic and Sexual Violence or designee;



(5) one representative of a community-based sexual violence advocacy organization, appointed by the Vermont Network Against Domestic and Sexual Violence;

(6) three Title IX Coordinators, one employed and appointed by the University of Vermont, one employed and appointed by the Vermont State Colleges, and one employed by a Vermont independent postsecondary educational institution, appointed by the President of the Association of Vermont Independent Colleges;

(7) one campus health and wellness educator or sexual violence prevention educator working in a Vermont postsecondary educational institution, appointed by the Higher Education Subcommittee of the Prekindergarten–16 Council;

(8) one victim advocate working in a Vermont postsecondary educational institution, appointed by the Higher Education Subcommittee of the PreK–16 Council;

(9) two students who are members of campus groups representing traditionally marginalized communities, appointed by the Higher Education Subcommittee of the Prekindergarten–16 Council;

(10) one community-based restorative justice practitioner, appointed by the Community Justice Network of Vermont;

(11) one representative appointed by the Pride Center of Vermont;

(12) one representative appointed by the Vermont Office of the Defender General;

(13) one representative appointed by the Vermont Department of State's Attorneys and Sheriffs;

(14) one representative appointed by the Vermont Bar Association, with expertise in working with postsecondary educational institutions on the investigation and adjudication of sexual harassment and sexual assault allegations; and

(15) the Executive Director of the Vermont Human Rights Commission, or designee.

(c) Powers and duties. The Task Force shall study the following:

(1) The pathways for survivors of sexual harm in postsecondary educational institutional settings to seek healing and justice and recommendations to increase or enhance those pathways.

(2) Issues with Vermont’s campus adjudication processes as identified by survivors of sexual harm, dating and intimate partner violence, or stalking in postsecondary educational institutional settings, including the interface between campus adjudication processes and law enforcement.

(3) Issues relating to transparency, safety, affordability, accountability of outcomes, and due process in campus conduct adjudication processes for sexual harm, dating and intimate partner violence, or stalking, including:

(A) current and best practices relating to outcomes conveyed through a student’s transcript record;

(B) the effectiveness of acts passed in New York in 2015 to address campus sexual assault and in Virginia in 2015 to include a notation “on the transcript of each student who has been suspended for, has been permanently dismissed for, or withdraws from the institution while under investigation for an offense involving sexual violence under the institution’s code, rules, or set of standards governing student conduct”;

(C) the effectiveness of requiring that student transcript records note expulsions or suspensions in order to trigger follow-up conversations between the transferring and receiving schools; and

(D) consideration of concerns raised by the Association of Title IX Administrators with regard to transcript notation, in support of proposed federal legislation known as the Safe Transfer Act (H.R.6523, 114th Congress).

(4) How to improve survivor safety in campus adjudication processes.

(5) Any State policy changes that should be made in response to Title IX changes at the federal level.

(6) How to enhance ties between postsecondary educational institutions and community organizations that focus on domestic and sexual violence.

(d) Assistance. For purposes of scheduling meetings and preparing recommended legislation, the Task Force shall have the assistance of the Office of Legislative Council.

(e) Report. On or before March 15, 2020, the Task Force shall submit a written report to the House and Senate Committees on Education and Judiciary with its findings and any recommendations for legislative action.

(f) Meetings.

(1) The Executive Director of the Vermont Network Against Domestic and Sexual Violence or designee shall call the first meeting of the Task Force to occur on or before July 15, 2019.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Task Force shall cease to exist on March 16, 2020.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Task Force serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than seven meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Task Force who are not otherwise compensated for their service on the Task Force shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than seven meetings. These payments shall be made from monies appropriated to the Agency of Education.

(h) Appropriation. The sum of \$11,102.00 is appropriated to the Agency of Education from the General Fund in fiscal year 2020 for per diem compensation and reimbursement of expenses for nonlegislative members of the Task Force. The sum of \$3,066.00 is appropriated to the General Assembly from the General Fund in fiscal year 2020 for per diem compensation and reimbursement of expenses for legislative members of the Task Force.

Sec. 14. PROTECTION OF PROBATION AND PAROLE OFFICERS;  
AGENCY OF HUMAN SERVICES REPORT TO JOINT JUSTICE  
OVERSIGHT COMMITTEE

On or before December 15, 2019, the Secretary of Human Services, in consultation with the Vermont State Employees Association, shall report to the Joint Legislative Justice Oversight Committee, the Senate and House Committees on Judiciary, and the House Committee on Corrections and Institutions on best practices and standards for protecting probation and parole officers in the performance of their job duties. The report shall consider:

(1) development of a training and certification program to be administered by the Department of Corrections to enable probation and parole officers to implement and use defensive techniques, equipment, and measures to protect themselves and the public from the risk of serious bodily injury or death;

(2) whether to impose one or more standard conditions of probation to protect the public; and

(3) best practices for the supervision of offenders by probation and parole officers without risk to the safety of themselves or the public.

Sec. 15. EFFECTIVE DATE; APPLICABILITY

(a) This act shall take effect on July 1, 2019.

(b) Notwithstanding 1 V.S.A. § 214, Sec. 6, 15 V.S.A. § 752(b)(9) (maintenance guidelines), shall apply to actions filed on or after January 1, 2019.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 13, 2019, pages 393-394 and March 14, 2019, page 409)

**Reported favorably by Senator Sears for the Committee on Appropriations.**

The Committee recommends that the bill be amended as recommended by the Committee on Judiciary and when so amended ought to pass.

(Committee vote: 6-0-1)

**House Proposals of Amendment**

**S. 41**

An act relating to regulating entities that administer health reimbursement arrangements.

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

Sec. 1. 18 V.S.A. § 9417 is added to read:

§ 9417. TAX-ADVANTAGED ACCOUNTS FOR HEALTH-RELATED  
EXPENSES; ADMINISTRATION; RULEMAKING

(a) As used in this section:

(1) “Flexible spending account” or “FSA” has the same meaning as in 26 U.S.C. § 106(c)(2).

(2) “Health reimbursement arrangement” or “HRA” means any account-based reimbursement arrangement funded solely by employer contributions that reimburses an employee, spouse, or dependents, or a combination thereof, for medical care expenses incurred by the employee, spouse, dependents, or a combination thereof, up to a maximum coverage amount set by the employer for a given coverage period, and that is established pursuant to 26 U.S.C. §§ 105–106 and applicable guidance from the Internal Revenue Service.

(3) “Health savings account” or “HSA” has the same meaning as in 26 U.S.C. § 223(d)(1).

(b) Any entity administering one or more HRAs, HSAs, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these, in this State is subject to the jurisdiction of the Commissioner of Financial Regulation pursuant to 8 V.S.A. § 10 and all other applicable provisions.

(c) The Commissioner of Financial Regulation shall adopt rules pursuant to 3 V.S.A. chapter 25 to license and regulate, to the extent permitted under federal law, entities administering or proposing to administer one or more HRAs, HSAs, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these, in this State. The rules shall include:

(1) annual licensure or registration filing requirements; and

(2) such requirements and qualifications for such entities as the Commissioner determines necessary to protect Vermont consumers and employers and to help ensure that funds are disbursed appropriately.

(d) Following the adoption of rules pursuant to subsection (c) of this section, an entity making an initial application for a license or registration to administer HRAs, HSAs, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these, in this State shall pay to the Commissioner a nonrefundable fee of \$600.00 for examining, investigating, and processing the application. Each such entity shall also pay a renewal fee of \$600.00 on or before December 31 every three years following initial licensure.

(e) This section shall not apply to an employer that self-administers one or more tax-advantaged accounts on behalf of its own employees.

## **Sec. 2. RULEMAKING; REPORT**

On or before February 15, 2020, the Commissioner of Financial Regulation shall provide an update to the Senate Committee on Finance and the House Committees on Health Care and on Commerce and Economic Development on the progress of the rulemaking required by Sec. 1 of this act, including any findings related to the permissible scope of the rule.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on passage, provided that the Department of Financial Regulation shall adopt its final rule on or before September 1, 2020 regulating entities that administer HRAs, HSAs, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these.

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

An act relating to regulating entities that administer tax-advantaged accounts for health-related expenses.

### S. 107

An act relating to elections corrections.

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

\* \* \* Ratification of Articles of Amendment to the Vermont Constitution \* \* \*

Sec. 1. 17 V.S.A. chapter 32 is amended to read:

### CHAPTER 32. PUBLICATION AND RATIFICATION OF ARTICLES OF AMENDMENT TO VERMONT CONSTITUTION

\* \* \*

### § 1841. CONSTITUTIONAL REQUIREMENTS

(a) Amendments to the Constitution, having been proposed by the General Assembly, published, and concurred in by the succeeding General Assembly as required by § 72 of Chapter II of the Constitution, shall be submitted to the people of the ~~state~~ State for their ratification and adoption in the manner provided in this chapter.

(b) Following the concurrence by the succeeding General Assembly but prior to being submitted to the people of the State, the Governor shall issue a proclamation providing public notice of the proposed constitutional amendment.

### § 1842. TIME OF VOTING; WARNING

(a) The people shall be assembled for the purpose of voting on the article of amendment in their respective towns and cities at the same time and place as for the general election, on the first Tuesday after the first Monday in November, in even-numbered years, and the warning for each meeting shall contain an article, in substance as follows:

“To see if the ~~freemen and freewomen~~ voters will vote to accept or reject the proposed article of amendment to the Constitution of Vermont.”

(b) The omission of that article from the warning shall not invalidate nor affect the vote on the proposed article of amendment, and the ~~freemen and freewomen~~ voters of each town or city shall vote on the article of amendment whether the warning contains the foregoing article or not.

§ 1843. PROCESS OF VOTING; MAKING RETURNS; CONDUCT OF MEETINGS

(a)(1) At those meetings the ~~freemen and freewomen~~ voters may vote by ballot for or against the article of amendment.

(2) The same officer shall preside in each such meeting as provided in section 2680 of this title.

(b) The board of civil authority shall, in open meeting, receive, sort, and count the votes of the ~~freemen and freewomen~~ voters for and against the article of amendment and the result shall be declared by the presiding officer. That result shall be recorded by the clerk of the town or city and true returns thereof shall be made, sealed up and sent by the clerk by mail or otherwise to the Secretary of State as provided in section 2588 of this title.

(c) The ~~ballot boxes for the reception of votes~~ polls for voting on the article of amendment shall be ~~opened and shall close~~ open as provided in section 2561 of this title.

§ 1844. PUBLICATION IN NEWSPAPERS AND ON STATE WEBSITES; BALLOTS

(a)(1) The Secretary of State shall, between September 25 and October 1 in any year in which a vote on ratification of an article of amendment is taken, prepare copies of the proposal of amendment and forward them, with a summary of proposed changes, for publication in at least two newspapers having general circulation in the State, as determined by the Secretary of State.

(2) The proposal shall be so published once each week for three successive weeks in each of the papers at the expense of the State and on the websites of the General Assembly and the Office of the Secretary of State.

(b) The Secretary of State shall cause ballots to be prepared for a vote by the ~~freemen and freewomen~~ voters of the State upon the proposal of amendment.

§ 1845. QUALIFICATIONS OF VOTERS; ~~CHECKLISTS, BOOTHS,~~ CLERKS CONDUCT OF ELECTION

The qualifications of voters on the proposal of amendment, the checklist requirements for the election, and all other provisions relating to the conduct of the election shall be the same as those required ~~of voters~~ at general elections

~~under sections 2121-2126 of this title and sections 2141-2150 of this title relating to checklists shall apply, but the checklist specified in section 2141 of this title to be used at the meetings under this act shall be prepared and posted at least 30 days before the first Tuesday after the first Monday in November, in even-numbered years. Voting booths shall be prepared and the ballot clerks and assisting clerks shall be appointed, as in case of general elections.~~

§ 1846. FAILURE TO POST CHECKLISTS

The failure of the selectboard of any town, or the proper officers of any city, to prepare and post checklists of the ~~freemen and freewomen~~ voters of the town or city ~~at least 30 days before the first Tuesday after the first Monday in November, in even-numbered years,~~ as provided by section 1845 ~~2141~~ of this title, shall not invalidate the votes given by the ~~freemen and freewomen~~ voters of the town or city upon the proposed article of amendment.

\* \* \*

§ 1848. TABULATION OF RETURNS; RECORD OF AMENDMENTS

The Governor and Secretary of State shall, on the second Tuesday of December, of the year in which a vote on ratification of an article of amendment is taken, open and tabulate the returns made under section 1843 of this title chapter; and if it appears therefrom that the article of amendment has been ratified and adopted by a majority of the ~~freemen and freewomen~~ voters voting thereon, the amendment shall be enrolled on the parchment and deposited in the office of the Secretary of State as a part of the Constitution of this State and shall, in all future official revisions of the laws, be published in immediate connection therewith.

§ 1849. PROCLAMATION BY GOVERNOR

The Governor shall thereupon forthwith issue his or her proclamation, attested by the Secretary of State, reciting the article of amendment and announcing the ratification and adoption of it by the people of this State under this chapter and that the amendment has become a part of the Constitution thereof and requiring all ~~magistrates and~~ officers, and all citizens of the State to take notice thereof and govern themselves accordingly; or that the article of amendment has been rejected, as the case may be.

§ 1850. TRANSMISSION OF COPIES OF ~~ACT~~ CHAPTER AND FORMS TO CLERKS

(a) The Secretary of State shall send to the clerk of each city and town a copy of this ~~act~~ chapter at least two months before the vote on the ratification of an article of amendment.



(b) In any year in which a vote on ratification of an article of amendment is taken, the Secretary of State shall, within the period prescribed by section 1844 of this title chapter, send to the clerk of each city and town ballots provided for in that section ~~1844 of this title~~ and blank forms for the returns of votes on the article of amendment.

\* \* \* Reapportionment \* \* \*

Sec. 2. 17 V.S.A. § 1881a is amended to read:

§ 1881a. SENATORIAL DISTRICTS; NOMINATIONS AND ELECTION

\* \* \*

(c)(1) Petitions for nominating candidates for Senator in the General Assembly by primary or by certificates of nomination of candidates for that office by convention, caucus, committee, or voters under chapter 49 of this title may be filed in the office of any county clerk in a senatorial district.

(2)(A) On the day after the last day for filing those petitions or certificates for that office, the other county clerk shall notify the senatorial district clerk of the facts concerning those petitions or certificates.

(B) The senatorial district clerk shall be responsible for determining the names of candidates and other facts required by law to appear on the ballot for the office of Senator, and for obtaining and distributing the ballots to the other clerks in the district. ~~In senatorial districts, the ballots for Senator in the General Assembly shall be separate from those for other county officers.~~

\* \* \*

Sec. 3. 17 V.S.A. § 1901 is amended to read:

§ 1901. PURPOSE

(a) The Supreme Court of the United States has ruled that the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution requires all state legislative bodies to be apportioned in such manner as to achieve substantially equal weighting of the votes of all voters in the choice of legislators.

(b) To comply with such requirement it will be necessary to reapportion the House of Representatives and Senate at periodic intervals, so that changes may be recognized in legislative apportionment.

(c) It is the purpose of this chapter to achieve such reapportionment in an orderly and impartial manner.

Sec. 4. 17 V.S.A. § 1909 is amended to read:

§ 1909. REVIEW

(a) Within 30 days of the effective date of any apportionment bill enacted pursuant to section 1906b, 1906c, or 1907 of this ~~title~~ chapter, any five or more ~~freemen and freewomen~~ voters of the State aggrieved by the plan or act may petition the Supreme Court of Vermont for review of same.

(b) The sole grounds of review to be considered by the Supreme Court shall be that the apportionment plan, or any part of it, is unconstitutional or violates section 1903 of this ~~title~~ chapter.

\* \* \*

\* \* \* Offenses Against the Purity of Elections \* \* \*

Sec. 5. 17 V.S.A. § 2017 is amended to read:

§ 2017. UNDUE INFLUENCE

A person who attempts by bribery, threats, or any undue influence to dictate, control, or alter the vote of a ~~freeman or freewoman~~ voter about to be given at a local, primary, or general election shall be fined not more than \$200.00.

Sec. 5a. 17 V.S.A. § 2145 is amended to read:

§ 2145. APPLICATION FORMS

\* \* \*

(f) A person who makes a false statement in completing a voter registration application form or the voter registration portion of an application for a motor vehicle driver's license or nondriver identification card knowing the statement to be false shall be subject to the penalties of perjury as provided in 13 V.S.A. § 2901, except that a person who is not eligible to register to vote and who otherwise completes the application accurately shall not be considered to have made a false statement under this subsection by his or her unintentional failure to decline to register on a motor vehicle driver's license or nondriver identification card application under section 2145a of this chapter or on a designated automatic voter registration agency's application under subsection 2145b(e) of this chapter.

\* \* \*

\* \* \* Voter Registration \* \* \*

Sec. 6. 17 V.S.A. § 2145a is amended to read:

§ 2145a. REGISTRATIONS AT THE DEPARTMENT OF MOTOR  
VEHICLES

(a) An application for, or renewal of, a motor vehicle driver's license or nondriver identification card shall serve as a simultaneous application to register to vote unless the applicant checks the box on the application designating that he or she declines to use the application as a voter registration application.

\* \* \*

(c) An application for voter registration under this section shall update any previous voter registration by the applicant. Any change of address form submitted to the Department of Motor Vehicles in connection with an application for a motor vehicle driver's license shall serve to update voter registration information previously provided by the voter, unless the voter states on the form that the change of address is not for voter registration purposes.

(d)(1) The Department of Motor Vehicles shall transmit motor vehicle driver's license and nondriver identification card applications received under this section to the Secretary of State not later than five days after the date the application was accepted by the Department, or before the date of any primary or general election, whichever is sooner.

(2) The Department of Motor Vehicles shall not transmit motor vehicle driver's license and nondriver identification card applications when the applicant has designated that he or she declines to be registered.

(3) The Department of Motor Vehicles shall ensure confidentiality of records as required by subdivision (b)(2)(A) of this section.

\* \* \*

(i) Notwithstanding the provisions of subsection (d) of this section or any other provision of law to the contrary, the Department of Motor Vehicles shall share its motor vehicle driver's license, driver privilege card, and nondriver identification card customer data with the Secretary of State's office for the Secretary's use in conducting voter registration and voter checklist maintenance activities.

Sec. 7. 17 V.S.A. § 2145b is amended to read:

§ 2145b. VOTER REGISTRATION AGENCIES

(a) Each voter registration agency shall:

(1) distribute voter registration application forms approved under section 2145 of this title;

(2) assist applicants in completing voter registration application forms, unless the applicant refuses such assistance; and

(3) accept completed voter registration applications and transmit completed applications to the Secretary of State not later than 10 days after the date of acceptance, or before the date of any primary or general election, whichever is sooner.

(b) The Secretary shall promptly transmit applications received under this section to the clerks of the appropriate municipalities.

(c)(1) A voter registration agency shall provide each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration application that the office provides with regard to the completion of its own forms, unless the applicant refuses such assistance.

(2) If an agency provides services to a person with a disability at the person's home, the agency shall provide the services described in subsection (a) of this section at the person's home.

(d) A Except as provided in subsection (e) of this section, a voter registration agency that provides services or assistance in addition to conducting voter registration shall distribute a voter registration application with each application for the services or assistance provided by the agency, and with each recertification, renewal, or change of address form relating to those services or assistance. In addition to the voter registration application form, the agency shall distribute a separate form that includes the following:

(1) The question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?"

(2) In the case of an agency that provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."

(3) Boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote, together with the statement, "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE

CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.”

(4) The statement, “If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.”

(5) The statement, “If you believe that someone has interfered with your right to register or to decline to register to vote, you may file a complaint with the Secretary of State (Secretary of State’s office address and telephone number).”

(e) The Secretary of State may designate voter registration agencies that shall provide qualified applicants for such agency’s services, or qualified inmates within the custody of the Department of Corrections, with automatic voter registration as an integrated option on application forms for services provided by those agencies.

(1) Such designations shall be limited to a voter registration agency or a specific program administered by such an agency:

(A) that, in the regular course of the agency’s or program’s business, already collects and verifies documents necessary to provide proof of an individual’s eligibility to vote under subchapter 1 of this chapter; and

(B) whose secretary, commissioner, or other applicable head of the agency has approved of such designation.

(2) On or before January 1 of each year, the Secretary shall, in accordance with the approval given by a voter registration agency’s secretary, commissioner, or other head:

(A) publish on his or her official website a list of voter registration agencies designated under this subsection;

(B) specify which programs or services offered by each agency are included within the designation; and

(C) provide the date by which the agency’s specified programs or services will comply with requirements of this subsection.

(3) Beginning on the date by which a voter registration agency’s specified programs or services will comply with requirements of this subsection, an application for those services and any change of address form related to those services provided by the agency shall request the following information in a form approved by the Secretary of State:

(A) The applicant’s citizenship.

(B) The applicant's date of birth.

(C) The applicant's town of legal residence.

(D) The applicant's street address or a description of the physical location of the applicant's residence. The description must contain sufficient information so that the town clerk can determine whether the applicant is a resident of the town.

(E) The voter's oath.

(F) The applicant's e-mail address, which shall be optional to provide.

(4) An application for a designated automatic voter registration agency's services shall provide the following statements:

(A) "By signing and submitting this application, you are authorizing this voter registration agency to transmit this application to the Secretary of State for voter registration purposes. YOU MAY DECLINE TO REGISTER. Both the office through which you submit this application and your decision of whether or not to register will remain confidential and will be used for voter registration purposes only."

(B) "In order to be registered to vote, you must: (1) be a U.S. citizen; (2) be a resident of Vermont; (3) have taken the voter's oath; and (4) be 18 years of age or older. Any person meeting the requirements of (1)–(3) who will be 18 years of age on or before the date of a general election may register and vote in the primary election immediately preceding that general election. Failure to decline to register is an attestation that you meet the requirements to vote."

(5)(A) An application for a designated automatic voter registration agency's services shall provide the penalties provided by law for submission of a false voter registration application and shall require the signature of the applicant, under penalty of perjury.

(B) If a person who is ineligible to vote becomes registered to vote pursuant to this subsection in the absence of a violation of subsection 2145(f) of this chapter, that person's registration shall be presumed to have been effected with official authorization and not the fault of that person.

(f)(1) The Secretary of State shall have the authority to audit any voter registration agency to determine compliance with the requirements of this section and to require any voter registration agency to implement any remedial measures necessary to ensure compliance with this section.

(2) The Secretary of Administration shall provide the Secretary of State any assistance that is necessary to ensure the cooperation of voter registration agencies in implementing any remedial measures the Secretary of State requires under this subsection.

Sec. 8. 17 V.S.A. § 2150 is amended to read:

§ 2150. REMOVING NAMES FROM CHECKLIST

\* \* \*

(d) Except as provided in subsection (a) of this section, a board of civil authority shall only remove a name from the checklist in accordance with the following procedure:

(1) If the board of civil authority is satisfied that a voter whose eligibility is being considered is still qualified to vote in the municipality, the voter's name shall remain on the checklist, and no further action shall be taken.

(2)(A)(i) If the board of civil authority does not immediately know that the voter is still qualified to vote in the municipality, the board shall attempt to determine with certainty what the true status of the voter's eligibility is.

(ii) The board of civil authority may consider and rely upon official and unofficial public records and documents, including telephone directories, city directories, newspapers, death certificates, ~~obituary~~ obituaries (or other public ~~notice~~ notices of death), tax records, and any checklist or checklists showing persons who voted in any election within the last four years.

(iii) The board of civil authority may also designate one or more persons to attempt to contact the voter personally.

(B) Any voter whom the board of civil authority finds through such inquiry to be eligible to remain on the checklist shall be retained without further action being taken.

(C) The name of any voter proven to be deceased shall be removed from the checklist.

(3)(A)(i) If after conducting its inquiry the board of civil authority or town clerk is unable to locate a voter whose name is on the checklist, or if the inquiry reveals facts indicating that the voter may no longer be eligible to vote in the municipality, the board of civil authority or, upon request of the board, the town clerk shall send a written notice to the voter.

(ii) The notice shall be sent by first-class mail to the most recent known address of the voter, asking the voter to verify his or her current eligibility to vote in the municipality.

(iii) The notice shall be sent with the required U.S. Postal Service language for requesting change of address information.

(B) Enclosed with the notice shall be a ~~postage-paid~~ postage-paid pre-addressed return form on which the voter may reply swearing or affirming the voter's current place of residence as the municipality in question or alternatively consenting to the removal of the voter's name.

(C) The notice required by this subsection shall also include the following:

(A)(i) A statement informing the voter that if the voter has not changed his or her residence, or if the voter has changed his or her residence but the change was within the area covered by the checklist, the voter should return the form to the town clerk's office. The statement shall also inform the voter that if he or she fails to return the form as provided in this subdivision, written affirmation of the voter's address shall be required before the voter is permitted to vote.

(B)(ii) Information concerning how the voter can register to vote in another state or another municipality within this State.

(4) If the voter confirms in writing that the voter has changed his or her residence to a place outside the area covered by the checklist, the board of civil authority shall remove the voter's name from the checklist.

(5) In the case of voters who failed to respond to the notice sent pursuant to subdivision (3) of this subsection, the board of civil authority shall remove the voter's name from the checklist on the day after the second general election following the date of such notice, if the voter has not voted or appeared to vote in an election since the notice was sent or has not otherwise demonstrated his or her eligibility to remain on the checklist.

(6)(A) Notwithstanding the provisions of subdivision (5) of this subsection, if at any time subsequent to removal of a person's name from the checklist, the board determines that the person was still qualified to vote and that the voter's name should not have been removed, the board shall add the person's name to the checklist as provided in section 2147 of this ~~title~~ chapter.

(B) The provisions of this chapter shall be liberally construed, so that if there is any reasonable doubt whether a person's name should have been removed from the checklist, the person shall have the right to have the person's name immediately returned to the checklist.



(7)(A) The board of civil authority shall keep detailed records of its proceedings under this subchapter for at least two years. These records, except records relating to a person's decision not to register to vote or to the identity of the voter registration agency through which any particular voter registered, shall be public records and shall be available for inspection and copying at actual cost. The records shall include:

(A)(i) in the case of each name removed from the checklist, a clear statement of the reason or reasons for which the name was removed;

(B)(ii) in the case of the updating of the checklist required by subsection (c) of this section, the working copy or copies of the checklist used in the name by name review conducted to ascertain continued eligibility to vote;

(C)(iii) the total number of new registrations occurring during the period between general elections;

(D)(iv) the total number of persons removed from the checklist during the period between general elections; and

(E)(v) lists of the names and addresses of all persons to whom notices were sent under this subsection, and information concerning whether or not each person to whom a notice was sent responded to the notice as of the date that inspection of the records is made.

(B)(i) A letter certifying compliance with this section shall be filed with the Secretary of State by on or before September 20 of each odd-numbered year.

(ii) Upon request of any Superior judge or upon request of the Secretary of State, the town clerk shall forward a certified copy of the records of checklist maintenance.

Sec. 8a. 17 V.S.A. § 2154 is amended to read:

§ 2154. STATEWIDE VOTER CHECKLIST

\* \* \*

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

(2) A public agency as defined in 1 V.S.A. § 317 and any officer, employee, agent, or independent contractor of a public agency shall not

knowingly disclose a copy of all of the statewide voter checklist ~~or~~ a municipality's portion of the statewide voter checklist, or any other municipal voter checklist to any foreign government or to a federal agency or commission or to a person acting on behalf of a foreign government or of such a federal entity for the purpose of:

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

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

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

\* \* \*

\* \* \* Political Parties \* \* \*

Sec. 9. 17 V.S.A. chapter 45 is amended to read:

#### CHAPTER 45. POLITICAL PARTIES

##### § 2301. ORGANIZATION OF MAJOR POLITICAL PARTIES

A major political party shall organize biennially as provided in this chapter. ~~No~~ A person acting on behalf of a major political party shall not accept any contribution or make any expenditure (except for the purpose of organizing under this chapter) unless the party has a current certificate of organization on file with the Secretary of State.

##### § 2302. STATE CHAIR TO CALL CAUCUS

(a) The chair of the State committee of a party shall set a date for members of the party to meet in caucus in their respective towns, ~~which~~. The date shall be between September 10 and September 30, inclusive, in each odd-numbered year.

(b) At least 14 days before the date set for the caucuses, the State chair shall mail or electronically mail a notice of the date and purpose of the caucuses to each town clerk and to each town and county chair of the party.

##### § 2303. TOWN CHAIR TO GIVE NOTICE

(a) The town chair or, if unavailable or if the records of the Secretary of State show there is no chair, any three voters of the town shall arrange to hold a caucus on the day designated by the State chair, in some public place within the town and shall set the hour of the caucus.

(b)(1) At least five days before the day of the caucus, the town chair shall post a notice of the date, purpose, time, and place of the caucus in the town clerk's office and in at least one other public place in town.

(2) In towns of ~~3,000~~ 5,000 or more population, he or she shall also publish the notice:

(A) in a newspaper having general circulation in the town; or

(B) in a nonpartisan electronic news media website or online forum that specializes in news of the State or the community.

(c) If three voters arrange to call the caucus, the voters shall designate one person among them to perform the duties prescribed in subsection (b) of this section for the town chair.

#### § 2304. TOWN CAUCUS

(a)(1) At the time and place set for the town caucus, the voters of the party residing in the town shall meet in caucus and proceed to elect a town committee, consisting of such number of voters of the town as the caucus deems necessary, to serve during the following two years or until their successors are elected or appointed.

(2) Additional members of a town committee may be elected by the town committee at any meeting, and may be eligible to vote on matters before the town committee at that meeting or at the next meeting, as determined by the members of the committee before the election.

(b) The voter checklist used by the caucus shall be the most recent checklist approved by the board of civil authority.

#### § 2305. FIRST MEETING OF TOWN COMMITTEE

(a)(1) The first meeting of the town committee shall be held immediately following adjournment of the caucus.

(2) At this meeting, members of the town committee shall elect committee officers and delegates to the county committee.

(b) All officers and other members of the town committee and all delegates to the county committee shall be voters of the town.

#### § 2306. PROCEDURE UPON FAILURE TO HOLD CAUCUS

If the voters of the party residing in any town fail to hold a caucus on the day designated by the State ~~chairman chair~~, any three or more voters of the party residing in the town may call and hold a caucus at any time thereafter, in the manner provided ~~above~~ in sections 2303 through 2305 of this chapter.

Those voters calling the caucus shall designate one ~~of their number person~~ among them to perform the duties prescribed ~~above~~ in section 2303 for the town chair.

§ 2307. CERTIFICATION OF OFFICERS AND COUNTY COMMITTEE  
DELEGATES

(a) Within 72 hours after the caucus, the chair and secretary of the town committee shall ~~mail submit~~ to the ~~Secretary of State and the~~ chairs of the State and county committees a copy of the notice calling the meeting and a certified list of the names, and mailing addresses, phone numbers, and e-mails of the officers and members of the town committee and of the delegates to the county committee.

(b) A committee is not considered organized until a certificate of organization is filed by the State committee with the Secretary of State pursuant to section 2313 of this chapter. ~~it has filed the material required by this section.~~

(c) The Secretary of State shall furnish forms for this purpose to the chair of the State committee of a political party.

§ 2308. COMPOSITION OF COUNTY COMMITTEE

(a) The number of delegates to the county committee that each town caucus is entitled to elect shall be apportioned by the State committee, based upon the number of votes cast for the party's candidate for Governor in the last election, provided that each town caucus shall be entitled to elect at least two delegates.

(b) Delegates to the county committee shall be voters of the town, but need not be members of the town committee; ~~they~~.

(c) Delegates shall serve during the following for two years following their election or until their successors are elected or appointed.

§ 2309. FIRST MEETING OF COUNTY COMMITTEE

(a)(1) The chair of the State committee shall set a date, ~~not more than 45 days after the date of the party's caucuses,~~ for the first meeting of each county committee.

(2) The State chair shall notify the chairs of the county committees of the date of the meeting.

(3)(A) The chair of the county committee shall set the hour and place of the meeting and shall notify all delegates-elect by mail or electronic mail not less than 10 days prior to the meeting.

(B) If the chair of the county committee receives notice that a town committee within the county has organized 10 or fewer days before the date of the first meeting of the county committee, the chair ~~must~~ shall notify the newly elected members within 48 hours of receiving notice of the organized town committee.

(b)(1) At the time and place set for the meeting, the delegates shall proceed to elect their officers and perfect an organization of the county committee for the ensuing two years.

(2) All officers and other members of the county committee and all delegates to the State committee shall be voters of the county.

#### § 2310. ELECTION OF STATE COMMITTEE

(a)(1) The chair of the county committee shall be a member of the State committee.

(2) Each county committee shall be entitled to elect at least two additional members of the State committee. These delegates need not be members of the county committee.

(3) If the rules or bylaws of a State committee provide for apportionment of additional members of the State committee to come from the county, the county committee also shall elect those additional members.

(b) All county committee members and officers and all persons elected to the State committee shall be voters in the county from which they are elected.

(c) County committee members and delegates to the State committee shall serve for ~~the following~~ two years following their election or until their successors are elected or appointed.

#### § 2311. CERTIFICATION OF COUNTY OFFICERS AND STATE COMMITTEE MEMBERS

(a) Within 72 hours of the first meeting of the county committee, its chair and secretary shall ~~mail~~ submit to ~~the Secretary of State and~~ the chair of the State committee a copy of the notice calling the meeting and a certified list of the names, ~~and mailing addresses, phone numbers, and e-mails~~ of the officers of the county committee and of the members elected by the county committee to the State committee.

(b) A committee is not considered organized until ~~it has filed the material required by this section~~ a certificate of organization is filed by the State committee with the Secretary of State pursuant to section 2313 of this chapter.

(c) The Secretary of State shall prescribe and furnish forms for this purpose.

§ 2312. FIRST MEETING OF THE STATE COMMITTEE

(a) The chair of the State committee shall name an hour and place of meeting ~~on a day not less than 15 nor more than 30 days after the day set for the first meeting of the county committee of the party,~~ at which time the members-elect of the State committee shall meet and perfect an organization of the State committee for the ensuing two years.

(b) The chair of the State committee shall notify all members-elect of the State committee in writing, at least ~~seven~~ 10 days before the day set for the meeting.

§ 2313. FILING OF CERTIFICATE OF ORGANIZATION

(a)(1) Within 10 days after the first meeting of the State committee of a party, the chair and secretary shall file in the office of the Secretary of State a certificate stating that the party has completed its organization for the ensuing two years and has substantially complied with the provisions of this chapter.

(2) However, no State committee shall be eligible to file a certificate of organization unless it has town committees organized in at least 30 towns in this State and county committees organized in at least seven counties by January 1 of the year of the general election.

(b) The certificate of organization shall:

(1) set forth the names, ~~and~~ mailing addresses, phone numbers, ~~and e-mails~~ of the officers and members of the State committee, together with the counties that they represent. ~~It shall also;~~

(2) contain a listing of the towns and counties in which committees have organized;

(3) designate, in not more than three words, the name by which the party shall be identified on any Australian ballot; ~~and shall~~

(4) be accompanied by a copy of the notice calling the meeting.

\* \* \*

§ 2316. ~~SECRET BALLOT~~

~~At every caucus or meeting of a political committee, if there is a contest for nomination, recommendation, or election to any office or position, the vote shall be taken by secret written ballot. [Repealed.]~~

§ 2317. VOTERS NOT TO PARTICIPATE IN MORE THAN ONE PARTY

~~No~~ A voter shall not vote in the ~~biennial~~ a town, county, or State caucus of more than one party in the same year 12-month period, nor shall any voter

simultaneously hold membership on the committees of more than one political party.

\* \* \*

§ 2319. PARTY CONVENTIONS FOR PLATFORMS AND  
PRESIDENTIAL ELECTIONS

On or before the fourth Tuesday in September in each even-numbered year, upon the call of the chair of the State committee of the party, a party platform convention of each organized political party shall be held to make and adopt the platform of the party. ~~In presidential years, the convention shall be the same convention held to nominate presidential electors.~~

\* \* \*

\* \* \* Nominations \* \* \*

Sec. 10. 17 V.S.A. chapter 49 is amended to read:

CHAPTER 49. NOMINATIONS

Subchapter 1. Primary Elections

\* \* \*

§ 2353. PETITIONS TO PLACE NAMES ON BALLOT

(a) The name of any person shall be printed upon the primary ballot as a candidate for nomination by any major political party for ~~any~~ the office indicated, if ~~petitions~~ a petition containing the requisite number of signatures made by registered voters, in substantially the following form, ~~are~~ is filed with the proper official, together with the person's written consent to having his or her name printed on the ballot:

\* \* \*

(b)(1) A person's name shall not be listed as a candidate on the primary ballot of more than one party in the same election.

(2) A single petition shall contain only one office for which a person seeks to be a candidate.

(3) A person shall file a separate petition for each office for which he or she seeks to be a candidate.

§ 2354. SIGNING PETITIONS

(a) Any number of voters may sign the same petition.

(b)(1) A voter's signature shall not be valid unless at the time he or she signs, the voter is registered and qualified to vote for the candidate whose petition he or she signs.

(2) Each voter shall indicate his or her town of residence next to his or her signature.

(c) The signature of a voter on a candidate's petition does not necessarily indicate that the voter supports the candidate. ~~A voter shall not sign more than one petition for the same office, unless more than one nomination is to be made, in which case he or she may sign as many petitions as there are nominations to be made for the same office.~~

(d) A petition shall contain the name of only one candidate.

\* \* \*

#### § 2368. CANVASSING COMMITTEE MEETINGS

After the primary election is conducted, ~~the~~:

(1) The canvassing committee for State and national offices and statewide public questions shall meet at 10 a.m. one week after the day of the election.

(2) The canvassing committee for county offices ~~and~~ countywide public questions, and State Senator shall meet at 10 a.m. on the third day following the election.

(3) The canvassing committees for local offices ~~and~~ local public questions, ~~including and~~ State Representative, shall meet at 10 a.m. on the day after the election, except that in the case of canvassing committees for State Representative in multi-town representative districts, the committees shall meet at 10 a.m. on the third day after the election.

#### § 2369. DETERMINING WINNER; TIE VOTES

(a) A person who receives a plurality of all the votes cast by a party in a primary shall be a candidate of that party for the office designated on the ballot.

(b)(1) If, after the period for requesting a recount under section 2602 of this title has expired, no candidate has requested a recount and two or more candidates of the same party are tied for the same office, or if the results of any recount result in a tie the choice among those tied shall be determined upon five days' notice and not later than 10 days following the primary election by the committee of that party, which shall meet to nominate a candidate from among the tied candidates. The committee that nominates a candidate shall be as follows:

- (A) the State committee of a party for a State or congressional office;
- (B) the senatorial district committee for State Senate;



(C) the county committee for county office; or

(D) the representative district committee for a Representative to the General Assembly.

(2) The committee chair shall certify the candidate nomination for the general election to the Secretary of State within 48 hours of the nomination.

\* \* \*

### Subchapter 3. Independent Candidates

\* \* \*

### § 2403. NUMBER OF CANDIDATES; PARTY NAMES

(a)(1) A statement of nomination shall contain the name of only one candidate, except in the case of presidential and vice presidential candidates, who may be nominated by means of the same statement of nomination. ~~A person shall not sign more than one statement of nomination for the same office.~~

(2) A single statement of nomination shall contain only one office for which a person seeks to be a candidate.

\* \* \*

### Subchapter 4. Miscellaneous Provisions

\* \* \*

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

\* \* \*

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

(2)(A) The Secretary of State shall post a copy of any disclosure forms and tax returns he or she receives under this section on his or her official State website. The forms shall remain posted on the Secretary's website until the date of the filing deadline for petition and consent forms for major party candidates for the statewide primary in the following election cycle.

\* \* \*

\* \* \* Election Complaint Procedure \* \* \*

Sec. 11. 17 V.S.A. § 2458 is amended to read:

§ 2458. COMPLAINT PROCEDURE

(a)(1) The Secretary of State shall adopt rules to establish a uniform and nondiscriminatory complaint procedure to be used by any person who believes that a violation of this title or any other provision of ~~Title III of United States Public Law 107-252~~ 52 U.S.C. chapter 209, subchapter III (Uniform and Nondiscriminatory Election Technology and Administration Requirements) has occurred, is occurring, or is about to occur in the course of any election in which a candidate for federal office appears on the ballot.

(b) ~~For purposes of~~ As used in this section, “complaint” ~~shall mean~~ means a statement in writing made by a voter stating, with particularity, the violation, notarized, and sworn or affirmed under penalty of perjury.

(c) The Secretary’s rules shall provide for an informal proceeding to hear complaints for all complainants unless a formal hearing is requested. Formal complaints held pursuant to this section shall be in conformance with the rules adopted by the Secretary.

(d) Any decision of the Secretary may be appealed to the Superior Court in the county where the individual resides.

\* \* \* Conduct of Elections \* \* \*

Sec. 12. 17 V.S.A. § 2473 is amended to read:

§ 2473. PROVISIONS RELATIVE TO PRESIDENTIAL ELECTION

\* \* \*

(c)(1) If a candidate whose name is not printed on the ballot receives the greatest number of votes for President, the Secretary of State shall notify him or her of that fact, and within two weeks thereafter, the candidate shall file with the Secretary of State, a list of ~~freemen and freewomen~~ voters equal to the number of electors that the State is entitled to elect. The list shall be signed by the candidate personally.

(2) The persons so named shall be electors, having the duties prescribed in this title.

Sec. 13. 17 V.S.A. § 2508 is amended to read:

§ 2508. CAMPAIGNING DURING POLLING HOURS; VOTER ACCESS

(a)(1) The presiding officer shall ensure during polling hours on the day of the election that:

(A) within the building containing a polling place, no campaign literature, stickers, buttons, name stamps, information on write-in candidates,

or other political materials that display the name of a candidate on the ballot or an organized political party or that demonstrate support or opposition to a question on the ballot are displayed, placed, handed out, or allowed to remain;

(B) within the building containing a polling place, no candidate, election official, or other person distributes election materials, solicits voters regarding an item or candidate on the ballot, or otherwise campaigns; and

(C) on the walks and driveways leading to a building in which a polling place is located, no candidate or other person physically interferes with the progress of a voter to and from the polling place.

(2) The provisions of subdivision (1) of this subsection shall apply to the town clerk's office during any period of early or absentee voting.

(b) During polling hours, the presiding officer shall control the placement of signs on the property of the polling place in a fair manner.

(c) The provisions of this section shall be posted in the notice required by section 2521 of this ~~title~~ chapter.

\* \* \* Early or Absentee Voters \* \* \*

Sec. 14. 17 V.S.A. chapter 51, subchapter 6 is amended to read:

Subchapter 6. Early or Absentee Voters

§ 2531. APPLICATION FOR EARLY VOTER ABSENTEE BALLOT

(a) Deadline to file.

(1)(A) A voter who expects to be an early or absentee voter, or an authorized person on behalf of such voter, may apply for an early voter absentee ballot until 5:00 p.m. or the closing of the town clerk's office on the day preceding the election.

(2)(B) If a town clerk does not have regular office hours on the day before the election and his or her office will not otherwise be open on that day, an application may be filed until the closing of the clerk's office on the last day that office has hours preceding the election.

(2)(A) In cases of emergency, including unanticipated illness or injury, at his or her discretion the town clerk may accept a request for an absentee ballot after the deadline set forth in subdivision (1) of this subsection.

(B) In such cases of emergency, the ballot may be mailed, electronically delivered, or delivered by two justices of the peace as set forth in subsection 2539(b) of this subchapter.

(b) Place of filing.

(1) All applications shall be filed with the town clerk of the town in which the early or absentee voter is registered to vote.

(2) The town clerk shall file written applications and memoranda of verbal applications in his or her office, and shall retain the applications and memoranda for 90 days following the election, at which time they may be destroyed.

(c) Australian ballot. Voting by early voter absentee ballot shall be allowed only in elections using the Australian ballot system.

§ 2532. APPLICATIONS AUTHORIZED APPLICANTS; APPLICATION FORM; DUPLICATES

(a) Authorized applicants.

(1) An early or absentee voter, or an authorized family member or health care provider acting in the voter's behalf, may apply for an early voter absentee ballot by telephone, in person, or in writing. ~~“Family~~ As used in this subsection, “family member” here means a person's spouse, children, brothers, sisters, parents, spouse's parents, grandparents, and spouse's grandparents.

(2) Any other authorized person may apply in writing or in person; provided, however, that voter authorization to such a person shall not be given by response to a robotic phone call.

~~(b)(2)~~ Form of application.

(1) The application shall be in substantially the following form:

REQUEST FOR EARLY VOTER ABSENTEE BALLOT

Name of early or absentee voter: \_\_\_\_\_

Voter's Town of Residence: \_\_\_\_\_

Current physical address (address where you reside): \_\_\_\_\_

\_\_\_\_\_  
Telephone Number: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Date: \_\_\_\_\_

I request early voter absentee ballot(s) for the election(s) checked below:

- (1) Annual Town Meeting;
- (2) All other local elections;
- (3) August Primary Election;
- (4) Presidential Primary (YOU MUST SELECT PARTY);

- (5) November General Election;
- (6) All elections in this calendar year.

Please deliver the ballot(s) as indicated below (check one):

(1) Mail to voter at: \_\_\_\_\_  
Street or P.O. Box    Town/City State    Zip Code

(2) Delivery by two Justices of the Peace (this may only be selected if you are ill ~~or if you, injured, or~~ have a physical disability).

If applicant is other than early or absentee voter:

Name of applicant: \_\_\_\_\_

Address of applicant: \_\_\_\_\_

Relationship to early or absentee voter: \_\_\_\_\_

Organization, if applicable: \_\_\_\_\_

Date: \_\_\_\_\_ Signature of applicant: \_\_\_\_\_

~~(3)~~(2) If the application is made by telephone or in writing, the information supplied ~~must~~ shall be in substantial conformance with the information requested on this form.

~~(b) A person temporarily residing in a foreign country who is eligible to register to vote in this State, or a military service absentee voter who is eligible to register to vote in this State, may apply for early voter absentee ballots in the same manner and within the same time limits that apply for other early or absentee voters. An official federal postcard application shall suffice as a simultaneous request for an application for addition to the checklist and for an early voter absentee ballot, when properly submitted. Any other person also may make a simultaneous request for an application for addition to the checklist and for an early voter absentee ballot.~~

(c) Simultaneous voter registration.

(1) If a person makes a simultaneous request to register to vote and to apply for an early voter absentee ballot or if the request for an early voter absentee ballot is made for a person who is not yet registered and the request is received by the town clerk receives the request prior to the deadline for requesting to apply for early voter absentee ballots set forth in section 2531 of this chapter subchapter, the town clerk shall mail a blank voter registration application for addition to the checklist, together with a full set of early voter absentee ballots, to that person.

(2) An official federal postcard application shall suffice as a simultaneous application to register to vote and for an early voter absentee ballot.

(3)(A) All such voter registration applications for addition to the checklist that are returned to the town clerk before the close of the polls on election day shall be considered and acted upon by the board of civil authority before the ballots are counted.

(B) If the voter registration application is approved and the voter's name added to the checklist, the early voter absentee ballots cast by that voter shall be treated as other valid early voter absentee ballots.

(d) Application time frame.

(1) An application for an early voter absentee ballot shall be valid for the elections or the time frame specified by the applicant.

(e)(2) A single application shall only be valid for any elections within the same calendar year.

(f) A person residing in a State institution may apply for early voter absentee ballots in the same manner and within the same time limits that apply for other early or absentee voters.

(g)(e) Duplicate early voter absentee ballots.

(1)(A) The town clerk may, upon application, issue a duplicate early voter absentee ballot if the original ballot is not received by the voter within a reasonable period of time after mailing.

(B) The application may be made by a person entitled to apply for an early voter absentee ballot under subsection (a) of this section and shall be accompanied by a sworn statement affirming that the voter has not received the original ballot.

(2) If a duplicate early voter absentee ballot is issued and both the duplicate and original early voter absentee ballots are received before the close of the polls on election day, the ballot with the earlier postmark shall be counted.

(h)(f) Unauthorized applicants.

(1) Any person who applies for an early voter absentee ballot knowing the person is without authorization from the early or absentee voter shall be fined not more than \$100.00 per violation for the first three violations; not more than \$500.00 per violation for the fourth through ninth violations; and not more than \$1,000.00 per violation for the tenth and subsequent violations.

(2) The Attorney General or a State's Attorney, whenever he or she has reason to believe any person to be or to have been in violation of this provision, shall conduct a civil investigation in accordance with the procedures set forth in section 2904 of this title.

\* \* \*

#### § 2537. EARLY OR ABSENTEE VOTING IN THE TOWN CLERK'S OFFICE

(a)(1) A voter may, if he or she chooses, apply in person to the town clerk for the early voter absentee ballots and envelopes ~~rather than having them mailed as required by section 2539 of this subchapter.~~

(2) In this case, the clerk shall furnish the early voter absentee ballots and envelopes when a valid application has been made, or at such time as the clerk receives the ballots, whichever comes first.

(3) The voter may:

(A) mark his or her ballots, place them in the envelope, sign the certificate, and return the ballots in the envelope containing the certificate to the town clerk or an assistant town clerk without leaving the office of the town clerk; ~~or the voter may~~

(B) take the ballots and return them to the town clerk in the same manner as if the ballots had been received by mail.

(b) ~~No person, except~~ Except for justices of the peace as provided in section 2538 of this subchapter, may a person shall not take any ballot from the town clerk on behalf of any other person.

#### § 2538. DELIVERY OF BALLOTS BY JUSTICES OF THE PEACE

(a)(1) In the case of persons who are early or absentee voters due to illness, injury, or ~~physical~~ disability, ballots shall be delivered in the following manner, unless the early or absentee voter has requested pursuant to section 2539 of this title subchapter that the early voter absentee ballots be mailed or electronically delivered.

(2) Not later than three days prior to the election, the board of civil authority or, upon request of the board, the town clerk, shall designate in pairs justices of the peace in numbers sufficient to deliver early voter absentee ballots to the applicants for early voter absentee ballots who have stated in their applications that they are unable to vote in person at the polling place due to illness, injury, or ~~physical~~ disability ~~but who have not requested in their applications that early voter absentee ballots be mailed to them.~~ No A pair shall not consist of two justices from the same political party.

(3) If there shall not be available a sufficient number of justices to make up the required number of pairs, a member of each remaining pair shall be designated by the board, to be selected from lists of registered voters submitted by the chairs of the town committees of political parties, and from among registered voters who in written application to the board state that they are not affiliated with any political party.

(4) No A candidate or spouse, parent, or child of a candidate shall not be eligible to perform the duties prescribed by this section unless the candidate involved is not disqualified by section 2456 of this ~~title~~ chapter from serving as an election official. ~~This shall not prevent a candidate for district office from serving as a justice in another district.~~

(5) The compensation of justices and voters designated under this subsection shall be fixed by the board of civil authority and shall be paid by the town.

(6) The justices may, but shall not be required to, deliver ballots outside the town.

(b)(1) The town clerk shall divide the list of applicants who have an illness, injury, or ~~physical~~ disability into approximately as many equal parts as there are pairs of justices so designated, having regard to the several parts of the town in which the applicants may be found.

(2) As soon as early voter absentee ballots are available, the clerk shall deliver to each pair of justices one part of the list, together with early voter absentee ballots and envelopes for each applicant.

(3) When justices receive ballots and envelopes prior to election day, they shall receive only the ballots and envelopes they are assigned to deliver on that day.

(c)(1) Each pair of justices on the days they are assigned to deliver the ballots and envelopes shall call upon each of the early or absentee voters whose name appears on the part of the list furnished to them and shall deliver early voter absentee ballots and envelopes to each early or absentee voter.

(2) The early or absentee voter shall then proceed to mark the ballots alone or in the presence of the justices, but without exhibiting them to the justices or to any other person, except that when the early or absentee voter is blind or physically unable to mark his or her ~~ballot~~ ballots, they may be marked by one of the justices in full view of the other.



§ 2539. MAILING DELIVERY OF EARLY VOTER ABSENTEE  
BALLOTS; ~~VOTERS WHO ARE PERMANENTLY DISABLED~~

(a) Default; town office or mail.

(1) ~~Unless~~ Except as provided in subsections (b) and (c) of this section,  
~~unless the early or absentee voter votes in the town clerk's office as set forth in~~  
~~section 2537 of this subchapter, or unless the justices are to deliver the early~~  
~~voter absentee ballots to the early or absentee voter,~~ the town clerk shall  
provide to the early or absentee voter who comes to the town clerk's office a  
complete set of early voter absentee ballots or mail a complete set of early  
voter absentee ballots to each early or absentee voter for whom a valid  
application has been filed.

(2) The early voter absentee ballots shall be mailed forthwith upon the  
filing of a valid application, or upon the town clerk's receipt of the necessary  
ballots, whichever is later.

(b) Voters who are ill, injured, or have a disability. In the case of persons  
who are early or absentee voters due to illness, injury, or ~~physical~~ disability, if  
the voter or authorized person requests in his or her application or otherwise  
that early voter absentee ballots be mailed ~~rather than delivered by justices of~~  
~~the peace or electronically delivered,~~ the town clerk shall mail or electronically  
deliver the ballots; otherwise the ballots shall be delivered to ~~such voters the~~  
voter by justices of the peace as set forth in section 2538 of this subchapter. ~~In~~  
~~the case of all other early or absentee voters, the town clerk shall mail the early~~  
~~voter absentee ballots, unless the voter chooses to apply and vote in person at~~  
~~the town clerk's office.~~

(c) Military or overseas voters.

(1) Early voter absentee ballots ~~to for~~ for military or overseas voters shall  
be sent air mail, first class, postpaid when such service is available, or they  
may be ~~sent by email electronically delivered~~ electronically delivered when requested by the voter.

(2)(A) The town clerk's office shall be open on the 46th day before any  
election that includes a federal office and the town clerk shall send on or  
before that day all absentee ballots to any military or overseas voter who  
requested an early voter absentee ballot on or before that day.

(B) On that day the town clerk shall complete any reporting  
requirements and any other responsibilities regarding the mailing of early  
voter absentee ballots to military or overseas voters, as directed by the  
Secretary of State.

§ 2540. INSTRUCTIONS TO BE SENT WITH BALLOTS

(a) The town clerk shall send with all early voter absentee ballots and envelopes printed instructions, which may be included on the envelope, in substantially the following form:

INSTRUCTIONS FOR EARLY OR ABSENTEE VOTERS

1. Mark the ballots.
2. Place them in this envelope.
3. Fill out and sign the certificate on the envelope.
4. Mail or deliver the envelope containing the ballots to the town clerk of the town where you are a registered voter in time to arrive not later than election day.

Note: If these ballots have been brought to you personally by two justices of the peace because of your illness, injury or physical disability, just return them to the justices after you have signed the envelope. YOU HAVE THE RIGHT TO MARK YOUR BALLOTS IN PRIVATE - but if you ask for help in filling out the ballots, they will give it to you.

BE SURE TO FILL OUT AND SIGN THE CERTIFICATE ON THIS ENVELOPE OR YOUR VOTE WILL NOT COUNT!

(b) In the case of early absentee voting in a primary, the instructions shall also include appropriate instructions prepared by the Secretary of State for separating and depositing unvoted ballots in a separate envelope provided and clearly marked for that purpose.

§ 2541. MARKING OF BALLOTS

(a) An early or absentee voter to whom ballots, envelopes, and instructions are mailed shall mark the ballots in accordance with the instructions.

~~(b) When an early or absentee voter is blind or is physically unable to go to the polls to vote in person or to mark his or her ballots, they may be marked by one of the officers who delivers the ballots, in the presence of the other officer.~~  
A person who gives assistance to a voter in the marking or registering of ballots shall not in any way divulge any information regarding the choice of the voter or the manner in which the voter's ballot was cast.

(c) If an early or absentee voter makes an error in marking a ballot, the voter may return that ballot by mail or in person to the town clerk and receive another ballot, consistent with the provisions of section 2568 of this title chapter.

\* \* \*

§ 2546b. EARLY VOTING IN TOWN CLERK'S OFFICE; DEPOSIT INTO  
VOTE TABULATOR

(a)(1) A board of civil authority may vote to permit its town's registered early or absentee voters to vote in the town clerk's office in the same manner as those voting on election day by marking their early voter absentee ballots and depositing them into a vote tabulator.

(2) If a board of civil authority votes to permit early voting as described in subdivision (1) of this subsection, the town's process for conducting this early voting shall conform to the provisions of this section and to procedures that the Secretary of State shall adopt for this purpose.

(b)(1) During business hours in the town clerk's office, the vote tabulator and ballot bin shall be in a secured area accessible only to election officials and voters. The vote tabulator unit shall be secured with an identifiable seal and the ballot box containing voted ballots shall remain locked at all times and secured with an identifiable seal. Neither seal shall be broken prior to the time of closing the polls on election day.

(2) Once early voting has commenced in the town clerk's office, the town clerk or designee shall certify each day in a record prepared for this purpose that the seals on the vote tabulator and ballot box are intact.

(3) When an election official is not present or at times other than business hours, the sealed vote tabulator and ballot box shall be secured in the town clerk's office vault.

(4) The town clerk shall maintain a record of each early or absentee voter who voted in person in accordance with this section.

(c) On the day of the election:

(1) The sealed vote tabulator and sealed ballot boxes shall be transferred to the polling place on election day by two election officials and shall not be opened until the polls have closed on election day.

(2) When the vote tabulator is turned on at the polling place, the town clerk shall verify that the number of ballots that the vote tabulator displays as having been counted matches the number of voters who deposited their early voter absentee ballots in the vote tabulator in accordance with this section and any early voter absentee ballots that were processed and deposited in the vote tabulator under section 2546a of this subchapter.

(3) All early voter absentee ballots shall be commingled with those voted at the polls on election day prior to being examined for the purpose of identifying write-in votes.

§ 2547. DEFECTIVE BALLOTS

(a) If upon examination by the election officials it shall appear that any of the following defects is present, either the ballot or the unopened certificate envelope shall be marked “defective” and the ballot shall not be counted:

- (1) the identity of the early or absentee voter cannot be determined;
- (2) the early or absentee voter is not legally qualified to vote;
- ~~(2)(3)~~ the early or absentee voter has voted in person or previously returned a ballot in the same election;
- ~~(3) the affidavit on the certificate envelope is not completed~~;
- (4) the certificate is not signed;
- (5) the voted ballot is not in the certificate envelope; or
- (6) in the case of a primary vote, the early or absentee voter has failed to return the unvoted primary ballots.

(b) Each defective ballot or unopened certificate envelope shall be:

- (1) affixed with a note from the presiding officer indicating the reason it was determined to be defective;
- (2) placed with other such defective ballots in an envelope marked “Defective Ballots - Voter Checked Off Checklist - Do Not Count”; and
- (3) returned in that envelope to the town clerk in the manner prescribed by section 2590 of this ~~title~~ chapter.

(c) The provisions of this section shall be indicated prominently in the early or absentee voter material prepared by the Secretary of State.

\* \* \*

\* \* \* Process of Voting; Count and Return of Votes \* \* \*

Sec. 15. 17 V.S.A. § 2568 is amended to read:

§ 2568. REMOVING BALLOTS FROM POLLING PLACE;  
REPLACEMENT, ~~BLANK~~, AND UNUSED BALLOTS

- (a) Removing ballots from polling place. A person shall not take or remove a ballot from the polling place before the close of the polls.
- (b) Replacement ballots.

\* \* \*

(c) Unused ballots. Ballots originally delivered to the presiding officer that remain undistributed to the voters shall be preserved and returned to the town clerks, and ~~the clerk shall preserve them in such condition, unless called for by some authority entitled to demand and receive them.~~ After 90 days from the ~~date the election is held~~ following the election, they may be destroyed or distributed by the town clerk for educational purposes or for any other purpose the town clerk deems appropriate.

\* \* \* Recounts \* \* \*

Sec. 16. 17 V.S.A. § 2601 is amended to read:

§ 2601. RECOUNT THRESHOLD

(a)(1) In an election for federal office, statewide office, county office, or State Senator, if the difference between the number of votes cast for a winning candidate and the number of votes cast for a losing candidate is two percent or less of the total votes cast for all the candidates for an office, divided by the number of persons to be elected, that losing candidate shall have the right to have the votes for that office recounted.

(2) In an election for State Representative, if the difference between the number of votes cast for a winning candidate and the number of votes cast for a losing candidate is five percent or less of the total votes cast for all the candidates for an office, divided by the number of persons to be elected, that losing candidate shall have the right to have the votes for that office recounted.

(b) In the case of a recount for a local election, the threshold and procedures for conducting the recount shall be as provided in chapter 55, subchapter 3 of this title.

Sec. 17. 17 V.S.A. § 2602k is amended to read:

§ 2602k. RECOUNT TIES

(a)(1) If a recount of a primary election results in a tie, the provisions of subsection 2369(b) of this title shall apply.

(2) If a recount of a public question results in a tie, a runoff election shall not be held, and the question shall be certified not to have passed.

(3) If ~~the~~ a recount of a general election results in a tie, the provisions of this section shall apply, and the court shall order a runoff election to be held, within three weeks of the recount, on a date set by the court.

(b) The only candidates who shall appear on the ballot at the runoff election shall be those who tied in the previous election.

(c) The runoff election shall be considered a separate election for the purpose of voter registration under chapter 43 of this title.

~~(d) If the recount confirms a tie as to any public question, a runoff election shall not be held, and the question shall be certified not to have passed. [Repealed.]~~

(e) Warnings for a runoff election shall be posted as required by subchapter 5 of this chapter, except that the warnings shall be posted not less than 10 days before the runoff election.

(f) The conduct of a runoff election shall be as provided in this chapter for general elections.

\* \* \* Special Election for Congressional Vacancies \* \* \*

Sec. 18. 17 V.S.A. § 2621 is amended to read:

§ 2621. VACANCY IN OFFICE OF U.S. SENATOR OR REPRESENTATIVE

(a) If a vacancy occurs in the office of U.S. Senator or U.S. Representative, the Governor shall call a special election to fill the vacancy. His or her proclamation shall specify a day for the special election and a day for a special primary, pursuant to section 2352 of this title.

(b) The special election shall be held not more than ~~three~~ six months from the date the vacancy occurs, except that if the vacancy occurs within six months of a general election, the special election may be held the same day as the general election provided the ballots for the special election are able to be distributed by the deadline set forth in section 2479 of this title.

\* \* \* Local Elections \* \* \*

Sec. 19. 17 V.S.A. § 2647 is amended to read:

§ 2647. INCOMPATIBLE OFFICES

(a)(1) An auditor shall not be town clerk, town treasurer, selectboard member, first constable, collector of current or delinquent taxes, trustee of public funds, town manager, road commissioner, water commissioner, sewage system commissioner, sewage disposal commissioner, cemetery commissioner, or town district school director; nor shall a spouse of or any person assisting any of these officers in the discharge of official duties be eligible to hold office as auditor.

(2) A selectboard member or school director shall not be first constable, collector of taxes, town treasurer, assistant town treasurer, auditor, or town agent. A selectboard member shall not be lister or assessor.

(3) A cemetery commissioner or library trustee shall not be town treasurer, assistant town treasurer, or auditor.

(4) A town manager shall not hold any elective office in that town or town school district.

(5) Election officers at local elections shall be disqualified as provided in section 2456 of this title.

(b) Notwithstanding subsection (a) of this section, if a school district prepares and reports its budget independently from the budget of the town and the school district is audited by an independent public accountant, a person school director or spouse of a school director shall be eligible to hold office as auditor or town treasurer ~~even if that person's spouse holds office as a school director.~~

Sec. 20. 17 V.S.A. § 2681 is amended to read:

#### § 2681. NOMINATIONS; PETITIONS; CONSENTS

(a)(1)(A) Nominations of the municipal officers shall be by petition. The petition shall be filed with the municipal clerk, together with the endorsement, if any, of any party or parties in accordance with the provisions of this title, not later than 5:00 p.m. on the sixth Monday preceding the day of the election, which shall be the filing deadline.

\* \* \*

(3) A petition shall contain the name of only one candidate, ~~and the candidate's name shall appear on the petition as it does on the voter checklist. A voter shall not sign more than one petition for the same office, unless more than one nomination is to be made, in which case the voter may sign as many petitions as there are nominations to be made for the same office.~~

\* \* \*

\* \* \* Voting on Town Manager Form of Governance \* \* \*

Sec. 21. 24 V.S.A. chapter 37 is amended to read:

#### CHAPTER 37. TOWN, CITY, OR VILLAGE MANAGERS

\* \* \*

#### § 1241. PETITION; WARNING

When voters, in number equal to five percent of the legal registered voters in town, petition the selectboard ~~therefor~~ in writing to adopt or rescind the town manager form of governance, the warning for the annual or special meeting ~~which that~~ shall be called upon such petition shall contain an article in

substantially the following form set forth in section 1243 of this chapter: “To see if the town will vote to take advantage of the provisions of chapter 37 of Title 24 of the Vermont Statutes Annotated and authorize the selectboard to employ a town manager.”

\* \* \*

#### § 1243. METHOD OF VOTING

~~When the question of the adoption or rejection of~~ A town may vote at an annual or special meeting to adopt or rescind the provisions of this chapter is submitted to a meeting wherein the Australian ballot system is used for the election of officers, there. ~~A vote on the question shall be printed upon the ballots below the list of candidates the following question in substantially the following form:~~

~~““Will~~ Shall ~~the [town name] vote to take advantage of [adopt/rescind] the town manager form of governance in accordance with the provisions of chapter 37 of Title 24 of the Vermont Statutes Annotated and authorize the selectboard to employ a town manager?”~~

Yes ☐ — No ☐

~~And the voter shall make a cross or X in the blank space against the answer he or she desires to give concerning such question. The ballots shall be counted forthwith by the board of civil authority and the result announced by the presiding officer.~~

\* \* \*

\* \* \* Campaign Finance; Reporting Dates \* \* \*

Sec. 22. 17 V.S.A. § 2964 is amended to read:

#### § 2964. CAMPAIGN REPORTS; CANDIDATES FOR STATE OFFICE, THE GENERAL ASSEMBLY, AND COUNTY OFFICE; POLITICAL COMMITTEES; POLITICAL PARTIES

(a)(1) Each candidate for State office, the General Assembly, or a two-year-term county office who has rolled over any amount of surplus into his or her new campaign or who has made expenditures or accepted contributions of \$500.00 or more during the two-year general election cycle and, except as provided in subsection (b) of this section, each political committee that has not filed a final report pursuant to subsection 2965(b) of this chapter, and each political party required to register under section 2923 of this chapter shall file with the Secretary of State campaign finance reports as follows:



(A) in the first year of the two-year general election cycle, on July 15 1; and

(B) in the second year of the two-year general election cycle:

(i) on March 15;

(ii) on July 15 1 and August 15 1;

(iii) on September 1;

(iv) on October 1, October 15, and the Friday before the general election; and

(v) two weeks after the general election.

(2) Each candidate for a four-year-term county office who has rolled over any amount of surplus into his or her new campaign or who has made expenditures or accepted contributions of \$500.00 or more during the four-year general election cycle shall file with the Secretary of State campaign finance reports as follows:

(A) in the first three years of the four-year general election cycle, on July 15 1; and

(B) in the fourth year of the four-year general election cycle:

(i) on March 15;

(ii) on July 15 1 and August 15 1;

(iii) on September 1;

(iv) on October 1, October 15, and the Friday before the general election; and

(v) two weeks after the general election.

\* \* \*

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

## Sec. 23. EFFECTIVE DATES

This act shall take effect on July 1, 2019, except that:

(1) this section and Secs. 19, 17 V.S.A. § 2647 (incompatible offices) and 22, 17 V.S.A. § 2964 (campaign finance reports), shall take effect on passage; and

(2) in Sec. 14, 17 V.S.A. chapter 51, subchapter 6 (early or absentee voters), § 2546b (early voting in town clerk's office; deposit into vote tabulator) shall take effect on July 1, 2020, except that the Secretary of State

shall adopt the procedures described in subdivision (a)(2) of that section on or before January 1, 2020.

### **S. 108**

An act relating to employee misclassification.

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

\* \* \* Employee Misclassification \* \* \*

Sec. 1. 21 V.S.A. § 712 is added to read:

#### § 712. ENFORCEMENT BY ATTORNEY GENERAL

(a) Following the referral of a complaint by the Commissioner of Labor pursuant to the provisions of section 3 of this title, the Attorney General may investigate a complaint that an employer has committed a willful, substantial, or systemic violation of section 687 or 708 of this chapter by claiming that it is not an employer as defined pursuant to subdivision 601(3) of this chapter or that an individual is not a worker or employee as defined pursuant to subdivision 601(14) of this chapter and may enforce those provisions by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though an employer that violates section 687 or 708 of this chapter by claiming that it is not an employer as defined pursuant to subdivision 601(3) of this chapter or that an individual is not a worker or employee as defined pursuant to subdivision 601(14) of this chapter is committing an unfair act in commerce. Any employer, employment agency, or labor organization complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for a violation of section 687 or 708 of this chapter and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(b)(1) The Attorney General shall share information and coordinate investigatory and enforcement resources with the Departments of Financial Regulation, of Labor, and of Taxes pursuant to the provisions of section 3 of this title.

(2) Upon receiving notice that the Attorney General has determined that an employer committed a violation of section 687 or 708 of this chapter by claiming that it was not an employer as defined pursuant to subdivision 601(3) of this chapter or that an individual was not a worker or employee as defined pursuant to subdivision 601(14) of this chapter, the Commissioners of Financial Regulation and of Taxes shall review whether the employer is in compliance with the insurance or tax laws that are under their jurisdiction.

Sec. 2. 21 V.S.A. § 1379 is added to read:

§ 1379. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY ATTORNEY GENERAL

(a) Following the referral of a complaint by the Commissioner of Labor pursuant to the provisions of section 3 of this title, the Attorney General may investigate a complaint that an employing unit or employer has committed a willful, substantial, or systemic violation of section 1314a of this chapter by failing to properly classify one or more employees and may enforce the provisions of this chapter by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though the misclassification of an employee is an unfair act in commerce. Any employing unit or employer complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(b)(1) The Attorney General shall share information and coordinate investigatory and enforcement resources with the Departments of Financial Regulation, of Labor, and of Taxes pursuant to the provisions of section 3 of this title.

(2) Upon receiving notice that the Attorney General has determined that an employing unit or employer has committed a violation of section 1314a of this chapter by failing to properly classify one or more employees, the Commissioners of Financial Regulation and of Taxes shall review whether the employing unit or employer is in compliance with the insurance or tax laws that are under their jurisdiction.

Sec. 3. 21 V.S.A. § 1314 is amended to read:

§ 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;  
DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT  
EMPLOYMENT INFORMATION; DISCLOSURE OF  
INFORMATION TO OTHER STATE AGENCIES TO  
INVESTIGATE MISCLASSIFICATION OR MISCODING

\* \* \*

(d)(1) Except as otherwise provided in this chapter, information obtained from any employing unit or individual in the administration of this chapter, and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or open to public inspection in any manner revealing the individual's or employing unit's identity, nor be admissible in evidence in any action or proceeding other than one arising out of this chapter, or to support or facilitate an investigation by a public agency identified in subdivision (e)(1) of this section.

\* \* \*

(e)(1) Subject to such restrictions as the Board may by regulation prescribe, information from unemployment insurance records may be made available to any public officer or public agency of this or any other state or the federal government dealing with the administration or regulation of relief, public assistance, unemployment compensation, a system of public employment offices, wages and hours of employment, workers' compensation, misclassification or miscoding of workers, occupational safety and health, or a public works program for purposes appropriate to the necessary operation of those offices or agencies. The Commissioner may also make information available to colleges, universities, and public agencies of the State for use in connection with research projects of a public service nature, and to the Vermont Economic Progress Council with regard to the administration of 32 V.S.A. chapter 105, subchapter 2; but no person associated with those institutions or agencies may disclose that information in any manner that would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by Commissioner.

\* \* \*

(8) The Department of Labor shall disclose, upon request, to the Attorney General and employees of the Office of the Attorney General information necessary for the Attorney General to investigate a complaint and enforce the provisions of this chapter as provided pursuant to section 1379 of this chapter.

\* \* \*

Sec. 4. 21 V.S.A. § 346 is added to read:

§ 346. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE  
MISCLASSIFICATION

(a) Following the referral of a complaint by the Commissioner of Labor pursuant to the provisions of section 3 of this title, the Attorney General may investigate a complaint that an employer has committed a willful, substantial, or systemic violation of section 342, 343, 348, 482, or 483 of this chapter by misclassifying an employee as an independent contractor and may enforce those provisions by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though the misclassification of an employee is an unfair act in commerce. Any employer complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(b)(1) The Attorney General shall share information and coordinate investigatory and enforcement resources with the Departments of Financial Regulation, of Labor, and of Taxes pursuant to the provisions of section 3 of this title.

(2) Upon receiving notice that the Attorney General has determined that an employing unit has committed a violation of section 342, 343, 348, 482, or 483 of this chapter by misclassifying an employee as an independent contractor, the Commissioners of Financial Regulation and of Taxes shall review whether the employer is in compliance with the insurance or tax laws that are under their jurisdiction.

Sec. 5. 21 V.S.A. § 342a is amended to read:

§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

\* \* \*

(h) Information obtained from any employer, employee, or witness in the course of investigating a complaint of unpaid wages shall be confidential and shall not be disclosed or open to public inspection in any manner that reveals

the employee's or employer's identity or be admissible in evidence in any action or proceeding other than one arising under this subchapter. However, such information may be released to any public official for the purposes provided in subdivision 1314(e)(1) of this title or to the Attorney General in relation to investigations conducted pursuant to section 346 of this subchapter as provided pursuant to the terms of the memorandum of understanding between the Attorney General and the Commissioner of Labor executed pursuant to section 3 of this title.

Sec. 6. 21 V.S.A. § 387 is added to read:

§ 387. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE MISCLASSIFICATION

(a) Following the referral of a complaint by the Commissioner of Labor pursuant to the provisions of section 3 of this title, the Attorney General may investigate a complaint that an employer has committed a willful, substantial, or systemic violation of this subchapter by misclassifying an employee as an independent contractor and may enforce the provisions of this subchapter by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though the misclassification of an employee is an unfair act in commerce. Any employer complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(b)(1) The Attorney General shall share information and coordinate investigatory and enforcement resources with the Departments of Financial Regulation, of Labor, and of Taxes pursuant to the provisions of section 3 of this title.

(2) Upon receiving notice that the Attorney General has determined that an employing unit has committed a violation of this subchapter by misclassifying an employee as an independent contractor, the Commissioners of Financial Regulation and of Taxes shall review whether the employer is in compliance with the insurance or tax laws that are under their jurisdiction.

Sec. 7. 32 V.S.A. § 3102 is amended to read:

§ 3102. CONFIDENTIALITY OF TAX RECORDS

\* \* \*

(d) The Commissioner shall disclose a return or return information:

\* \* \*

(5) to the Attorney General, if such return or return information relates to chapter 205 of this title or 33 V.S.A. chapter 19, subchapters 1A and 1B, for purposes of investigating potential violations of and enforcing 7 V.S.A. chapter 40, 20 V.S.A. chapter 173, subchapter 2A, and 33 V.S.A. chapter 19, subchapters 1A and 1B, and 21 V.S.A. §§ 346, 387, 712, and 1379;

\* \* \*

Sec. 8. 21 V.S.A. § 3 is added to read:

§ 3. COOPERATION WITH ATTORNEY GENERAL; MEMORANDUM OF UNDERSTANDING

(a) The Attorney General and the Commissioner of Labor shall enter into a memorandum of understanding to establish a process for the referral of complaints received by the Commissioner of Labor to the Attorney General, the sharing of information, and the coordination of investigatory and enforcement resources in relation to the provisions of sections 346, 387, 712, and 1379 of this title. Notwithstanding any provision of 9 V.S.A. § 2460(a) to the contrary, the memorandum shall, at a minimum, provide for:

(1) notice from the Attorney General to the Commissioner of Labor regarding complaints received by the Attorney General that relate to a possible violation of the laws under the jurisdiction of the Commissioner;

(2) a procedure for the Commissioner of Labor to refer a complaint to the Attorney General if the employer complained of appears to be engaging in willful, substantial, or systemic violations of the provisions of chapter 5, subchapter 2 or 3 of this title, or chapter 9 or 17 of this title through the misclassification of employees.

(3) a requirement that the Commissioner of Labor shall, upon receiving a complaint against an employer that has been determined to have engaged in employee misclassification on three separate occasions during the past 10 years or is alleged to have misclassified 10 or more employees, refer the complaint to the Attorney General and coordinate with the Attorney General to investigate the complaint and, depending on the outcome of the investigation, seek any appropriate penalties pursuant to the provisions of this title and 9 V.S.A. §§ 2458–2461;

(4) the exchange of information and coordination of investigatory and enforcement resources between the Commissioner of Labor and the Attorney General.

(b) Nothing in this section shall be construed to prevent the Commissioner of Labor from investigating complaints of violations of the laws under his or her jurisdiction or enforcing those laws pursuant to the applicable provisions of this title.

(c) The Attorney General shall enter into separate memoranda of understanding with the Commissioner of Financial Regulation and the Commissioner of Taxes to establish a process for sharing information related to an investigation by the Attorney General pursuant to sections 346, 387, 712, and 1379 of this title. Notwithstanding any provision of 9 V.S.A. § 2460(a) to the contrary, each memorandum shall, at a minimum, provide for the disclosure by the Attorney General of any instance in which he or she has determined that an employer has, through the misclassification of an employee, violated the provisions of chapter 5, subchapter 2 or 3 of this title or chapter 9 or 17 of this title and the basis for that determination.

(d) Information shared pursuant to this section shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential. Notwithstanding 1 V.S.A. § 317(e), the Public Records Act exemption created in this section shall continue in effect and shall not be repealed through the operation of 1 V.S.A. § 317(e).

#### **Sec. 9. EMPLOYEE MISCLASSIFICATION; ENFORCEMENT BY ATTORNEY GENERAL; REPORTS**

(a)(1) On or before January 15, 2021, the Attorney General and the Commissioner of Labor shall submit a written report to the House Committees on Commerce and Economic Development and on General, Housing, and Military Affairs and the Senate Committees on Economic Development, Housing and General Affairs and on Finance regarding the enforcement of employment laws related to employee misclassification pursuant to 21 V.S.A. §§ 346, 387, 712, and 1379 and by the Commissioner of Labor pursuant to 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17.

(2)(A) The report shall include for both the Office of the Attorney General and the Department of Labor in each calendar year:

(i) the number of complaints received in relation to violations of 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17 that involved employee misclassification;



(ii) the number and percentage of complaints received that were referred to the other entity;

(iii) the number of investigations initiated;

(iv) the average number of days between the receipt of a complaint, the start of an investigation, and the completion of an investigation;

(v) the number and percentage of investigations that resulted in, for the Office of the Attorney General, the imposition of a civil penalty, an assurance of discontinuance, or the imposition of injunctive relief, and, for the Department of Labor, the imposition of a penalty;

(vi) the number and percentage of investigations that resulted in a determination that the employer had engaged in employee misclassification;

(vii) the number and percentage of investigations that resulted in the imposition of debarment pursuant to 21 V.S.A. §§ 692, 708, or 1314a; and

(viii) the number of investigations related to employers who had previously violated the provisions of 21 V.S.A. chapter 5, subchapter 2 or 3, or 21 V.S.A. chapter 9 or 17; and

(B) any recommendations for legislative action to improve the effectiveness of the provisions of 21 V.S.A. §§ 346, 387, 712, and 1379.

(b)(1) On or before January 15, 2023, the Attorney General, in consultation with the Commissioners of Financial Regulation, of Labor, and of Taxes, shall submit a written report to the House Committees on Commerce and Economic Development and on General, Housing, and Military Affairs and the Senate Committees on Economic Development, Housing and General Affairs and on Finance regarding the enforcement of employment laws related to employee misclassification by the Attorney General pursuant to 21 V.S.A. §§ 346, 387, 712, and 1379 and by the Commissioner of Labor pursuant to 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17.

(A) The report shall include for both the Office of the Attorney General and the Department of Labor in each calendar year:

(i) the number of complaints received in relation to violations of 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17 that involved employee misclassification;

(ii) the number and percentage of complaints received that were referred to the other entity;

(iii) the number of investigations initiated;

(iv) the average number of days between the receipt of a complaint, the start of an investigation, and the completion of an investigation;

(v) the number and percentage of investigations that resulted in, for the Office of the Attorney General, the imposition of a civil penalty, an assurance of discontinuance, or the imposition of injunctive relief, and, for the Department of Labor, the imposition of a penalty;

(vi) the number and percentage of investigations that resulted in a determination that the employer had engaged in employee misclassification;

(vii) the number and percentage of investigations that resulted in the imposition of debarment pursuant to 21 V.S.A. § 692, 708, or 1314a; and

(viii) the number of investigations related to employers who had previously violated the provisions of 21 V.S.A. chapter 5, subchapter 2 or 3, or 21 V.S.A. chapter 9 or 17; and

(B) a recommendation regarding whether to delay or eliminate the repeal of 21 V.S.A. §§ 346, 387, 712, and 1379, and if a delay or elimination of the repeal is proposed, any recommendations for legislative action related to those sections.

(c) As used in this section, “employee misclassification” means:

(1) the misclassification of an employee as an independent contractor;

or

(2) a violation of 21 V.S.A. § 687 or 708 that results from an employer claiming that it is not an employer as defined pursuant to 21 V.S.A. § 601(3) or that an individual is not a worker or employee as defined pursuant to 21 V.S.A. § 601(14).

#### Sec. 10. REPEAL

21 V.S.A. §§ 346, 387, 712, and 1379 are repealed.

Sec. 11. 21 V.S.A. § 1314 is amended to read:

§ 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;  
DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT  
EMPLOYMENT INFORMATION; DISCLOSURE OF  
INFORMATION TO OTHER STATE AGENCIES TO  
INVESTIGATE MISCLASSIFICATION OR MISCODING

\* \* \*

(e)(1) Subject to such restrictions as the Board may by regulation prescribe, information from unemployment insurance records may be made

available to any public officer or public agency of this or any other state or the federal government dealing with the administration or regulation of relief, public assistance, unemployment compensation, a system of public employment offices, wages and hours of employment, workers' compensation, misclassification or miscoding of workers, occupational safety and health, or a public works program for purposes appropriate to the necessary operation of those offices or agencies. The Commissioner may also make information available to colleges, universities, and public agencies of the State for use in connection with research projects of a public service nature, and to the Vermont Economic Progress Council with regard to the administration of 32 V.S.A. chapter 105, subchapter 2; but no person associated with those institutions or agencies may disclose that information in any manner that would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by Commissioner.

\* \* \*

~~(8) The Department of Labor shall disclose, upon request, to the Attorney General and employees of the Office of the Attorney General information necessary for the Attorney General to investigate a complaint and enforce the provisions of this chapter as provided pursuant to section 1379 of this chapter. [Repealed.]~~

\* \* \*

Sec. 12. 21 V.S.A. § 342a is amended to read:

§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

\* \* \*

(h) Information obtained from any employer, employee, or witness in the course of investigating a complaint of unpaid wages shall be confidential and shall not be disclosed or open to public inspection in any manner that reveals the employee's or employer's identity or be admissible in evidence in any action or proceeding other than one arising under this subchapter. However, such information may be released to any public official for the purposes provided in subdivision 1314(e)(1) of this title ~~or to the Attorney General pursuant to the terms of a memorandum of understanding between the Commissioner and the Attorney General that was agreed to in relation to investigations conducted pursuant to section 346 of this subchapter.~~

Sec. 13. 32 V.S.A. § 3102 is amended to read:

§ 3102. CONFIDENTIALITY OF TAX RECORDS

\* \* \*

(d) The Commissioner shall disclose a return or return information:

\* \* \*

(5) to the Attorney General, if such return or return information relates to chapter 205 of this title or 33 V.S.A. chapter 19, subchapters 1A and 1B, for purposes of investigating potential violations of and enforcing 7 V.S.A. chapter 40, 20 V.S.A. chapter 173, subchapter 2A, and 33 V.S.A. chapter 19, subchapters 1A and 1B, and 21 V.S.A. §§ 346, 387, 712, and 1379;

\* \* \*

#### Sec. 14. EDUCATION AND OUTREACH

(a) On or before September 15, 2019, the Commissioner of Labor and the Attorney General shall develop and disseminate informational materials for employers and employees that informs them:

(1) that the Attorney General has been granted investigation and enforcement authority in relation to complaints of employee misclassification pursuant to the provisions of 21 V.S.A. §§ 346, 387, 712, and 1379;

(2) of the requirements related to proper employee classification; and

(3) about how to file a complaint regarding employee misclassification.

(b) The methods of disseminating the informational materials shall include:

(1) posting the information on the Attorney General's and the Department of Labor's websites; and

(2) e-mailing or otherwise providing written notice to employer and employee organizations.

\* \* \* Workers' Compensation \* \* \*

Sec. 15. 21 V.S.A. § 711 is amended to read:

#### § 711. WORKERS' COMPENSATION ADMINISTRATION FUND

(a) The Workers' Compensation Administration Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5 to be expended by the Commissioner for the administration of the workers' compensation and for costs of the occupational disease safety and health programs that are not funded by federal OSHA grants and matching State General Fund appropriations. The Fund shall consist of contributions from employers made at a rate of 1.4 percent of the direct calendar year premium for workers' compensation insurance, one percent of self-insured workers' compensation losses, and one percent of workers' compensation losses of corporations approved under this chapter. Disbursements from the Fund shall be on warrants drawn by the

Commissioner of Finance and Management in anticipation of receipts authorized by this section.

\* \* \*

Sec. 16. WORKERS' COMPENSATION EXEMPTION FOR EQUINE CARE AND MANAGEMENT; REPORT

(a) On or before January 15, 2020, the Commissioners of Agriculture and of Labor shall report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs regarding whether certain activities related to equine care and management should be excluded from the definition of "worker" and "employee" pursuant to 21 V.S.A. § 601(14).

(b) The report shall specifically address the following:

(1) an appropriate definition for the terms "agriculture" and "farm employment" as those terms are used in 21 V.S.A. § 601(14)(C);

(2) whether any activities related to equine care and management would fall within the definitions of "agriculture" and "farm employment" determined pursuant to subdivision (1) of this subsection;

(3) what activities related to equine care and management, if any, should be included in the exemptions from the definition of "worker" and "employee"; and

(4) what the potential impact of excluding the activities identified pursuant to subdivision (3) of this subsection from the definition of "worker" and "employee" would be with respect to workers' compensation premiums, worker safety, and potential liability for employers that have equine care and management operations.

(c) The report may include a recommendation for legislative action.

Sec. 17. STATE EMPLOYEES; WORKERS' COMPENSATION; POST-TRAUMATIC STRESS DISORDER; MENTAL DISORDERS; STUDY; REPORT

On or before January 15, 2020, the Agency of Administration, Office of Risk Management, in consultation with the Agency of Human Services, the Department for Children and Families, and the Departments of Human Resources and of Labor, shall submit a written report on the workers' compensation claims submitted by State employees in relation to post-traumatic stress disorder and other mental conditions to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs. The report shall:

(1) examine the occurrence and frequency of workers' compensation claims submitted by State employees in relation to post-traumatic stress disorder and other mental conditions that are caused or aggravated by workplace stressors or workplace violence;

(2) identify professions and occupations in State government that have a heightened risk of exposure to traumatic situations or stress that could cause post-traumatic stress disorder or other mental conditions;

(3) include an inventory of currently existing prevention and education plans related to the occurrence of post-traumatic stress disorder and other mental conditions among State employees;

(4) identify various approaches for preventing the occurrence of post-traumatic stress disorder and other mental conditions among State employees, including specific actions and methods to reduce the likelihood of job-related stressors or workplace violence; and

(5) identify specific training and educational activities and materials that can be implemented to:

(A) enable State employees to better recognize situations, incidents, and other occurrences that may result in a stressful situation or violent interaction;

(B) enable State employees to better recognize the symptoms of post-traumatic stress disorder and other common mental conditions in themselves and their coworkers;

(C) identify the resources available to employees following a stressful or traumatic incident, including the Employee Assistance Program and counseling; and

(D) educate State employees regarding how to file and pursue a workers' compensation claim for work-related post-traumatic stress disorder or another work-related mental condition that requires treatment or has become disabling.

Sec. 18. WORKERS' COMPENSATION; COMPENSATION FOR  
PRESCRIBED OVER-THE-COUNTER MEDICATIONS;  
OUTREACH

On or before October 15, 2019, the Commissioner of Labor shall develop and disseminate informational materials to educate workers and employers regarding the ability of a worker to receive compensation for the cost of prescribed over-the-counter medications. The methods of disseminating the materials shall include:

- (1) posting the information on the Department's website;
- (2) e-mailing or otherwise providing written notice to insurance carriers that offer workers' compensation insurance in Vermont; and
- (3) ensuring, in coordination with the Department of Health and the appropriate professional licensing boards and professional membership associations, that the information is made available to all licensed health care professionals who are authorized to prescribe medications and to all licensed pharmacists in Vermont.

Sec. 19. 21 V.S.A. § 650 is amended to read:

§ 650. PAYMENT; AVERAGE WAGE; COMPUTATION

\* \* \*

(f) When benefits have been awarded or are not in dispute as provided in subsection (e) of this section, the employer shall establish a weekday on which payment shall be mailed or deposited and notify the claimant and the Department of that day. The employer shall ensure that each weekly payment is mailed or deposited on or before the day established. Payment shall be made by direct deposit to a claimant who elects that payment method. The employer shall notify the claimant of his or her right to payment by direct deposit. If the benefit payment is not mailed or deposited on the day established, the employer shall pay to the claimant a late fee of \$10.00 or five percent of the benefit amount, whichever is greater, for each weekly payment that is made after the established day. ~~For the purposes of~~ As used in this subsection, "paid" means the payment is mailed to the claimant's mailing address or, in the case of direct deposit, transferred into the designated account. In the event of a dispute, proof of payment shall be established by affidavit.

\* \* \* Required Notice for Unemployment Insurance \* \* \*

Sec. 20. 21 V.S.A. § 1346 is amended to read:

§ 1346. CLAIMS FOR BENEFITS; ~~REGULATIONS~~ RULES; NOTICE

(a) Claims for benefits shall be made in accordance with ~~such regulations as rules adopted by the Board may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his or her service and shall make available to each such individual, at the time he or she becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the Commissioner to each employer without cost to him or her.~~

(b) Every person making a claim shall certify that he or she has not, during the week with respect to which waiting period credit or benefits are claimed, earned or received wages or other remuneration for any employment, whether subject to this chapter or not, otherwise than as specified in his or her claim. All benefits shall be paid in accordance with ~~such regulations as~~ the rules adopted by the Board may prescribe.

(c) An employer shall post notice of how an unemployed individual can seek unemployment benefits in a form provided by the Commissioner in a place conspicuous to individuals performing services for the employer. The notice shall also advise individuals of their rights under the Domestic and Sexual Violence Survivor's Transitional Employment Program, pursuant to chapter 16A of this title. The Commissioner shall provide a copy of the notice to an employer upon request without cost to the employer.

\* \* \* Short-Time Compensation Program \* \* \*

## Sec. 21. FINDINGS

The General Assembly finds:

(1) The Short-Time Compensation Program was enacted in 1986 to assist employers in avoiding layoffs by temporarily reducing the hours worked by some of their employees.

(2) The Program provides partial unemployment insurance benefits to the employees who are working reduced hours.

(3) In 2014, the General Assembly amended 21 V.S.A. § 1338a to change the formula by which partially unemployed individuals who are not covered by a short-time compensation plan are paid partial unemployment benefits. By changing a claimant's so-called "disregarded earnings" from 30 percent to 50 percent of the claimant's weekly wage, the amount of unemployment benefits available to a partially employed individual increased significantly.

(4) Because of the change in disregarded earnings, employers and employees both have less to gain from short-time compensation plans.

(5) The application and approval process for short-time compensation plans is an administrative burden for employers.

(6) Since 2014, only one employer in Vermont has established a Short-Time Compensation Program.

(7) Therefore, the General Assembly finds that 21 V.S.A. chapter 17, subchapter 3, which establishes the Short-Time Compensation Program, should be repealed.



Sec. 22. REPEAL

21 V.S.A. chapter 17, subchapter 3 is repealed.

\* \* \* Self-Employment Assistance Program \* \* \*

Sec. 23. 21 V.S.A. § 1340a is added to read:

§ 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

(a) As used in this section:

(1) “Full-time basis” means that the individual is devoting the necessary time as determined by the Commissioner to establish a business that will serve as a full-time occupation for that individual.

(2) “Regular benefits” shall have the same meaning as in subdivision 1421(5) of this title.

(3) “Self-employment assistance activities” means activities approved by the Commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed, including entrepreneurial training, business counseling, and technical assistance.

(4) “Self-employment assistance allowance” means an allowance payable in lieu of regular benefits from the Unemployment Compensation Trust Fund to an individual who meets the requirements of this section.

(5) “Self-Employment Assistance Program” means the program under which an individual who meets the requirements of subsection (d) of this section is eligible to receive an allowance in lieu of regular benefits for the purpose of assisting that individual in establishing a business and becoming self-employed.

(b) The weekly amount of the self-employment assistance allowance payable to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable pursuant to this title.

(c) The maximum amount of the self-employment assistance allowance paid pursuant to this section shall not exceed the maximum amount of benefits established pursuant to section 1340 of this title with respect to any benefit year.

(d)(1) An individual may receive a self-employment assistance allowance if that individual:

(A) is eligible to receive regular benefits or would be eligible to receive regular benefits except for the requirements described in subdivisions (2)(A) and (B) of this subsection (d);

(B) is identified by a worker profiling system as an individual likely to exhaust regular benefits;

(C) has received the approval of the Commissioner to participate in a program providing self-employment assistance activities;

(D) is engaged actively on a full-time basis in activities that may include training related to establishing a business and becoming self-employed; and

(E) has filed a weekly claim for the self-employment assistance allowance and provided the information the Commissioner requires.

(2) A self-employment allowance shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits pursuant to this chapter, except:

(A) the requirements of section 1343 of this title, relating to availability for work, efforts to secure work, and refusal to accept work, are not applicable to the individual; and

(B)(i) the individual is not considered to be self-employed pursuant to subdivision 1301(24) of this title;

(ii) an individual who meets the requirements of this section shall be considered to be unemployed pursuant to section 1338 of this title; and

(iii) an individual who fails to participate in self-employment assistance activities or who fails to engage actively on a full-time basis in activities, including training, relating to the establishment of a business and becoming self-employed shall be disqualified from receiving an allowance for the week in which the failure occurs.

(e) The self-employment assistance allowance may be paid to up to 35 qualified individuals at any time.

(f)(1) The self-employment assistance allowance shall be charged to the Unemployment Compensation Trust Fund.

(2) In the event that the self-employment assistance allowance cannot be charged to the Unemployment Compensation Trust Fund pursuant to subdivision (1) of this subsection, the allowance shall be charged in accordance with section 1325 of this title.

(g) The Commissioner may approve a program upon determining that it will provide self-employment assistance activities to qualified individuals.

(h)(1) The Commissioner shall adopt rules to implement this section.

(2) The rules adopted pursuant to this subsection shall include a detailed explanation of how an individual may apply for and establish eligibility for the Self-Employment Assistance Program and any criteria that the Commissioner will consider in determining whether to approve a program.

(i) The Commissioner may suspend the Self-Employment Assistance Program with approval of the Secretary of Administration and notice to the House Committee on Commerce and Economic Development and the Senate Committee on Finance in the event that the Program presents unintended adverse consequences to the Unemployment Compensation Trust Fund.

Sec. 24. USE OF SELF EMPLOYMENT ASSISTANCE PROGRAM;  
REPORT

On or before January 15, 2021, the Commissioner of Labor shall submit a written report to the House Committee on Commerce and the Senate Committee on Economic Development, Housing and General Affairs regarding the utilization of the Self Employment Assistance Program during the previous 18 months, including the number of applications received, programs approved, and programs completed, and any recommendations for legislative action to improve the utilization of the Self Employment Assistance Program. The Commissioner shall also present the report in person to both Committees.

\* \* \* Unemployment Insurance Experience Ratings \* \* \*

Sec. 25. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;  
DISCLOSURE TO SUCCESSOR ENTITY

(a)(1) The Commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

\* \* \*

(E) The individual was paid wages of \$1,000.00 or less by the employer during the individual's base period.

\* \* \*

Sec. 26. MITIGATING IMPACT OF EXPERIENCE RATING SYSTEM ON  
SMALL BUSINESSES; REPORT

On or before January 15, 2020, the Commissioner of Labor shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs regarding potential approaches to mitigate the impact of a single separation from employment on a small employer's unemployment insurance experience rating and contribution rate. The report shall specifically identify and describe provisions in other states' laws that reduce the impact of a single separation from employment on small employers' unemployment insurance experience ratings and contribution rates, and any resulting effect on the state's unemployment insurance trust fund. The report shall also identify any amendments to the Vermont Statutes Annotated that could reduce the impact of a single separation from employment on a small employer's unemployment insurance experience rating and contribution rate and, if possible, make a recommendation for legislative action to accomplish that goal.

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

Sec. 27. EFFECTIVE DATES

(a) Sec. 8 of this act shall take effect on July 1, 2019, and the memoranda of understanding required pursuant to that section shall be executed on or before September 1, 2019.

(b) Secs. 10, 11, 12, and 13 of this act shall take effect on July 1, 2023.

(c) Sec. 19 of this act shall take effect on January 1, 2020, and shall apply to injuries incurred on or after that date.

(d) The remaining sections of this act shall take effect on July 1, 2019.

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

An act relating to workers' compensation, unemployment insurance, and employee misclassification.

## S. 110

An act relating to data privacy and consumer protection.

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

\* \* \* Data Privacy; State Government \* \* \*

### Sec. 1. DATA PRIVACY INVENTORY

(a) On or before January 15, 2020, the following persons shall conduct a data privacy inventory and submit a report for their respective branches of State government to the House Committees on Commerce and Economic Development and on Government Operations and to the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations:

(1) the State Court Administrator for the Judicial Branch;

(2) the Deputy Director for Information Technology within the Office of Legislative Council for the Legislative Branch; and

(3) the Chief Data Officer within the Agency of Digital Services and the Chief Records Officer within the Office of the Secretary of State for the Executive Branch.

(b) The inventory and report for each branch shall address the collection and management of personally identifiable information, as defined in 9 V.S.A. § 2430, and of street addresses, e-mail addresses, telephone numbers, and demographic information, specifically:

(1) federal and State laws, rules, and regulations that:

(A) exempt personally identifiable information from public inspection and copying pursuant to 1 V.S.A. § 317;

(B) require personally identifiable information to be produced or acquired in the course of State government business;

(C) specify fees for obtaining personally identifiable information produced or acquired in the course of State government business; and

(D) require personally identifiable information to be shared between branches of State government or between branches and nonstate entities, including municipalities;

(2) arrangements or agreements, whether verbal or written, between branches of State government or between branches and nonstate entities, including municipalities, to share personally identifiable information,

street addresses, e-mail addresses, telephone numbers, and demographic information; and

(3) recommendations for proposed legislation concerning the collection and management of personally identifiable information, street addresses, e-mail addresses, telephone numbers, and demographic information.

\* \* \* Security Breach Notice Act \* \* \*

Sec. 2. 9 V.S.A. § 2430 is amended to read:

§ 2430. DEFINITIONS

As used in this chapter:

\* \* \*

(6) “Data collector” means a person who, for any purpose, whether by automated collection or otherwise, handles, collects, disseminates, or otherwise deals with personally identifiable information, and includes the State, State agencies, political subdivisions of the State, public and private universities, privately and publicly held corporations, limited liability companies, financial institutions, and retail operators.

(7) “Encryption” means use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key.

(8) “License” means a grant of access to, or distribution of, data by one person to another in exchange for consideration. A use of data for the sole benefit of the data provider, where the data provider maintains control over the use of the data, is not a license.

(9) “Login credentials” means a consumer’s user name or e-mail address, in combination with a password or an answer to a security question, that together permit access to an online account.

~~(9)~~(10)(A) “Personally identifiable information” means a consumer’s first name or first initial and last name in combination with ~~any~~ one or more of the following digital data elements, when the data elements are not encrypted, ~~or~~ redacted, or protected by another method that renders them unreadable or unusable by unauthorized persons:

(i) a Social Security number;

(ii) ~~motor vehicle operator’s license number or nondriver identification card number~~ a driver license or nondriver State identification card number, individual taxpayer identification number, passport number, military identification card number, or other identification number that

originates from a government identification document that is commonly used to verify identity for a commercial transaction;

(iii) a financial account number or credit or debit card number, if circumstances exist in which the number could be used without additional identifying information, access codes, or passwords;

(iv) account passwords a password, or personal identification numbers number, or other access codes code for a financial account;

(v) unique biometric data generated from measurements or technical analysis of human body characteristics used by the owner or licensee of the data to identify or authenticate the consumer, such as a fingerprint, retina or iris image, or other unique physical representation or digital representation of biometric data;

(vi) genetic information; and

(vii)(I) health records or records of a wellness program or similar program of health promotion or disease prevention;

(II) a health care professional's medical diagnosis or treatment of the consumer; or

(III) a health insurance policy number.

(B) "Personally identifiable information" does not mean publicly available information that is lawfully made available to the general public from federal, State, or local government records.

(40)(11) "Record" means any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

(41)(12) "Redaction" means the rendering of data so that the data are unreadable or are truncated so that no more than the last four digits of the identification number are accessible as part of the data.

(42)(13)(A) "Security breach" means unauthorized acquisition of, electronic data or a reasonable belief of an unauthorized acquisition of, electronic data that compromises the security, confidentiality, or integrity of a consumer's personally identifiable information or login credentials maintained by a data collector.

(B) "Security breach" does not include good faith but unauthorized acquisition of personally identifiable information or login credentials by an employee or agent of the data collector for a legitimate purpose of the data collector, provided that the personally identifiable information is or login

credentials are not used for a purpose unrelated to the data collector's business or subject to further unauthorized disclosure.

(C) In determining whether personally identifiable information ~~has~~ or login credentials have been acquired or is reasonably believed to have been acquired by a person without valid authorization, a data collector may consider the following factors, among others:

(i) indications that the information is in the physical possession and control of a person without valid authorization, such as a lost or stolen computer or other device containing information;

(ii) indications that the information has been downloaded or copied;

(iii) indications that the information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported; or

(iv) that the information has been made public.

Sec. 3. 9 V.S.A. § 2435 is amended to read:

#### § 2435. NOTICE OF SECURITY BREACHES

(a) This section shall be known as the Security Breach Notice Act.

(b) Notice of breach.

(1) Except as ~~set forth~~ otherwise provided in subsection (d) of this section, any data collector that owns or licenses computerized personally identifiable information or login credentials ~~that includes personal information concerning a consumer~~ shall notify the consumer that there has been a security breach following discovery or notification to the data collector of the breach. Notice of the security breach shall be made in the most expedient time possible and without unreasonable delay, but not later than 45 days after the discovery or notification, consistent with the legitimate needs of the law enforcement agency, as provided in subdivisions (3) and (4) of this subsection (b), or with any measures necessary to determine the scope of the security breach and restore the reasonable integrity, security, and confidentiality of the data system.

(2) Any data collector that maintains or possesses computerized data containing personally identifiable information ~~of a consumer~~ or login credentials ~~that the data collector does not own or license or any data collector that acts or conducts business in Vermont that maintains or possesses records or data containing personally identifiable information~~ or login credentials that the data collector does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the



breach, consistent with the legitimate needs of law enforcement as provided in subdivisions (3) and (4) of this subsection (b).

(3) A data collector or other entity subject to this subchapter shall provide notice of a breach to the Attorney General or to the Department of Financial Regulation, as applicable, as follows:

(A) A data collector or other entity regulated by the Department of Financial Regulation under Title 8 or this title shall provide notice of a breach to the Department. All other data collectors or other entities subject to this subchapter shall provide notice of a breach to the Attorney General.

(B)(i) The data collector shall notify the Attorney General or the Department, as applicable, of the date of the security breach and the date of discovery of the breach and shall provide a preliminary description of the breach within 14 business days, consistent with the legitimate needs of the law enforcement agency as provided in this subdivision (3) and subdivision (4) of this subsection (b), of the data collector's discovery of the security breach or when the data collector provides notice to consumers pursuant to this section, whichever is sooner.

(ii) Notwithstanding subdivision (B)(i) of this subdivision (b)(3), a data collector who, prior to the date of the breach, on a form and in a manner prescribed by the Attorney General, had sworn in writing to the Attorney General that it maintains written policies and procedures to maintain the security of personally identifiable information or login credentials and respond to a breach in a manner consistent with Vermont law shall notify the Attorney General of the date of the security breach and the date of discovery of the breach and shall provide a description of the breach prior to providing notice of the breach to consumers pursuant to subdivision (1) of this subsection (b).

(iii) If the date of the breach is unknown at the time notice is sent to the Attorney General or to the Department, the data collector shall send the Attorney General or the Department the date of the breach as soon as it is known.

(iv) Unless otherwise ordered by a court of this State for good cause shown, a notice provided under this subdivision (3)(B) shall not be disclosed to any person other than the Department, the authorized agent or representative of the Attorney General, a State's Attorney, or another law enforcement officer engaged in legitimate law enforcement activities without the consent of the data collector.

(C)(i) When the data collector provides notice of the breach pursuant to subdivision (1) of this subsection (b), the data collector shall notify the

Attorney General or the Department, as applicable, of the number of Vermont consumers affected, if known to the data collector, and shall provide a copy of the notice provided to consumers under subdivision (1) of this subsection (b).

(ii) The data collector may send to the Attorney General or the Department, as applicable, a second copy of the consumer notice, from which is redacted the type of personally identifiable information or login credentials that was subject to the breach, and which the Attorney General or the Department shall use for any public disclosure of the breach.

(D) If a security breach is limited to an unauthorized acquisition of login credentials, a data collector is only required to provide notice of the security breach to the Attorney General or Department of Financial Regulation, as applicable, if the login credentials were acquired directly from the data collector or its agent.

(4)(A) The notice to a consumer required by this subsection shall be delayed upon request of a law enforcement agency. A law enforcement agency may request the delay if it believes that notification may impede a law enforcement investigation, or a national or Homeland Security investigation or jeopardize public safety or national or Homeland Security interests. In the event law enforcement makes the request for a delay in a manner other than in writing, the data collector shall document such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. A law enforcement agency shall promptly notify the data collector in writing when the law enforcement agency no longer believes that notification may impede a law enforcement investigation, or a national or Homeland Security investigation or jeopardize public safety or national or Homeland Security interests. The data collector shall provide notice required by this section without unreasonable delay upon receipt of a written communication, which includes facsimile or electronic communication, from the law enforcement agency withdrawing its request for delay.

(B) A Vermont law enforcement agency with a reasonable belief that a security breach has or may have occurred at a specific business shall notify the business in writing of its belief. The agency shall also notify the business that additional information on the security breach may need to be furnished to the Office of the Attorney General or the Department of Financial Regulation and shall include the website and telephone number for the Office and the Department in the notice required by this subdivision. Nothing in this subdivision shall alter the responsibilities of a data collector under this section or provide a cause of action against a law enforcement agency that fails, without bad faith, to provide the notice required by this subdivision.

(5) The notice to a consumer required in subdivision (1) of this subsection (b) shall be clear and conspicuous. ~~The A notice to a consumer of a security breach involving personally identifiable information~~ shall include a description of each of the following, if known to the data collector:

(A) the incident in general terms;

(B) the type of personally identifiable information that was subject to the security breach;

(C) the general acts of the data collector to protect the personally identifiable information from further security breach;

(D) a telephone number, toll-free if available, that the consumer may call for further information and assistance;

(E) advice that directs the consumer to remain vigilant by reviewing account statements and monitoring free credit reports; and

(F) the approximate date of the security breach.

(6) A data collector may provide notice of a security breach involving personally identifiable information to a consumer by one or more of the following methods:

(A) Direct notice, which may be by one of the following methods:

(i) written notice mailed to the consumer's residence;

(ii) electronic notice, for those consumers for whom the data collector has a valid e-mail address if:

(I) the data collector's primary method of communication with the consumer is by electronic means, the electronic notice does not request or contain a hypertext link to a request that the consumer provide personal information, and the electronic notice conspicuously warns consumers not to provide personal information in response to electronic communications regarding security breaches; or

(II) the notice is consistent with the provisions regarding electronic records and signatures for notices in 15 U.S.C. § 7001; or

(iii) telephonic notice, provided that telephonic contact is made directly with each affected consumer and not through a prerecorded message.

(B)(i) Substitute notice, if:

(I) the data collector demonstrates that the lowest cost of providing notice to affected consumers pursuant to subdivision (6)(A) of this subsection among written, e-mail, or telephonic notice to affected consumers

would exceed ~~\$5,000.00~~ \$10,000.00; or

~~(II) the class of affected consumers to be provided written or telephonic notice exceeds 5,000; or~~

~~(III) the data collector does not have sufficient contact information.~~

(ii) A data collector shall provide substitute notice by:

(I) conspicuously posting the notice on the data collector's website if the data collector maintains one; and

(II) notifying major statewide and regional media.

(c) In the event a data collector provides notice to more than 1,000 consumers at one time pursuant to this section, the data collector shall notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice. This subsection shall not apply to a person who is licensed or registered under Title 8 by the Department of Financial Regulation.

(d)(1) Notice of a security breach pursuant to subsection (b) of this section is not required if the data collector establishes that misuse of ~~personal information~~ personally identifiable information or login credentials is not reasonably possible and the data collector provides notice of the determination that the misuse of the ~~personal information~~ personally identifiable information or login credentials is not reasonably possible pursuant to the requirements of this subsection (d). If the data collector establishes that misuse of the ~~personal information~~ personally identifiable information or login credentials is not reasonably possible, the data collector shall provide notice of its determination that misuse of the ~~personal information~~ personally identifiable information or login credentials is not reasonably possible and a detailed explanation for said determination to the Vermont Attorney General or to the Department of Financial Regulation in the event that the data collector is a person or entity licensed or registered with the Department under Title 8 or this title. The data collector may designate its notice and detailed explanation to the Vermont Attorney General or the Department of Financial Regulation as "trade secret" if the notice and detailed explanation meet the definition of trade secret contained in 1 V.S.A. § 317(c)(9).

(2) If a data collector established that misuse of ~~personal information~~ personally identifiable information or login credentials was not reasonably possible under subdivision (1) of this subsection (d), and subsequently obtains facts indicating that misuse of the ~~personal information~~ personally identifiable

information or login credentials has occurred or is occurring, the data collector shall provide notice of the security breach pursuant to subsection (b) of this section.

(3) If a security breach is limited to an unauthorized acquisition of login credentials for an online account other than an e-mail account the data collector shall provide notice of the security breach to the consumer electronically or through one or more of the methods specified in subdivision (b)(6) of this section and shall advise the consumer to take steps necessary to protect the online account, including to change his or her login credentials for the account and for any other account for which the consumer uses the same login credentials.

(4) If a security breach is limited to an unauthorized acquisition of login credentials for an email account:

(A) the data collector shall not provide notice of the security breach through the email account; and

(B) the data collector shall provide notice of the security breach through one or more of the methods specified in subdivision (b)(6) of this section or by clear and conspicuous notice delivered to the consumer online when the consumer is connected to the online account from an Internet protocol address or online location from which the data collector knows the consumer customarily accesses the account.

(e) A data collector that is subject to the privacy, security, and breach notification rules adopted in 45 C.F.R. Part 164 pursuant to the federal Health Insurance Portability and Accountability Act, P.L. 104-191 (1996) is deemed to be in compliance with this subchapter if:

(1) the data collector experiences a security breach that is limited to personally identifiable information specified in 2430(10)(A)(vii); and

(2) the data collector provides notice to affected consumers pursuant to the requirements of the breach notification rule in 45 C.F.R. Part 164, Subpart D.

(f) Any waiver of the provisions of this subchapter is contrary to public policy and is void and unenforceable.

(f)(g) Except as provided in subdivision (3) of this subsection (g), a financial institution that is subject to the following guidances, and any revisions, additions, or substitutions relating to an interagency guidance shall be exempt from this section:

(1) The Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

(2) Final Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice, issued on April 14, 2005, by the National Credit Union Administration.

(3) A financial institution regulated by the Department of Financial Regulation that is subject to subdivision (1) or (2) of this subsection ~~(f)~~(g) shall notify the Department as soon as possible after it becomes aware of an incident involving unauthorized access to or use of personally identifiable information.

~~(g)~~(h) Enforcement.

(1) With respect to all data collectors and other entities subject to this subchapter, other than a person or entity licensed or registered with the Department of Financial Regulation under Title 8 or this title, the Attorney General and State's Attorney shall have sole and full authority to investigate potential violations of this subchapter and to enforce, prosecute, obtain, and impose remedies for a violation of this subchapter or any rules or regulations made pursuant to this chapter as the Attorney General and State's Attorney have under chapter 63 of this title. The Attorney General may refer the matter to the State's Attorney in an appropriate case. The Superior Courts shall have jurisdiction over any enforcement matter brought by the Attorney General or a State's Attorney under this subsection.

(2) With respect to a data collector that is a person or entity licensed or registered with the Department of Financial Regulation under Title 8 or this title, the Department of Financial Regulation shall have the full authority to investigate potential violations of this subchapter and to prosecute, obtain, and impose remedies for a violation of this subchapter or any rules or regulations adopted pursuant to this subchapter, as the Department has under Title 8 or this title or any other applicable law or regulation.

\* \* \* Student Data Privacy \* \* \*

Sec. 4. 9 V.S.A. chapter 62, subchapter 3A is added to read:

Subchapter 3A: Student Privacy

§ 2443. DEFINITIONS

As used in this subchapter:

(1) “Covered information” means personal information or material, or information that is linked to personal information or material, in any media or format that is:

(A)(i) not publicly available; or

(ii) made publicly available pursuant to the federal Family Educational and Rights and Privacy Act; and

(B)(i) created by or provided to an operator by a student or the student’s parent or legal guardian in the course of the student’s, parent’s, or legal guardian’s use of the operator’s site, service, or application for PreK–12 school purposes;

(ii) created by or provided to an operator by an employee or agent of a school or school district for PreK–12 school purposes; or

(iii) gathered by an operator through the operation of its site, service, or application for PreK–12 school purposes and personally identifies a student, including information in the student’s education record or electronic mail; first and last name; home address; telephone number; electronic mail address or other information that allows physical or online contact; discipline records; test results; special education data; juvenile dependency records; grades; evaluations; criminal records; medical records; health records; social security number; biometric information; disability status; socioeconomic information; food purchases; political affiliations; religious information; text messages; documents; student identifiers; search activity; photos; voice recordings; or geolocation information.

(2) “Operator” means, to the extent that an entity is operating in this capacity, the operator of an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for PreK–12 school purposes and was designed and marketed for PreK–12 school purposes.

(3) “PreK–12 school purposes” means purposes that are directed by or that customarily take place at the direction of a school, teacher, or school district; aid in the administration of school activities, including instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents; or are otherwise for the use and benefit of the school.

(4) “School” means:

(A) a public or private preschool, kindergarten, elementary or secondary educational institution, vocational school, special educational agency or institution; and

(B) a person, agency, or institution that maintains school student records from more than one of the entities described in subdivision (6)(A) of this section.

(5) “Targeted advertising” means presenting advertisements to a student where the advertisement is selected based on information obtained or inferred over time from that student’s online behavior, usage of applications, or covered information. The term does not include advertising to a student at an online location based upon that student’s current visit to that location or in response to that student’s request for information or feedback, without the retention of that student’s online activities or requests over time for the purpose in whole or in part of targeting subsequent ads.

#### § 2443a. OPERATOR PROHIBITIONS

(a) An operator shall not knowingly do any of the following with respect to its site, service, or application:

(1) Engage in targeted advertising on the operator’s site, service, or application or target advertising on any other site, service, or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator’s site, service, or application for PreK–12 school purposes.

(2) Use information, including a persistent unique identifier, that is created or gathered by the operator’s site, service, or application to amass a profile about a student, except in furtherance of PreK–12 school purposes. “Amass a profile” does not include the collection and retention of account information that remains under the control of the student, the student’s parent or legal guardian, or the school.

(3) Sell, barter, or rent a student’s information, including covered information. This subdivision (3) does not apply to the purchase, merger, or other type of acquisition of an operator by another entity if the operator or successor entity complies with this subchapter regarding previously acquired student information.

(4) Except as otherwise provided in section 2443c of this title, disclose covered information, unless the disclosure is made for one or more of the following purposes and is proportionate to the identifiable information necessary to accomplish the purpose:

(A) to further the PreK–12 school purposes of the site, service, or application, provided:



(i) the recipient of the covered information does not further disclose the information except to allow or improve operability and functionality of the operator's site, service, or application; and

(ii) the covered information is not used for a purpose inconsistent with this subchapter;

(B) to ensure legal and regulatory compliance or take precautions against liability;

(C) to respond to judicial process;

(D) to protect the safety or integrity of users of the site or others or the security of the site, service, or application;

(E) for a school, educational, or employment purpose requested by the student or the student's parent or legal guardian, provided that the information is not used or further disclosed for any other purpose; or

(F) to a third party if the operator contractually prohibits the third party from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information provided by the operator to subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices.

(b) This section does not prohibit an operator's use of information for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application.

#### § 2443b. OPERATOR DUTIES

An operator shall:

(1) implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information and designed to protect that covered information from unauthorized access, destruction, use, modification, or disclosure;

(2) delete, within a reasonable time period and to the extent practicable, a student's covered information if the school or school district requests deletion of covered information under the control of the school or school district, unless a student or his or her parent or legal guardian consents to the maintenance of the covered information; and

(3) publicly disclose and provide the school with material information about its collection, use, and disclosure of covered information, including publishing a term of service agreement, privacy policy, or similar document.

#### § 2443c. PERMISSIVE USE OR DISCLOSURE

An operator may use or disclose covered information of a student under the following circumstances:

(1) if other provisions of federal or State law require the operator to disclose the information and the operator complies with the requirements of federal and State law in protecting and disclosing that information;

(2) for legitimate research purposes as required by State or federal law and subject to the restrictions under applicable State and federal law or as allowed by State or federal law and under the direction of a school, school district, or the State Board of Education if the covered information is not used for advertising or to amass a profile on the student for purposes other than for PreK–12 school purposes; and

(3) disclosure to a State or local educational agency, including schools and school districts, for PreK–12 school purposes as permitted by State or federal law.

#### § 2443d. OPERATOR ACTIONS THAT ARE NOT PROHIBITED

This subchapter does not prohibit an operator from doing any of the following:

(1) using covered information to improve educational products if that information is not associated with an identified student within the operator's site, service, or application or other sites, services, or applications owned by the operator;

(2) using covered information that is not associated with an identified student to demonstrate the effectiveness of the operator's products or services, including in their marketing;

(3) sharing covered information that is not associated with an identified student for the development and improvement of educational sites, services, or applications;

(4) using recommendation engines to recommend to a student either of the following:

(A) additional content relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party; or

(B) additional services relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application

if the recommendation is not determined in whole or in part by payment or other consideration from a third party; and

(5) responding to a student's request for information or for feedback without the information or response being determined in whole or in part by payment or other consideration from a third party.

#### § 2443e. APPLICABILITY

This subchapter does not:

(1) limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or under a court order;

(2) limit the ability of an operator to use student data, including covered information, for adaptive learning or customized student learning purposes;

(3) apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications;

(4) limit service providers from providing Internet connectivity to schools or students and their families;

(5) prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to parents if the marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this subchapter;

(6) impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this subchapter on those applications or software;

(7) impose a duty upon a provider of an interactive computer service, as defined in 47 U.S.C. § 230, to review or enforce compliance with this subchapter by third-party content providers;

(8) prohibit students from downloading, exporting, transferring, saving, or maintaining their own student-created data or documents; or

(9) supersede the federal Family Educational Rights and Privacy Act or rules adopted pursuant to that Act.

§ 2443f. ENFORCEMENT

A person who violates a provision of this subchapter commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

Sec. 5. STUDENT PRIVACY; REVIEW; RECOMMENDATIONS

The Attorney General, in consultation with the Agency of Education, shall examine the issue of student data privacy as it relates to the federal Family Educational Rights and Privacy Act and access to student data by data brokers or other entities, and shall confer with parties of interest to determine any necessary recommendations.

\* \* \* Automatic Renewal Provisions \* \* \*

Sec. 6. 9 V.S.A. § 2454a is amended to read:

§ 2454a. CONSUMER CONTRACTS; AUTOMATIC RENEWAL

(a) A contract between a consumer and a seller or a lessor with an initial term of one year or longer that renews for a subsequent term that is longer than one month shall not renew automatically unless:

(1) the contract states clearly and conspicuously the terms of the automatic renewal provision in plain, unambiguous language in bold-face type; and

~~(2) in addition to accepting the contract, the consumer takes an affirmative action to opt in to the automatic renewal provision; and~~

~~(3) if the consumer opts in to the automatic renewal provision, the seller or lessor provides a written or electronic notice to the consumer:~~

(A) not less than 30 days and not more than 60 days before the earliest of:

(i) the automatic renewal date;

(ii) the termination date; or

(iii) the date by which the consumer must provide notice to cancel the contract; and

(B) that includes:

(i) the date the contract will terminate and a clear statement that the contract will renew automatically unless the consumer cancels the contract on or before the termination date; and

(ii) the length and any additional terms of the renewal period;

~~(iii) one or more methods by which the consumer can cancel the~~

~~contract; and~~

~~(iv) contact information for the seller or lessor.~~

(b) A seller or lessor under a contract subject to subsection (a) of this section shall:

(1) provide to the consumer a toll-free telephone number, electronic-mail address, a postal address if the seller or lessor directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for canceling the contract; and

(2) if the consumer accepted the contract online, permit the consumer to terminate the contract exclusively online, which may include a termination e-mail formatted and provided by the seller or lessor that the consumer can send without additional information.

(c) A person who violates a provision of subsection (a) of this section commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

~~(e)~~(d) The provisions of this section do not apply to:

(1) a contract between a consumer and a financial institution, as defined in 8 V.S.A. § 11101, or between a consumer and a credit union, as defined in 8 V.S.A. § 30101; or

(2) a contract for insurance, as defined in 8 V.S.A. § 3301a.

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

## Sec. 7. EFFECTIVE DATE

(a) This section and Secs. 1–5 of this act shall take effect on July 1, 2019.

(b) Sec. 6 of this act shall take effect on July 1, 2019 and supersedes contrary provisions of 2018 Acts and Resolves No. 179, Sec. 1.

## **S. 134**

An act relating to background investigations for State employees with access to federal tax information.

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

\* \* \* Background Investigations \* \* \*

Sec. 1. 3 V.S.A. § 241 is amended to read:

§ 241. BACKGROUND INVESTIGATIONS

\* \* \*

(b) As used in this chapter, “Recipient” means the following authorities of the Executive Branch of State government that receive FTI:

(1) Agency of Human Services, including the:

- (A) Department for Children and Families;
- (B) Department of Health;
- (C) Department of Mental Health; and
- (D) Department of Vermont Health Access.

(2) Department of Labor.

(3) Department of Motor Vehicles.

(4) Department of Taxes.

(5) Agency of Digital Services.

(6) Department of Buildings and General Services.

(c)(1) The Recipient shall conduct an initial background investigation of any individual, including a current or prospective employee, volunteer, contractor, or subcontractor, to whom the Recipient will permit access to FTI for the purpose of assessing the individual’s fitness to be permitted access to FTI.

(2) The Recipient shall, at least every 10 years, conduct a periodic background reinvestigation of any employee, volunteer, contractor, or subcontractor to whom the Recipient permits access to FTI.

(3) The impact of the results of a background investigation performed pursuant to subdivision (1) of this subsection shall be the subject of impact bargaining between the State and the collective bargaining representative for the employee’s bargaining unit to the extent required by any collective bargaining agreements between the parties.

\* \* \*

\* \* \* State Temporary and Seasonal Employees \* \* \*

Sec. 2. 3 V.S.A. § 323 is amended to read:

§ 323. DEFINITIONS

As used in this chapter, unless the context clearly requires otherwise:

\* \* \*

(2) “Bona fide emergency” means an unanticipated need for short-term staffing:

(A) to prevent significant disruption to the continued operation of State government;

(B) to avoid serious or imminent harm to the public, critical services, or other staff; or

(C) to avoid jeopardizing public safety.

(3) “Class” means one or more positions sufficiently similar in nature, scope, and accountability that the same title, test of fitness, and schedule of compensation may be applied to each position.

(3)(4) “Job evaluation” means the systematic method used to determine the value of each job in relation to other jobs within the State service.

(5) “Seasonal employment” means employment in a temporary position with a specific start date and anticipated end date for a period of not more than seven months in any 12-month period or employment in a temporary position with a specific start date and anticipated end date for a period of more than seven months that has been approved by the Commissioner of Human Resources pursuant to subdivision 331(c)(3) of this chapter. Seasonal employment includes employment in temporary positions that are available on a reoccurring basis from year to year.

Sec. 3. 3 V.S.A. § 331 is amended as follows:

#### § 331. TEMPORARY EMPLOYEES

(a) The State shall not employ any person in a temporary capacity except in accordance with the provisions of this section.

(b)(1) On request of the appointing authority, the Commissioner of Human Resources may approve, in writing, the creation of a temporary position and the hiring of a person to fill such temporary position only if the position and person are needed:

(A) to meet a seasonal employment need of State government;

(B) to respond to a bona fide emergency;

(C) to fill in for the temporary absence of an existing employee, or a vacancy in an existing position; or

(D) to perform a governmental function that requires only intermittent, sporadic, or ongoing employment ~~that averages less than 20 hours per week during any one calendar year~~, provided that such employment does not exceed 1,280 work hours in any one calendar year.

\* \* \*

(c)(1) The Commissioner may authorize the continued employment of a person in a temporary capacity for more than 1,280 work hours in any one calendar year if the Commissioner determines, in writing, that a bona fide emergency exists for the appointing authority that requires such continued employment. Authorization of temporary employment for more than 1,280 work hours in a calendar year shall not be required for seasonal employment, as that term is defined pursuant to section 323 of this chapter. Annually, on or before January 15, the Commissioner shall submit a report to the House Committee on General, Housing, and Military Affairs and the House and Senate Committees on Government Operations:

\* \* \*

(2) It shall be the responsibility of the head of each department to provide to the Department of Human Resources a detailed justification for each waiver to exceed the 1,280-work-hour limit within his or her department and such other information as may be required in order to enable that department to carry out its responsibility under this section.

(3) The Commissioner may authorize seasonal employment in a specific position for a period of between seven and 12 months if the Commissioner determines, in writing, that the nature and duties of the position require the employment of a person for a period of more than seven months in a 12-month period. The Commissioner shall not authorize seasonal employment for a period of more than seven months in a 12-month period if the authorization is intended to circumvent, or has the effect of circumventing, the policies and purposes of the classified service under this chapter. Annually, on or before January 15, the Commissioner shall submit a report to the House and Senate Committees on Government Operations regarding:

(A) the total number of positions in seasonal employment that have been authorized for a period of between seven and 12 months during the prior calendar year;

(B) the agency or department that each position identified in subdivision (A) of this subdivision (c)(3) is assigned to; and

(C) the period of time that each identified position is authorized for.

(d) The Commissioner may transfer and convert existing, vacant positions in the Executive Branch of State government to replace the temporary positions of long-term temporary employees who are performing ongoing and continuing functions of State government ~~for more than an average of 20 hours per week during any one calendar year or~~ for more than 1,280 work hours in any one calendar year.



\* \* \*

(f) An individual employed in a temporary or seasonal capacity shall be entitled to the whistleblower protections, rights, and remedies provided to State employees pursuant to sections 971–978 of this title.

#### Sec. 4. STATE TEMPORARY AND SEASONAL EMPLOYEES; REPORT

On or before January 15, 2020, the Secretary of Administration shall submit a written report to the House and Senate Committees on Appropriations and on Government Operations regarding:

(1) the number of temporary employees, not including individuals working in seasonal employment as defined pursuant to 3 V.S.A. § 323(5), who, during the prior calendar year, were employed by each agency and department in a temporary capacity pursuant to 3 V.S.A. § 331;

(2) the number of temporary positions in each agency or department identified pursuant to subdivision (1) of this section that are performing ongoing and continuing functions of State government for which a permanent classified position would better meet the needs of the State;

(3) the number of temporary positions during the prior calendar year, organized by agency and department, not including individuals working in seasonal employment as defined pursuant to 3 V.S.A. § 323(5), in which one or more individuals have been employed for a combined total of more than 1,280 hours per year for a period of two years;

(4) the projected cost and the potential impact of replacing the temporary positions identified in subdivision (3) of this section with permanent, classified positions on the relevant department or agency's efficiency and ability to fulfill its mission and duties; and

(5) the number of individuals working in seasonal employment as defined pursuant to 3 V.S.A. § 323(5) during the prior calendar year organized by agency and department, including the start and end date for each position and the total number of hours worked by the individual employed in each position.

#### Sec. 5. CREATION OF NEW CORRECTIONAL OFFICER POSITIONS

On or before June 30, 2020, the Secretary of Administration shall create 30 new Correctional Officer I positions in the Department of Corrections, which shall be funded within existing departmental appropriations.

Sec. 6. 4 V.S.A. § 40 is added to read:

§ 40. REPORT ON TEMPORARY EMPLOYEES

Annually, on or before January 15, the State Court Administrator shall submit a report to the House Committee on General, Housing, and Military Affairs and the House and Senate Committees on Government Operations identifying for each of the two prior calendar years:

(1) the total number of individuals employed by the Judiciary Department on a temporary basis who have worked in excess of 1,280 hours in the prior calendar year, excluding employees identified in 3 V.S.A. § 1011(7), (8)(A)–(D), (8)(F)–(G), and (8)(I)–(K);

(2) the total number of temporary positions in which one or more individuals have been employed for a combined total of more than 1,280 hours, excluding positions filled by employees identified in 3 V.S.A. § 1011(7), (8)(A)–(D), (8)(F)–(G), and (8)(I)–(K);

(3) the total number of hours worked by each temporary employee identified pursuant to subdivision (1) of this subsection; and

(4) the total number of years during which each temporary employee identified pursuant to subdivision (1) of this subsection has worked for the Judiciary Department.

\* \* \* Expansion and Codification of Position Pilot Program\* \* \*

Sec. 7. 2014 Acts and Resolves No. 179, Sec. E.100(d), as amended by 2015 Acts and Resolves No. 4, Sec. 74, by 2016 Acts and Resolves No.172, Sec. E.100.2, 2017 Acts and Resolves No. 85, Sec. E.100.1, and by 2018 (Sp. Sess.) Acts and Resolves No. 11, Sec. E.100.1 is further amended to read:

(d) Position Pilot Program. A Position Pilot is hereby created to assist participating departments in more effectively managing costs of overtime, compensatory time, temporary employees, and contractual work by removing the position cap with the goal of maximizing resources to the greatest benefit of Vermont taxpayers.

\* \* \*

(7) This Pilot shall sunset on July 1, 2020, ~~unless extended or modified by the General Assembly July 2, 2019.~~

\* \* \*

Sec. 8. 3 V.S.A. § 328 is added to read:

§ 328. CREATION OF NEW POSITIONS

(a) Intent. It is the intent of the General Assembly to maximize the resources of the State to the greatest benefit of Vermont taxpayers by eliminating the cap on the total number of authorized State positions in the Department of State's Attorneys and Sheriffs, the Vermont Veterans Home, and the State agencies and departments under the Office of Governor to allow those agencies and departments to more effectively manage costs of overtime, compensatory time, temporary employees, and contractual work by permitting the creation of new positions pursuant to the provisions of subsection (b) of this section.

(b) Creation of positions.

(1) On request of an appointing authority, the Secretary of Administration may approve, in writing, the creation of a new permanent position in the Department of State's Attorneys and Sheriffs, the Vermont Veterans Home, and the State agencies and departments under the Office of Governor in order to address a specific need identified by the appointing authority.

(2) The Secretary of Administration may only approve the creation of a new position pursuant to subdivision (1) of this subsection if the creation of the requested permanent position is anticipated to be more cost-effective than meeting the identified need with existing departmental resources, including through the use of overtime or compensatory time for existing State employees.

(3) Any new position created pursuant to this subsection shall be funded within existing departmental appropriations and shall not be transferrable outside the agency or department in which it is created.

(c) Reporting requirements.

(1) No later than 15 days before a position created pursuant to subsection (b) of this section will be established, the Secretary of Administration, in consultation with the Commissioner of Human Resources and the appointing authority, shall submit to the Joint Fiscal Committee, the Government Accountability Committee, and the House and Senate Committees on Government Operations a written report identifying the position to be created, the reason for the creation of the position, the method used to evaluate the cost-effectiveness of creating the position, and the expected short- and long-term impact of creating the position on the agency or department's budget.

(2) Annually, as part of its budget presentation, an agency or department in which, during the prior fiscal year, one or more new positions was created pursuant to this section shall report on the number and type of positions created, the source of funds used to support each position created, the performance and cost outcomes associated with each position created, and whether the projected budgetary outcomes identified pursuant to subdivision (1) of this subsection have been realized.

#### Sec. 9. AUTHORIZATION FOR CREATION OF NEW POSITIONS

Notwithstanding any provision of law enacted during the 2019 legislative session to the contrary, the Department of State's Attorneys and Sheriffs, the Vermont Veterans Home, and the State agencies and departments under the Office of Governor may create new positions in conformance with the provisions of 3 V.S.A. § 328.

\* \* \* Repeal of Report on Temporary Employees \* \* \*

Sec. 10. 3 V.S.A. § 331 is amended to read:

#### § 331. TEMPORARY EMPLOYEES

\* \* \*

(c)(1) The Commissioner may authorize the continued employment of a person in a temporary capacity for more than 1,280 hours in any one calendar year if the Commissioner determines, in writing, that a bona fide emergency exists for the appointing authority that requires such continued employment. ~~Annually, on or before January 15, the Commissioner shall submit a report to the House Committee on General, Housing, and Military Affairs and the House and Senate Committees on Government Operations:~~

~~(A) identifying the total number of temporary employees who have worked:~~

~~(i) 1,280 hours in the prior calendar year; or~~

~~(ii) in excess of 1,280 hours in the prior calendar year;~~

~~(B) identifying the agency or department that is assigned the temporary position;~~

~~(C) identifying the total number of hours worked by each temporary employee; and~~

~~(D) including a statement:~~

~~(i) recommending the conversion of the position to a permanent classified position; or~~

~~(ii) stating the reasons why the temporary position should be continued.~~

\* \* \*

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

#### Sec. 11. EFFECTIVE DATES

(a) Secs. 7, 8, and 9 shall take effect on July 2, 2019.

(b) Sec. 10 shall take effect on July 1, 2024.

(c) This section and the remaining sections of this act shall take effect on July 1, 2019.

#### CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission shall be fully and separately acted upon.

Lindsay H. Kurrle of Middlesex – Commissioner, Department of Labor – By Sen. Clarkson for the Committee on Economic Development, Housing and General Affairs. (5/1/19)

Kenneth A. Schatz of South Burlington – Commissioner, Department for Children and Families – By Sen. Ingram for the Committee on Health and Welfare. (5/3/19)

Joan Nagy of Cambridge – Member, Human Rights Commission – By Sen. Benning for the Committee on Judiciary. (5/14/19)