

Journal of the House

Tuesday, February 11, 2020

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Rev. Deborah McKinley, East Craftsbury Presbyterian Church, East Craftsbury.

Pledge of Allegiance

Page Addison Pinard of Barre led the House in the Pledge of Allegiance.

House Bills Introduced

House bills of the following titles were severally introduced, read the first time and referred to committee or placed on the Calendar as follows:

H. 920

By Reps. Cina of Burlington and O'Sullivan of Burlington,

House bill, entitled

An act relating to economic incentive recommendations of the Artificial Intelligence Task Force;

To the committee on Energy and Technology.

H. 921

By Rep. Cina of Burlington,

House bill, entitled

An act relating to the Artificial Intelligence Commission and code of ethics;

To the committee on Energy and Technology.

Remarks Journalized

On motion of **Rep. Young of Greensboro**, the following remarks by **Rep. Trieber of Rockingham** were ordered printed in the Journal:

“Madam Speaker:

In January of 1973, former member Michael Obuchowski was seated in this chamber and was assigned seat 120. Obie continued to serve for 39 years. This included a period as house speaker. Against custom, Obie remained in seat 120 and returned to that same seat after losing the speakership. When I was seated

after Obie's retirement, I was assigned seat 120 and have remained here ever since. In short, seat 120 has been assigned to the member from Rockingham for almost 50 years. That is why I am particularly sad that I will not be able to occupy the seat until its 50th year.

As many of you know, in the off-session, I work as a counselor for high school students with disabilities. I take great pride in the on-the-ground work of interacting with my students and helping them to take steps to achieve their dreams. This year, when looking at how long service in this body would require being away from my students, essentially missing out on helping an entire class, I had to make the difficult decision to leave this body. I am standing today, to announce that I will be resigning my seat next week.

Before leaving, I want to highlight a few things I've learned over my five terms in this body, the most important being the value of the legislature as a whole. We are in the unique position of being the branch of government that is responsible for appropriating money, and this creates certain difficulties, primarily that we must go on record to vote for increases in our own pay. Do not be afraid of this. For Vermont to thrive, we must have a strong and high-functioning legislative branch. As the most open and transparent branch of government, our strength benefits Vermonters. We were set up to be a citizen legislature. This is a fact that I have heard many speak about routinely as a point of pride. However, in recent times, it is clear that most citizens lack the financial freedom to serve in this body. For us to truly be a citizen legislature, every Vermonter who wishes to serve should have the opportunity to run and represent their district without fear of financial ruin. As long as this is not the case, we will only have the myth of a citizen legislature. It is too easy for some to seek cheap political points by denigrating bills that would make the legislature more accessible to all; I urge you to fight for a strong, effective, and truly citizen legislature.

Secondly, when looking around the room, it is easy to find defenders of the education or transportation funds; but we should all be as protective of the general fund. Although not connected to some third rail issue like property taxes, the general fund provides for much that Vermonters have come to expect from government. It is all too easy to dismiss conversations about overall funding mechanisms by just thinking "we'll pay for it out of the general fund." Further, when new revenue streams present themselves, we often find ourselves in the situation of directing new money into the education fund so that we can simply say, "it will lower property taxes." Without a deep dive into the future health and ongoing viability of the general fund, difficult choices will continue to force themselves upon us.

When it comes to funding, my hope is that this body will take the initiative in all spending priorities. We are in the unique constitutional position of having to originate spending bills, but all too often, instead we end up reacting to the Governor's proposed budget more than highlighting and championing our own direction. We spend much of the year speaking to our constituents about what they expect and would like to see from government. We owe it to them to advocate for their wants and desires instead of chasing whatever scraps are available after the discussion of all of the Governor's priorities.

I have a lot of faith in this body to continue to be the voice of our friends and neighbors in state government. We benefit from the ability to interact with our constituents directly and to ensure that their concerns are heard. During my time here, regardless of differences of general political opinions, I have been able to find common ground with each and every representative as I speak with them; we are all committed to this state and its people.

I am extremely grateful to each and every one of you for helping to shape and guide me, and train me to be the best legislator that I can be. I would like to thank my district mate, the member from Windham. Throughout the years, she has been a wonderful confidant and companion when attending community events, as well as a trusted sounding board for ideas of how to best serve our communities. The amazing chairwomen that I had the privilege to learn from and serve with have given me insights that I will always cherish. The member from South Burlington, the member from Danville, the member from South Hero, and the member from Moretown helped to teach me to be more patient, listen to different viewpoints, how to have knock down/drag out fights with your friends, but then to take the time to hug it out afterward. Most importantly, the member from Danville specifically taught me to work harder and work faster.

Over the past 10 years, I have learned a great deal from my interactions with each and every one of you, those legislators who no longer serve, and those who are no longer with us. This has been an amazing experience that I would not trade for a moment. Together, we have had the opportunity to make the lives of our neighbors better, and I wish you all the best of luck as we continue on our quest to make Vermont grow and thrive.”

**Senate Proposal of Amendment Concurred in
With a Further Amendment Thereto**

H. 760

The Senate proposed to the House to amend House bill, entitled
An act relating to fiscal year 2020 budget adjustments

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

First: By striking out Secs. 12, 14, and 34 in their entirety and inserting in lieu thereof new Secs. 12, 14, and 34 to read as follows:

Sec. 12. 2019 Acts and Resolves No. 72, Sec. B.301 is amended to read:

Sec. B.301 Secretary's office - global commitment

Operating expenses	3,150,212	3,150,212
Grants	<u>1,631,994,544</u>	<u>1,630,119,013</u>
Total	<u>1,635,144,756</u>	<u>1,633,269,225</u>
Source of funds		
General fund	<u>562,258,602</u>	557,208,815
Special funds	34,969,169	34,969,169
Tobacco fund	21,049,373	21,049,373
State health care resources fund	<u>16,915,501</u>	21,101,110
Federal funds	<u>984,584,332</u>	983,572,979
Interdepartmental transfers	<u>15,367,779</u>	<u>15,367,779</u>
Total	<u>1,635,144,756</u>	<u>1,633,269,225</u>

Sec. 14. 2019 Acts and Resolves No. 72, Sec. B.306 is amended to read:

Sec. B.306 Department of Vermont health access - administration

Personal services	<u>134,603,806</u>	140,308,825
Operating expenses	29,905,859	29,905,859
Grants	<u>7,314,723</u>	<u>6,764,723</u>
Total	<u>171,824,388</u>	<u>176,979,407</u>
Source of funds		
General fund	<u>29,222,317</u>	32,242,529
Special funds	6,096,108	6,096,108
Federal funds	124,749,165	124,749,165
Global Commitment fund	4,214,196	9,369,215
Interdepartmental transfers	<u>7,542,602</u>	<u>4,522,390</u>
Total	<u>171,824,388</u>	<u>176,979,407</u>

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	<u>997,706,686</u>	1,007,088,907
Special funds	<u>123,880,549</u>	123,986,513
Tobacco fund	23,088,208	23,088,208
State health care resources fund	<u>16,915,501</u>	21,101,110
Federal funds	<u>1,420,544,308</u>	1,422,626,911
Global Commitment fund	<u>1,590,055,367</u>	1,374,334,713
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	4,010,633,162

Second: In Sec. 45, by striking out subdivision (c)(1) in its entirety and inserting in lieu thereof a new subdivision (c)(1) to read as follows:

(1) The following amounts shall revert to the General ~~Funds~~ Fund from the accounts indicated:

<u>1130030000</u>	<u>Department of Libraries</u>	<u>106,000.00</u>
<u>1210001000</u>	<u>Legislative Council</u>	<u>75,000.00</u>
<u>1210002000</u>	<u>Legislature</u>	<u>175,000.00</u>
<u>1210891801</u>	<u>Working Group Expenses</u>	<u>7,704.00</u>
<u>1220000000</u>	<u>Joint Fiscal Office</u>	<u>30,000.00</u>
<u>1240001000</u>	<u>Lieutenant Governor</u>	<u>1,555.54</u>
<u>2130100000</u>	<u>State's Attorneys</u>	<u>116,991.45</u>
<u>2130200000</u>	<u>Sheriffs</u>	<u>354,968.67</u>
<u>2130400000</u>	<u>Special investigative unit</u>	<u>2,603.49</u>
<u>2170010000</u>	<u>Criminal Justice Training Council</u>	<u>6,772.00</u>
<u>3300010000</u>	<u>Vermont Veterans' Home</u>	<u>50,000.00</u>
<u>3310000000</u>	<u>Commission on Women</u>	<u>1,732.18</u>
<u>3330010000</u>	<u>Green Mountain Care Board</u>	<u>80,674.56</u>
<u>1260891402</u>	<u>Public Retirement Plan Study</u>	<u>1,159.71</u>
<u>2240891101</u>	<u>Case Mgmt Syst-docket files</u>	<u>3,777.50</u>
<u>5100891904</u>	<u>Staff to Student Task Force</u>	<u>7,320.00</u>

And by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read as follows:

(f) The following General Fund amount shall be reserved in fiscal year 2020 for fiscal year 2021 budget expenditures: \$18,365,715. These funds shall be unreserved in fiscal year 2021.

Third: In Sec. 49 by inserting a new subsection (d) to read as follows:

(d) In fiscal year 2020, the sum of \$25,000 is appropriated to the Secretary of Administration to support initial planning and expenses of the Vermont 250th Commission to be formed to coordinate commemorative celebrations statewide for the 250th anniversary of various historic events and battles leading to our declaration as an independent State (this period is currently referred to as the Vermont Republic).

Fourth: By striking out Sec. 52 in its entirety and inserting in lieu thereof a new Sec. 52 to read as follows:

Sec. 52. 16 V.S.A. § 2857 amended to read:

§ 2857. VERMONT NATIONAL GUARD TUITION BENEFIT PROGRAM

(a) Program creation. The Vermont National Guard Tuition Benefit Program (Program) is created, under which a member of the Vermont National Guard (member) who meets the eligibility requirements in subsection (c) of this section is entitled to the following tuition benefit for up to full-time attendance:

(1) For courses at either campus of the Northern Vermont University (NVU), the Vermont Technical College (VTC), the University of Vermont and State Agricultural College (UVM), or at the Community College of Vermont (CCV), the benefit shall be the in-state residence tuition rate for the relevant institution.

(2) For courses at a Vermont State College, other than NVU, VTC, or CCV, or at any eligible Vermont private postsecondary institution, the benefit shall be the in-state tuition rate charged by NVU.

(3) For courses at an eligible training institution offering nondegree, certificate training, or continuing education programs, the benefit shall be the lower of the institution's standard tuition or the in-state tuition rate charged by NVU.

* * *

Fifth: By striking out Sec. 54 in its entirety and inserting in lieu thereof a new Sec. 54 to read as follows:

Sec. 54. CALENDAR YEAR 2020 DELIVERY SYSTEM REFORM
INVESTMENT COORDINATION

(a) In order to ensure coordination of funding and the strategic alignment of resources for delivery system-reform (DSR) related investments in calendar year 2020, the Agency of Human Services shall ensure that DSR projects recommended for funding are consistent with the criteria defined in Attachment I (Menu of Approvable Delivery System Investments) of the Global Commitment for Health Section 1115 Demonstration. At a minimum, the Agency shall apply the metrics for evaluation as prescribed in Attachments I and J (Investment Application Template) of the Global Commitment for Health Section 1115 Demonstration and may also consider additional metrics that align with the Vermont All-Payer Accountable Care Organization Model Agreement's three population health and health outcomes targets. In addition, the Agency shall require the Accountable Care Organization and DSR investment recipients to evaluate each project to determine whether it should be scaled or sunset, based on its performance against established metrics. All DSR investment projects to support implementation of Vermont's All-Payer Accountable Care Organization (ACO) model shall be designed and prioritized

in partnership with the Agency and with the relevant departments within the Agency and funding shall be dependent on the approval of the Agency and relevant departments.

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 – fifteen (15) Correctional Officer I.

(b) Notwithstanding any other provision of law, through December 31, 2021, no vacant Correctional Officer I positions shall be reassigned to the Department of Human Resources State position pool.

(c) 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.

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

(a) The Department of Corrections shall review and 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:

(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) explore establishing 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) explore how the Department's contractors could 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; and

(8) explore opportunities to redefine housing requirements for incarcerated persons in order to receive approval for furlough release.

(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.

Pending the question Will the House concur in the Senate proposal of amendment? **Rep. Toll of Danville**, moved to concur in the Senate proposal of amendment with a 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.

Which was agreed to.

Second Reading; Bill Amended; Third Reading Ordered

H. 1

Rep. Kornheiser of Brattleboro, for the committee on Commerce and Economic Development, to which had been referred House bill, entitled

An act relating to agreements not to compete

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 495o is added to read:

§ 495o. AGREEMENTS NOT TO COMPETE; PROHIBITION;

EXCEPTIONS

(a) Except as otherwise provided by this section, agreements not to compete are prohibited.

(b) Notwithstanding subsection (a) of this section, a key employee may enter into an agreement not to compete with an employer at the commencement of employment or in relation to a promotion or a substantial change in the employee's job responsibilities if the agreement satisfies all of the following requirements:

(1)(A) If the agreement is in relation to a promotion or a substantial change in the employee's job responsibilities:

(i) the employee receives additional compensation in relation to the promotion or substantial change in the employee's job responsibilities; and

(ii) the agreement not to compete is supported by substantial consideration that is specified in the agreement and is commensurate with the burden imposed on the employee by the agreement.

(B) If the agreement is in relation to the commencement of employment, the agreement not to compete is supported by substantial consideration that is specified in the agreement and is commensurate with the burden imposed on the employee by the agreement.

(2) The agreement is in writing and signed by the employer and the employee.

(3)(A) If the agreement is entered into in relation to the commencement of employment, it is provided to the employee with the formal offer of employment or 10 days before the commencement of employment, whichever is earlier; or

(B) if the agreement is entered into in relation to a promotion or a substantial change in the employee's job responsibilities, it is provided to the employee at least 10 days before it will take effect.

(4)(A) The agreement states that the employee has the right to consult with an attorney prior to signing the agreement and that the employer shall reimburse the employee for the cost of consulting with an attorney for the purpose of reviewing the agreement and obtaining legal advice.

(B) The agreement shall, at a minimum, provide that the employer shall reimburse the employee for a period of up to two hours of attorney time.

(5) The limitations set forth in the agreement are reasonable in time, geographical area, and the scope of activity to be restrained.

(c) Nothing in this section shall be construed to prohibit:

(1) An agreement that prohibits the disclosure of trade secrets as defined in 9 V.S.A. § 4601 or a nondisclosure agreement that protects confidential business information that does not constitute a trade secret.

(2) A nonsolicitation agreement between an employer and an employee, provided that the limitations set forth in the agreement are reasonable in time, geographical area, and the scope of activity to be restrained.

(3) An individual from entering into an agreement not to compete in relation to:

(A) the sale of all or substantially all of the individual's ownership interest in:

(i) a business or its operating assets; or

(ii) a subsidiary or division of a business or the operating assets of a subsidiary or division of a business;

(B) the dissolution of a partnership in which the individual is a partner or the dissociation of the individual from a partnership; or

(C) the dissolution of a limited liability company in which the individual is a member or the termination of the individual's interest in a limited liability company.

(d) Any provision of an employment contract or other agreement entered into on or after July 1, 2020 that violates the provisions of this section shall be void and unenforceable.

(e) As used in this section:

(1) "Agreement not to compete" means any agreement between an individual and a business that restrains the individual from engaging in a lawful profession, trade, or business.

(2) "Executive, administrative, or professional employee" means an employee who is exempt from the wage and hour provisions of the Fair Labor Standards Act pursuant to 29 U.S.C. § 213(a)(1) and is employed in a bona fide executive, administrative, or professional capacity, as defined pursuant 29 C.F.R. Part 541.

(3) "Key employee" means an individual who:

(A) is an executive, administrative, or professional employee; and

(B) earns wages or a salary equal to at least one and one-half times the Vermont average annual wage.

(4) “Nonsolicitation agreement” means an agreement between an employer and an employee pursuant to which the employee agrees not to:

(A) solicit or recruit the employer’s employees; or

(B) solicit or transact business with customers or clients of the employer who were customers or clients while the employee was employed by the employer.

(5) “Vermont average annual wage” means the most recent annual mean wage for Vermont published by the U.S. Bureau of Labor Statistics.

Sec. 2. EDUCATION AND OUTREACH

The Secretary of Commerce and Community Development, the Attorney General, and the Commissioner of Labor shall, on or before October 15, 2020, jointly develop and make available on the Agency of Commerce and Community Development’s, the Attorney General’s, and the Department of Labor’s websites information and materials to educate and inform employers and employees about the provisions of 21 V.S.A. § 495o.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2020 and shall apply to agreements entered into on or after that date.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Commerce and Economic Development agreed to and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 722

Rep. Harrison of Chittenden, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to the Department of Libraries

Reported in favor of its passage when amended as follows:

First: In Sec. 1, 3 V.S.A. § 260, in subsection (c), by striking out the subsection in its entirety and inserting in lieu thereof the following:

(c) ~~The principal office of each of the following boards and divisions shall be located in Montpelier: Division for Historic Preservation and Board of Libraries. [Repealed.]~~

Second: In Sec. 6, 32 V.S.A. § 163, by striking out Sec. 6 in its entirety and inserting in lieu thereof the following:

Sec. 6. [Deleted.]

Having appeared on the Calendar one day for Notice, was taken up and read the second time and the report of the committee on Government Operations was agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Harrison of Chittenden** moved to amend the bill as follows:

In Sec. 2, 12 V.S.A. § 1699, by striking out the section in its entirety and inserting in lieu thereof the following:

Sec. 2. 12 V.S.A. § 1699 is amended to read:

§ 1699. FOREIGN LAWS AND DECISIONS; DETERMINATION BY COURT

The statutes, laws, and decisions of another state may be evidenced, prima facie, in the courts of this State by a printed copy thereof, which purports to be published by the authority of ~~such~~ the other state, or which is kept in the State Library at ~~Montpelier~~. The determination of ~~such~~ the laws shall be made by the court and not by the jury, and shall be reviewable.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time? **Rep. Murphy of Fairfax** moved to amend the bill as follows:

In Sec. 3, 16 V.S.A. § 212, in subdivision (7), immediately following “provide for cooperation with the”, by striking out “~~Board of Libraries established by 22 V.S.A. § 602~~” and inserting in lieu thereof “Board of Libraries established by 22 V.S.A. § 602 or the”

Which was agreed to and third reading ordered.

Second Reading; Bill Amended; Third Reading Ordered

H. 793

Rep. Colston of Winooski, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to the powers and duties of the Auditor of Accounts

Reported in favor of its passage when amended as follows:

First: In Sec. 1, 32 V.S.A. § 163, at the beginning of subdivision (1)(B) following “the”, by striking out “compliance audit” and inserting in lieu thereof “financial and compliance audits”

Second: In Sec. 1, 32 V.S.A. § 163, in subdivision (4)(A), by striking out in its entirety subdivision (ii) and inserting in lieu thereof a new subdivision (ii) to read:

~~(ii) The audit reports shall be public records and a copy of each report shall be furnished to and kept in the State Library for public use.~~

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Government Operations agreed to and third reading ordered.

**Favorable Report; Second Reading;
Third Reading Ordered**

H. 608

Rep. Brownell of Pownal, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to incompatible local offices

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Report of Committee of Conference Adopted

S. 110

The Speaker placed before the House the following Committee of Conference report:

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

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

An act relating to data privacy and consumer protection

Respectfully report that they have met and considered the same and recommend that the bill be amended 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) 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, 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

This act shall take effect on July 1, 2020.

Which was considered and adopted on the part of the House.

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

Committee on the part of the Senate

*CHARLES A. KIMBALL
STEPHANIE Z. JEROME
MICHAEL J. MARCOTTE*

Committee on the part of the House

Joint Resolution Adopted in Concurrence

J.R.S. 38

Joint resolution, entitled

Joint resolution providing for a Joint Assembly for the election of two legislative Trustees of the Vermont State Colleges Corporation

Was taken up and adopted in concurrence.

Joint Resolution Adopted in Concurrence

J.R.S. 39

Joint resolution, entitled

Joint resolution establishing a procedure for the conduct of the election of two legislative trustees of the Vermont State Colleges Corporation by plurality

vote by the General Assembly in 2020

Was taken up and adopted in concurrence.

Message from the Senate No. 14

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that:

The Senate has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses upon Senate bill of the following title:

S. 108. An act relating to employee misclassification.

And has accepted and adopted the same on its part.

The Senate has on its part adopted joint resolution of the following title:

J.R.S. 40. Joint resolution relating to weekend adjournment.

In the adoption of which the concurrence of the House is requested.

The Governor has informed the Senate that on February 10, 2020, he returned without signature and *vetoed* a bill originating in the Senate of the following title:

S. 23. An act relating to increasing the minimum wage.

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. S. 23**, 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”

Adjournment

At eleven o'clock and twelve minutes in the forenoon, on motion of **Rep. McCoy of Poultney**, the House adjourned until tomorrow at one o'clock in the afternoon.