

Senate Calendar

THURSDAY, FEBRUARY 13, 2020

SENATE CONVENES AT: 1:00 P.M.

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ACTION CALENDAR

UNFINISHED BUSINESS OF TUESDAY, JANUARY 7, 2020

GOVERNOR'S VETOES

S. 37.

An act relating to medical monitoring.

Pending question (to be voted by call of the roll): Shall the bill pass, notwithstanding the Governor's refusal to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

(For text of veto message, see Senate Calendar for January 7, 2020, page 1.)

S. 169.

An act relating to firearms procedures.

Pending question (to be voted by call of the roll): Shall the bill pass, notwithstanding the Governor's refusal to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

(For text of veto message, see Senate Calendar for January 7, 2020, page 9.)

UNFINISHED BUSINESS OF TUESDAY, FEBRUARY 11, 2020

Committee Bill for Second Reading

Favorable with Recommendation of Amendment

S. 335.

An act relating to universal access to afterschool programs.

By the Committee on Education. (Senator Baruth for the Committee.)

Reported favorably with recommendation of amendment by Senator McCormack for the Committee on Appropriations.

The Committee recommends that the bill be amended as follows:

In Sec. 2 (Task Force for Universal Afterschool Access) by striking out subsections (g) and (h) in their entirety and inserting in lieu thereof the following:

(g) 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 six meetings. The Legislative Branch shall administer reimbursement for legislative members of the Task Force.

(2) Members of the Task Force who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than six meetings. The Agency of Human Services shall administer reimbursement for the Task Force members specified in this subdivision from funds available from the appropriation made in 2018 (Special Session) Acts and Resolves No. 11, Sec. C.106.2, specifically from the funds allocated for afterschool programing in the spending plan for this appropriation adopted by the Joint Fiscal Committee at its July 27, 2018 meeting.

(Committee vote: 6-0-1)

NEW BUSINESS

GOVERNOR'S VETO

S. 23.

An act relating to increasing the minimum wage.

Pending Question (to be voted by call of the roll): Shall the bill pass, notwithstanding the Governor's refusal to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

Text of Communication from Governor

The text of the communication to the Senate from His Excellency, the Governor, whereby he vetoed and returned unsigned **Senate Bill No. 23** to the Senate is as follows:

“February 10, 2020

The Honorable John Bloomer, Jr.
Secretary of the Senate
115 State House
Montpelier, VT 05633-5401

Dear Mr. Bloomer:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning S.23, *An act relating to increasing the minimum wage*, without my signature because of my objections described herein:

It's critical to recognize that we share the goal of Vermonters making more money. I also believe Vermonters should keep more of what they earn, which is why I can't support policies that increase the costs of living.

My objection to a mandated increase to the minimum wage is based on three primary concerns:

1. Fiscal analysis projects job losses, decreases to employee hours, and increased costs of goods and services, which will offset the intended positive benefits for workers;
2. These harmful impacts will be felt more significantly in rural parts of the state, worsening economic inequity between counties; and
3. There will be an overall negative impact on economic growth.

These concerns are reinforced by data and analysis from regions where mandated increases have taken effect, and – importantly – by the Vermont Legislature's Joint Fiscal Office, which predicted, if implemented, this bill could cause job losses, reduced hours, and higher prices.

Based on our own experience with mandated minimum wage increases in recent years, Vermont data shows that increases to hourly rates do not guarantee an increase to weekly or annual earnings for Vermont workers.

The Legislature's economist, Tom Kavet, also reported a mandated increase would have a more harmful economic impact in our more rural regions.

From workforce declines to overall economic recovery – or lack thereof – most of the state has simply not kept pace with Northwestern Vermont, particularly Chittenden County. A statewide mandated wage increase would exacerbate this regional economic inequity.

For example, a local mom and pop store in Monkton, Albany or Richford, already struggling to stay open, is far less able to absorb an increase than a retailer with a higher volume of sales in the Burlington area. That means workers in these areas are more likely to be impacted by the predicted job losses or reduced hours, and small, locally owned businesses will feel an even greater burden. We must ask ourselves what our struggling communities might look like with more empty storefronts.

Even New York recognized its own regional inequity when raising the minimum wage, carving out four discrete regions, which account for the different economic circumstances in different parts of the state. We must recognize we have two Vermonts with distinct economies.

Finally, I'm concerned with the overall economic impact to the state. The Legislature's JFO predicts a negative economic impact, specifically through a slight reduction in Vermont's Gross Domestic Product.

Vermont has one of the highest minimum wage rates in the country – which already increases annually – and yet employers across the state struggle to fill positions. If the minimum wage was directly correlated to economic prosperity and workforce growth, Vermont would have a stronger economy and a larger workforce than New Hampshire.

Despite S.23's good intentions, the reality is there are too many unintended consequences and we cannot grow the economy or make Vermont more affordable by arbitrarily forcing wage increases. I believe this legislation would end up hurting the very people it aims to help.

Based on the outstanding objections outlined above, I cannot support this legislation and must return it without my signature pursuant to Chapter II, Section 11 of the Vermont Constitution.

Sincerely,
/s/Philip B. Scott
Governor

PBS/kp”

Text of Bill as Passed By Senate and House

The text of the bill as passed by the Senate and House of Representatives is as follows:

S.23 An act relating to increasing the minimum wage

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. § 384(a) is amended to read:

(a)(1) An employer shall not employ any employee at a rate of less than ~~\$9.15. Beginning on January 1, 2016, an employer shall not employ any employee at a rate of less than \$9.60. Beginning on January 1, 2017, an employer shall not employ any employee at a rate of less than \$10.00. Beginning on January 1, 2018, an employer shall not employ any employee at a rate of less than \$10.50, and beginning \$10.96. Beginning on January 1, 2019~~ January 1, 2021, an employer shall not employ any employee at a rate of less than \$11.75. Beginning on January 1, 2022, an employer shall not employ any employee at a rate of less than \$12.55, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally

adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage be decreased. The minimum wage shall be rounded off to the nearest \$0.01.

(2) An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a service or tipped employee at a basic wage rate less than one-half the minimum wage. As used in this subsection, “a service or tipped employee” means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than \$120.00 per month in tips for direct and personal customer service.

(3) If the minimum wage rate established by the U.S. government is greater than the rate established for Vermont for any year, the minimum wage rate for that year shall be the rate established by the U.S. government.

Sec. 2. TIPPED AND STUDENT MINIMUM WAGE STUDY; REPORT

On or before January 15, 2021, the Office of Legislative Council and the Joint Fiscal Office 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 effects of altering or eliminating the basic wage rate for tipped employees in Vermont and of eliminating the subminimum wage for secondary school students during the school year. In particular, the report shall:

(1) for states that have eliminated their tipped minimum wage, examine available research and information regarding the impact on:

(A) jobs, prices, and the state economy; and

(B) the welfare of tipped workers, women, and working families with children;

(2) for states that have increased their tipped wage during the last 10 years, examine available research and information regarding the impact on:

(A) jobs, prices, and the state economy; and

(B) the welfare of tipped workers, women, and working families with children;

(3) for states that have decoupled their tipped wage from the standard minimum wage during the last 10 years, examine available research and information regarding the impact on:

(A) jobs, prices, and the state economy; and

(B) the welfare of tipped workers, women, and working families with children;

(4) examine any available research and information regarding the projected impact in Vermont of altering or eliminating the basic wage rate for tipped employees on:

(A) jobs, prices, and the State economy; and

(B) the welfare of tipped workers, women, and working families with children;

(5) for states that have eliminated a subminimum wage for secondary school students, examine available research and information regarding the impact on:

(A) jobs, prices, and the state economy; and

(B) the welfare of individuals under 22 years of age; and

(6) for Vermont, examine available research and information regarding the projected impact in Vermont of eliminating the subminimum wage for secondary school students on:

(A) jobs, prices, and the State economy; and

(B) the welfare of individuals under 22 years of age.

Sec. 3. WAGE AND HOUR LAWS FOR AGRICULTURAL WORKERS; REPORT

On or before January 15, 2021, the Office of Legislative Council 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 wage and hour laws for agricultural workers. In particular, the report shall:

(1) examine the overlapping legal requirements of Vermont's wage and hour laws, the federal Fair Labor Standards Act, and other federal employment laws with respect to agricultural employees and employers; and

(2) summarize how other states' wage and hour laws address agricultural employees and employers.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2020.

Third Reading

S. 128.

An act relating to physician assistant licensure.

H. 83.

An act relating to female genital cutting.

NOTICE CALENDAR

Second Reading

Favorable with Recommendation of Amendment

S. 153.

An act relating to creating the Vermont 250th Commission.

Reported favorably with recommendation of amendment by Senator Pollina for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. VERMONT 250TH COMMISSION

(a) Creation. There is created the Vermont 250th Commission.

(b) Membership. The Commission shall be composed of the following members:

(1) one person from each of the counties of Addison, Bennington, Chittenden, Rutland, Windham, and Windsor, appointed by the Governor from a name or names that each county's legislative delegation shall submit;

(2) one member of the Senate, not from any of the counties listed in subdivision (b)(1) of this section, appointed by the Committee on Committees;

(3) one member of the House, not from any of the counties listed in subdivision (b)(1) of this section, appointed by the Speaker of the House;

(4) the Executive Director of the Vermont Historical Society or designee;

(5) the State Curator or designee;

(6) the State Historic Preservation Officer or designee;

(7) one person, appointed by the Vermont Commission on Native American Affairs;

(8) one person who is the author of published Vermont history books, appointed by the Governor; and

(9) one person, appointed by the Governor.

(c) Powers and duties. The Commission shall plan and sponsor events in advance of and in commemoration of the 250th anniversary of the State of Vermont and that also look to the future of the State. The Commission shall coordinate with the Agency of Education, the Agency of Agriculture, Food and Markets, the Department of Tourism and Marketing, and with other State agencies and departments; with federal agencies and departments; with the municipalities of the State; and with national and local public and private sector organizations in this and other states for assistance and support in planning and conducting commemorative semiquincentennial activities.

(d) Meetings

(1) The Historic Preservation Officer or designee shall call the first meeting of the Commission to occur on or before September 1, 2020.

(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) A member attending remotely shall count toward the quorum and cast a vote.

(5) The Commission shall not be limited to a specific number of meetings. However, it shall not incur expenses in excess of its appropriated funds.

(6) The Commission shall cease to exist on December 31, 2027.

(e) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Commission 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. These payments shall be made from monies appropriated to the Commission.

(2) Other members of the Commission shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010. These payments shall be made from monies appropriated to the Commission.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

Reported favorably with recommendation of amendment by Senator McCormack for the Committee on Appropriations.

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

By adding a Sec. 1a. to read as follows:

Sec. 1a. APPROPRIATION

The sum of \$25,000.00 is appropriated to the Agency of Administration for the Vermont 250th Commission from the General Fund in fiscal year 2020 for reimbursement of expenses for members of the Commission and for miscellaneous administrative costs the Commission may incur.

(Committee vote: 7-0-0)

S. 332.

An act relating to regulating student loan servicers.

Reported favorably with recommendation of amendment by Senator Balint for the Committee on Finance.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 2102 is amended to read:

§ 2102. APPLICATION FOR LICENSE

* * *

(b) At the time of making an application, the applicant shall pay to the Commissioner a fee for investigating the application and a license or registration fee for a period terminating on the last day of the current calendar year. The following fees are imposed on applicants:

* * *

(13) For an application for a loan servicer license under chapter 85 of this title, \$1,000.00 as a license fee and \$1,000.00 as an application and investigation fee.

(14) For an application for a student loan servicer licensure under chapter 86 of this title, \$1,000.00 as a license fee and \$500.00 as an application and investigation fee.

* * *

Sec. 2. 8 V.S.A. § 2109(a) is amended to read:

(a) On or before December 1 of each year, every licensee shall renew its license or registration for the next succeeding calendar year and shall pay to the Commissioner the applicable renewal of license or registration fee. At a minimum, the licensee or registree shall continue to meet the applicable standards for licensure or registration. At the same time, the licensee or registree shall maintain with the Commissioner any required bond in the amount and of the character as required by the applicable chapter. The annual license or registration renewal fee shall be:

* * *

(13) For a loan servicer license under chapter 85 of this title, ~~\$1,000.00~~ \$1,000.00.

(14) For a student loan servicer license under chapter 86 of this title, \$1,000.00.

Sec. 3. 8 V.S.A. chapter 86 is added to read:

CHAPTER 86. STUDENT LOAN SERVICERS

§ 3001. DEFINITIONS

As used in this chapter:

(1) "Borrower" means:

(A) a resident of this State who has agreed to pay, or shares legal responsibility to pay, a student loan; or

(B) a person who shares legal responsibility to repay a student loan with a person described in subdivision (1)(A) of this section.

(2) "Credit reporting agency" has the same meaning as in 9 V.S.A. § 2480a.

(3) "Federal student loan" means a loan made, guaranteed, or insured under Title IV of the federal Higher Education Act of 1965, as amended.

(4) "Federal student loan agreement" means, with respect to a federal student loan, each of the credit agreement and the promissory note for the federal student loan, or any similar agreement or instrument governing the terms and conditions of the federal student loan, to the extent that the form of

any note, agreement, or instrument is required by, or has been approved by, the U.S. Department of Education.

(5) “Servicing” means:

(A)(i) receiving payments, or notification of payments, on a student loan from a borrower; and

(ii) applying payments to the borrower’s account pursuant to the terms of a student loan or of a contract governing the servicing of the student loan;

(B) maintaining account records for a student loan that a borrower has agreed to pay or shares legal responsibility to repay;

(C) communicating with a borrower regarding a student loan on behalf of an owner or holder of the student loan; or

(D) interacting with a borrower, including to help prevent default on obligations arising from a student loan, to facilitate the activities described in this subdivision (5).

(6)(A) “Student loan” means a loan primarily for the purpose of financing a postsecondary education or the costs of attending a postsecondary institution, including a student’s tuition, fees, books, supplies, room and board, living expenses, transportation, and other personal expenses.

(B) “Student loan” includes a loan made to refinance a student loan described in subdivision (6)(A) of this section or to consolidate such a loan with another loan.

(C) “Student loan” does not include a loan under an open-end credit plan, as defined in Regulation Z, 12 C.F.R. § 1026.2, or a loan that is secured by real property, regardless of the purpose for the loan.

(7) “Student loan servicer” means a person, regardless of location, that engages in servicing or is responsible for servicing a student loan.

§ 3002. EXCLUSIONS

(a) This chapter does not apply to:

(1) a depository institution, as defined in section 2101 of this title, or a wholly-owned subsidiary of a depository institution;

(2) a public postsecondary institution or a private nonprofit postsecondary institution servicing a student loan it extended to the borrower;

(3) the Vermont Student Assistance Corporation or any agency, department, or instrumentality of this State; or

(4) the United States or any department, agency, or instrumentality thereof, provided that this chapter does apply to a nongovernmental person that performs student loan servicing pursuant to a contract with the United States or any department, agency, or instrumentality thereof.

§ 3003. STUDENT LOAN OMBUDSPERSON

(a) The Commissioner shall designate and support a student loan ombudsperson to provide assistance and education to borrowers.

(b) The student loan ombudsperson, in consultation with the Commissioner, may:

(1) receive, review, and attempt to resolve complaints from borrowers, including in collaboration with postsecondary institutions, student loan servicers, and any other participants in student loan lending, including originators servicing their own student loans;

(2) compile and analyze data on borrower complaints;

(3) assist borrowers in understanding their rights and responsibilities under the terms of their student loans;

(4) provide information to the public, State agencies, members of the General Assembly, and others regarding the problems and concerns of borrowers and make recommendations for resolving those problems and concerns;

(5) disseminate information concerning the availability of the student loan ombudsperson to assist borrowers and potential borrowers, postsecondary institutions, student loan servicers, and any other participants in student loan lending with concerns regarding servicing; and

(6) take any other actions necessary or reasonably related to the actions authorized in this subsection.

§ 3004. LICENSE REQUIRED

A person shall not act as a student loan servicer without first obtaining a student loan servicing license from the Commissioner pursuant to the application procedures set forth in section 2102 of this title.

§ 3005. EXEMPTION FROM APPLICATION PROCEDURES; AUTOMATIC LICENSURE

(a)(1) A person seeking to act within this State as a student loan servicer is exempt from the application procedures described in subsections 2102(a) and 2102(c)–(h) of this title, if and to the extent that the Commissioner determines

that the servicing performed is conducted pursuant to a contract awarded to the person by the U.S. Secretary of Education.

(2) The Commissioner shall prescribe the procedure to document eligibility for an exemption pursuant to this subsection.

(b) With regard to a person who the Commissioner determines is exempt under subsection (a) of this section, the Commissioner shall automatically:

(A) issue a student loan servicing license to the person upon payment of the fees required in subdivision 2102(b)(14) of this title; and

(B) renew the license upon payment of the fees required in subdivision 2109(a)(14) of this title.

(c) A person holding a student loan servicing license issued by the Commissioner under subsection (b) of this section shall not engage in any servicing other than servicing conducted pursuant to a contract awarded to the person by the U.S. Secretary of Education unless:

(1) the person has completed the application procedures described in subsections 2102(a) and 2102(c)–(h) of this title;

(2) the Commissioner has determined that the person meets the requirements of section 2103 of this title.

(d) A person holding a student loan servicing license issued by the Commissioner under subsection (b) of this section:

(1) may act as a student loan servicer until the contract awarded by the U.S. Secretary of Education expires or is terminated or revoked;

(2) shall provide written notice to the Commissioner not later than seven days after receiving notice of the expiration, revocation, or termination of the contract;

(3) subject to providing timely notice to the Commissioner, may continue to act as a student loan servicer until 30 days after the effective date of the expiration, revocation, or termination of the contract; and

(4) shall not further engage in servicing after the 30-day period expires unless the person obtains a license pursuant to section 3004 of this title.

(e) With respect to student loan servicing not conducted pursuant to a contract awarded by the U.S. Secretary of Education, this section does not prevent the Commissioner from issuing an order to temporarily or permanently prohibit any person holding a license issued by the Commissioner under subsection (b) of this section from engaging in such servicing.

(f) Nothing in this section shall prevent the Commissioner from issuing a cease and desist order or obtaining an injunction against any student loan servicer to cease activities in violation of this chapter or 9 V.S.A. § 2453(a).

§ 3006. APPLICATION FOR LICENSE; ADDITIONAL INFORMATION

In addition to the information required by section 2102 of this title, a person who applies for a student loan servicer license pursuant to section 3004 of this title shall provide in its application a current schedule of the ranges and categories of the fees it charges to borrowers for servicing.

§ 3007. DUTIES OF STUDENT LOAN SERVICERS

Except as otherwise provided in federal law, a federal student loan agreement, or a contract between the federal government and a student loan servicer:

(1) At the time a student loan servicer obtains the right to service a student loan, the servicer shall disclose in a conspicuous written notice to the borrower:

(A) a current schedule of the ranges and categories of the fees it charges to borrowers for servicing;

(B) that the servicer is licensed by the Commissioner; and

(C) that the borrower may submit complaints about the servicer to the Commissioner.

(2) Upon receiving a written inquiry from a borrower, or his or her authorized representative, or the student loan ombudsperson concerning the borrower's account, a student loan servicer shall:

(A) within 10 days, acknowledge receipt of the written inquiry; and

(B) within 30 days, provide information relating to the inquiry and, if applicable, the action the servicer will take to correct the account or an explanation for its determination that the borrower's account is correct.

(3) A student loan servicer shall respond within 15 days to a communication, other than an inquiry described in subsection 2(A), from the student loan ombudsperson or within a shorter reasonable time as the student loan ombudsperson requests in his or her communication.

(4) If a borrower makes a payment that exceeds the monthly amount due on the borrower's account, a student loan servicer shall request instruction on how to apply the overpayment to the loan and shall follow the instruction for future overpayments until the borrower provides different instructions.

(5)(A) If a borrower makes a payment that is less than the monthly amount due on the borrower's account, a student loan servicer shall apply the partial payment in a manner that minimizes late fees and negative credit reporting.

(B) If a borrower has multiple loans on his or her account that are equally delinquent, a student loan servicer shall apply partial payments to satisfy as many individual loan payments on the account as possible.

(6) A student loan servicer shall notify a borrower of the occurrence, nature, and extent of a delinquency or default not later than 30 days after it occurs.

(7) If a sale, assignment, or other transfer of the servicing of a student loan results in a change in the identity of the person to whom a borrower is required to send payments or direct any communication concerning the student loan:

(A)(i) As a condition of the sale, assignment, or transfer, a student loan servicer shall require the new student loan servicer to honor all benefits originally represented as available to the borrower, upon the same terms and conditions, during the repayment of the student loan and preserve the availability of the benefits, including any benefits for which the borrower has not yet qualified; or

(ii) if the student loan servicer is not also the owner or holder of the student loan, or is not acting on behalf of the owner or holder, the student loan servicer shall provide the information necessary for the new servicer to identify and honor all benefits originally represented as available to the borrower, upon the same terms and conditions, during the repayment of the student loan and preserve the availability of the benefits, including any benefits for which the borrower has not yet qualified.

(B)(i) Not later than 45 days after the sale, assignment, or transfer, the student loan servicer shall transfer to the new servicer all records concerning the borrower, the borrower's account, and the borrower's student loan, including records concerning the borrower's repayment status and any benefits associated with the student loan of the borrower.

(ii) A student loan servicer shall adopt policies and procedures to verify that it has received the records described in this subdivision (B).

(C) Not later than seven days before the next payment on the loan is due, the parties shall provide notice of the sale, assignment, or transfer to the borrower, which shall include:

(i) the identity and contact information of the new student loan servicer;

(ii) the effective date of the sale, assignment, or transfer; and

(iii) the date on which the current student loan servicer will no longer accept payments.

(D) The new student loan servicer shall honor all benefits previously represented as available to the borrower, upon the same terms and conditions, during the repayment of the student loan and preserve the availability of such benefits, including any benefits for which the borrower has not yet qualified.

(8) Upon request of the Commissioner, a student loan servicer shall provide a report to the Commissioner concerning its activity in this State that includes:

(A) the number of student loans and borrowers whose student loans the servicer is servicing;

(B) the type and characteristics of the student loans the servicer is servicing;

(C) the number of student loans in default and the number of borrowers with student loans in default, including a breakdown of the borrowers and student loans with 30-, 60-, and 90-day delinquencies;

(D) information concerning the servicer's loss mitigation activities, including the details of the servicer's workout arrangements, if applicable; and

(E) other information the Commissioner requests.

(9) A student loan servicer shall properly evaluate whether a borrower is eligible for an income-based repayment plan, loan forgiveness program, or other student loan repayment plan or program before placing the borrower in forbearance or default.

(10) A student loan servicer shall safeguard and account for any money handled for a borrower and act with reasonable skill, care, and diligence.

§ 3008. PROHIBITED PRACTICES

A student loan servicer shall not:

(1) defraud, mislead, harass, or intimidate a borrower;

(2) employ, directly or indirectly, any scheme, device, or artifice to defraud or mislead a borrower;

(3) communicate with a borrower in any manner designed to harass or intimidate the borrower;

(4) misstate any material fact, or misrepresent or omit a material fact necessary in order to make any statements made not misleading, concerning a student loan or servicing, including the amount, nature, or terms of a fee or payment due, the terms or conditions of a loan agreement, a borrower's payment history, or a borrower's obligations;

(5) misapply or recklessly apply payments to the outstanding balance of a student loan;

(6) refuse to communicate with an authorized representative of a borrower who provides written proof of authority signed by the borrower, provided that a student loan servicer may adopt reasonable procedures to verify whether a person is authorized to act on behalf of a borrower;

(7) make a false statement, or misrepresent or omit a material fact necessary in order to make any statements made not misleading, concerning information or reports filed with a State or federal agency, or an investigation or examination conducted by the Commissioner, another state agency, or a federal agency; or

(8) violate an applicable federal law or regulation, including the federal Consumer Credit Protection Act, 15 U.S.C. chapter 41 and the Fair Credit Reporting Act, 15 U.S.C. §§ 1681–1681x.

Sec. 4. 16 V.S.A. § 2821 is amended to read:

§ 2821. STUDENT ASSISTANCE CORPORATION; PURPOSE

* * *

(c) Notwithstanding any general or special law to the contrary, the provisions of 8 V.S.A. ~~chapter 73~~ chapters 73 and 86 shall not apply to the Corporation or to any loan heretofore or hereafter made or serviced by the Corporation in accordance with this title.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2020.

(Committee vote: 7-0-0)

House Proposal of Amendment to Senate Proposal of Amendment

H. 760

An act relating to fiscal year 2020 budget adjustments

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

First: In the First proposal of amendment, by striking out Sec. 34 in its entirety and inserting in lieu thereof a new Sec. 34 to read as follows:

Sec. 34. 2019 Acts and Resolves No. 72, Sec. B.346 is amended to read:

Sec. B.346 Total human services

Source of funds

General fund	997,706,686	1,007,088,907
Special funds	123,880,549	123,986,513
Tobacco fund	23,088,208	23,088,208
State health care resources fund	16,915,501	21,101,110
Federal funds	1,420,544,308	1,424,376,911
Global Commitment fund	1,590,055,367	1,593,280,128
Internal service funds	2,035,610	2,035,610
Interdepartmental transfers	39,446,402	36,346,190
Permanent trust funds	<u>25,000</u>	<u>25,000</u>
Total	4,213,697,631	4,231,328,577

Second: By striking out the Third proposal of amendment in its entirety

Third: By striking out the Sixth proposal of amendment in its entirety and inserting in lieu thereof a new Sixth proposal of amendment to read as follows:

Sixth: By striking out Sec. 70 in its entirety and inserting three new sections to be numbered Secs. 70, 70a and 71 to read as follows:

Sec. 70. 2019 Acts and Resolves No. 58, Sec. 5, is amended to read:

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.~~

(a) The establishment of the following permanent classified positions is authorized in fiscal year 2020:

(1) In the Department of Corrections – thirty (30) Correctional Officer I.

(b) The Agency of Human Services and the Department of Corrections shall report to the Legislative Joint Justice Oversight and Joint Fiscal Committees at their respective meetings in November 2020 on the status of correctional facility staff recruitment, retention and reduction in the use of overtime, and the status of initial and ongoing training for correctional facility staff. The Department shall also report on the transfer and conversion on any positions within the department and into or out of the department.

Sec. 70a. DEPARTMENT OF CORRECTIONS; GRADUATED
SANCTIONS; REENTRY HOUSING; REPORT

(a) On or before April 1, 2020 the Department of Corrections shall report on how to strengthen existing graduated sanctions and incentives policies to ensure they reflect current research on best practices for responses to violation behavior that most effectively achieve behavior change and uphold public safety. The Department shall also identify reentry housing needs for corrections populations. As a part of this work, the Department shall report on how to:

(1) formalize the use of incentives and sanctions in supervision practices at a 4:1 ratio and require incentives to be entered and tracked in the community supervision case management system;

(2) analyze how supervision staff currently understand, implement, and input data regarding the Department's graduated sanctions policy to identify where practices differ across the State and, where necessary, provide additional staff training on the use and tracking of graduated sanctions;

(3) develop and implement a homeless screening tool for use when a person is booked into or released from Department facilities and track reports of homelessness among corrections populations in the Department's case management system;

(4) identify and quantify high utilizers of corrections, homeless, and behavioral health services; inform statewide permanent supportive housing planning; and establish data match partnerships with appropriate Agency of Human Services departments to match Department of Corrections, Homeless Management Information System (HMIS), and Medicaid information;

(5) establish a collaborative approach for the Department, the Department of Mental Health, and the Vermont Department of Health to contract with housing providers to coordinate responses for shared clients and identify how the State can better leverage local and federal housing vouchers;

(6) leverage federal Medicaid funding or other funding to allow the Department's contractors' clients to stay in supportive housing after they are no longer under the supervision of the Department;

(7) reduce barriers to recovery housing by establishing evidence-based norms and expectations for contracts and certifications for sober and recovery housing providers, including allowing for the use of medications and restricting evictions due to relapse;

(8) redefine housing requirements for incarcerated persons in order to receive approval for furlough release; and

(9) improve data and case management systems.

(b) On or before April 1, 2020, the Department shall report to the Senate Committee on Judiciary, the House Committee on Corrections and Institutions, and the House and Senate Committees on Appropriations on:

(1) the Department's plan to reduce its use of short-term incarceration sanctions for people on furlough, the number of short-term incarceration sanctions imposed, and the number of graduated sanctions imposed;

(2) recommendations for funding in the fiscal year 2021 budget; and

(3) the Department's progress toward completing the remaining work required by this section.

Sec. 71. EFFECTIVE DATES

(a) This act shall take effect on passage.

(b) Notwithstanding 1 V.S.A. § 214, Sec. 52 (National Guard tuition benefit program) shall take effect on passage and shall apply retroactively to July 1, 2019.

Report of Committee of Conference

S. 110

An act relating to data privacy and consumer protection.

To the Senate and House of Representatives:

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

S.110. An act relating to data privacy and consumer protection.

Respectfully reports that it has met and considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. DATA PRIVACY INVENTORY

(a) The following persons shall conduct a data privacy inventory for their respective branches of State government:

(1) the State Court Administrator for the Judicial Branch;

(2) the Director of Information Technology 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 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.

(c) On or before January 15, 2021, the Chief Data Officer and the Chief Records Officer, in collaboration with the State Court Administrator and the

Director of Information Technology, shall submit a unified report presenting their findings and recommendations to:

(1) the House Committees on Commerce and Economic Development, on Energy and Technology, and on Government Operations;

(2) the Senate Committees on Economic Development, Housing and General Affairs, on Finance, and on Government Operations; and

(3) the Joint Information Technology Oversight Committee.

* * * 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.

~~(10)~~(11) "Record" means any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

~~(11)~~(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.

~~(12)~~(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 chapter 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;

(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, e-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

This act shall take effect on July 1, 2020.

*CHERYL M. HOOKER
PHILIP E. BARUTH
MICHAEL D. SIROTKIN*

Committee on the part of the Senate

CHARLES A. KIMBELL
STEPHANIE Z. JEROME
MICHAEL J. MARCOTTE

Committee on the part of the House

CONCURRENT RESOLUTIONS FOR NOTICE

Concurrent Resolutions For Notice Under Joint Rule 16

The following joint concurrent resolutions have been introduced for approval by the Senate and House. They will be adopted by the Senate unless a Senator requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Secretary's Office.

H.C.R. 250 - 251 (For text of Resolutions, see Addendum to House Calendar for February 13, 2020.)

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.

Craig Bolio of Winooski – Commissioner, Department of Taxes – By Sen. Cummings for the Committee on Finance. (01/21/20)

Michael Schirling of Burlington – Commissioner, Department of Public Safety – Sen. Mazza for the Committee on Transportation. (01/29/20)

Michael K. Smith of Westford – Secretary, Agency of Human Services – Sen. Lyons for the Committee on Health and Welfare. (02/12/02)

Sabina Brochu of Williston - Member, State Board of Education - By Sen. Ingram for the Committee on Education. (01/24/20)

Kyle Courtois of Georgia - Member, State Board of Education - By Sen. Perchlik for the Committee on Education. (01/24/20)

Margaret Tandoh of South Burlington – Member, Board of Medical Practice – By Sen. McCormack for the Committee on Health and Welfare. (02/11/20)

Holly Morehouse of Burlington – Member, Children and Family Council for Prevention Programs – By Sen. Lyons for the Committee on Health and Welfare. (02/12/20)

Susan Hayward of Middlesex – Member, Capitol Complex Commission – By Sen. Benning for the Committee on Institutions. (02/14/20)

Heather Shouldice – Member, Capitol Complex Commission – By Sen. Benning for the Committee on Institutions. (02/14/20)

PUBLIC HEARINGS

February 18, 2020 - 5:00 p.m. - 7:00 p.m. - House Chamber - Re: H. 610 Firearms and Domestic Violence - House Committee on Judiciary.

NOTICE OF JOINT ASSEMBLY

Thursday, February 20, 2020 - 10:30 A.M. - Election of two (2) trustees for the Vermont State Colleges Corporation.

Candidates for the positions of trustee must notify the Secretary of State **in writing** not later than Thursday, February 13, 2020, by 5:00 P.M. pursuant to the provisions of 2 V.S.A. §12(b). Otherwise their names will not appear on the ballots for these positions.

The following rules shall apply to the conduct of these elections:

First: All nominations for these offices will be presented in alphabetical order prior to voting.

Second: There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.

JFO NOTICE

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3):

JFO #2993 – \$180,000 from the U.S. Environmental Protection Agency to the VT Dept. of Environmental Conservation. Funds will be used to perform lead testing on drinking water sources in all schools in the state.

[JFO received 01/31/20]

JFO #2994 – \$72,623 from the National Young Farmers Coalition to the VT Dept. of Disabilities, Aging and Independent Living. Funds will be used towards building a network of legal, financial and behavioral resources for the Vermont farming community. *One (1) limited-service position has been requested in conjunction with this grant.*

[JFO received 01/31/20]

JFO #2995 – \$10,000 from the U.S. Forest Service to the VT Dept. of Environmental Conservation. Funds will be used to perform water quality monitoring activities on federal land.

[JFO received 01/31/20]

JFO #2996 – \$749,519 from the U.S. Dept. of Justice to the VT Dept. of States Attorneys and Sheriffs. Funds will be used to support and enhance the State’s response to domestic violence in Windham and Bennington Counties.

[JFO received 01/31/20]

FOR INFORMATION ONLY

CROSSOVER DATES

The Joint Rules Committee established the following Crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 13, 2020**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day – Committee bills must be voted out of Committee by Friday March 13, 2020.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 20, 2020**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

Note: The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (the general Appropriations bill (“The Big Bill”), the Transportation capital bill, the Capital Construction bill, and the Fee/Revenue bills.