

# Journal of the Senate

WEDNESDAY, MAY 15, 2019

Pursuant to the Senate Rules, in the absence of the President, the Senate was called to order by the President *pro tempore*.

## Devotional Exercises

Devotional exercises were conducted by the Reverend and Senator Deborah J. Ingram of Chittenden District.

## Bill Referred to Committee on Finance

### H. 135.

House bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

An act relating to the authority of the Agency of Digital Services.

## Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

### S. 178.

By Senator Rodgers,

An act relating to repealing the prohibition on large capacity ammunition feeding devices.

To the Committee on Judiciary.

## Bills Referred

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

**H. 508.** An act relating to approval of amendments to the charter of the Town of Bennington.

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

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

**H. 547.** An act relating to approval of an amendment to the charter of the City of Montpelier.

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

**House Proposal of Amendment to Senate Proposal of Amendment  
Concurred In**

**H. 133.**

House proposal of amendment to Senate proposal of amendment to House bill entitled:

An act relating to miscellaneous energy subjects.

Was taken up.

The House proposes to the Senate to amend the Senate proposal of amendment as follows:

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

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

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

§ 201. DEFINITIONS

\* \* \*

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

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

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

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

\* \* \*

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

(2) Except for the replacement of existing facilities with equivalent facilities in the usual course of business, and except for electric generation or energy storage facilities that are operated solely for on-site electricity consumption by the owner of those facilities and for hydroelectric generation

facilities subject to licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1:

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

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

\* \* \*

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

\* \* \*

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

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

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

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

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

§ 8005a. STANDARD OFFER PROGRAM

\* \* \*

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

\* \* \*

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

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

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

\* \* \*

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

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

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

**House Proposal of Amendment Concurred In with Amendment**

**S. 131.**

House proposal of amendment to Senate bill entitled:

An act relating to insurance and securities.

Was taken up.

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

\* \* \* Insurance Regulatory Sandbox; Sunset \* \* \*

Sec. 1. 8 V.S.A. § 15a is added to read:

§ 15a. INSURANCE REGULATORY SANDBOX; INNOVATION  
WAIVER; SUNSET

(a) Subject to the limitations specified in subsection (g) of this section, the Commissioner may grant a variance or waiver (innovation waiver or waiver) with respect to the specific requirements of any insurance law, regulation, or bulletin if a person subject to that law, regulation, or bulletin demonstrates to the Commissioner's satisfaction that:

(1) the application of the law, regulation, or bulletin would prohibit the introduction of an innovative or more efficient insurance product or service that the applicant intends to offer during the period for which the proposed waiver is granted;

(2) the public policy goals of the law, regulation, or bulletin will be or have been achieved by other means;

(3) the waiver will not substantially or unreasonably increase any risk to consumers; and

(4) the waiver is in the public interest.

(b) An application for an innovation waiver shall include the following information:

(1) the identity of the person applying for the waiver;

(2) a description of the product or service to be offered if the waiver is granted, including how the product or service functions and the manner and terms on which it will be offered;

(3) an explanation of the potential benefits to consumers of the product or service;

(4) an explanation of the potential risks to consumers posed by the product or service and how the applicant proposes to mitigate such risks;

(5) an identification of the statutory or regulatory provision that prohibits the introduction, sale, or offering of the product or service; and

(6) any additional information required by the Commissioner.

(c)(1) An innovation waiver shall be granted for an initial period of up to 12 months, as deemed appropriate by the Commissioner.

(2) Prior to the end of the initial waiver period, the Commissioner may grant a one-time extension for up to an additional 12 months. An extension request shall be made to the Commissioner at least 30 days prior to the end of the initial waiver period and shall include the length of the extension period requested and specific reasons why the extension is necessary. The Commissioner shall grant or deny an extension request before the end of the initial waiver period.

(d) An innovation waiver shall include any terms, conditions, and limitations deemed appropriate by the Commissioner, including limits on the amount of premium that may be written in relation to the underlying product or service and the number of consumers that may purchase or utilize the underlying product or service; provided that in no event shall a product or service subject to an innovation waiver be purchased or utilized by more than 10,000 Vermont consumers.

(e) A product or service offered pursuant to an innovation waiver shall include the following written disclosures to consumers in clear and conspicuous form:

(1) the name and contact information of the person providing the product or service;

(2) that the product or service is authorized pursuant to an innovation waiver for a temporary period of time and may be discontinued at the end of the waiver period, the date of which shall be specified;

(3) contact information for the Department, including how a consumer may file a complaint with the Department regarding the product or service; and

(4) any additional disclosures required by the Commissioner.

(f) The Commissioner's decision to grant or deny a waiver or extension shall not be subject to the contested-case provisions of the Vermont Administrative Procedures Act.

(g)(1) Pursuant to the authority granted by this section, the Commissioner shall not grant a waiver with respect to any of the following:

(A) Any law, regulation, bulletin, or other provision that is not subject to the Commissioner's jurisdiction under Title 8;

(B) section 3304, 3366, or 6004(a)–(b) of this title or any other requirement as to the minimum amount of paid-in capital or surplus required to be possessed or maintained by any person;

(C) chapter 107 (concerning health insurance), 112 (concerning the Vermont Life and Health Insurance Guaranty Association Act), 117 (concerning workers' compensation insurance), 129 (concerning insurance trade practices), or 131 (concerning licensing requirements), and chapter 154 (concerning long-term care insurance) of this title or any regulations or bulletins directly relating thereto;

(D) section 4211 (concerning volunteer drivers) of this title;

(E) any law, regulation, or bulletin required for the Department to maintain its accreditation by the National Association of Insurance Commissioners unless said law or regulation permits variances or waivers;

(F) the application of any taxes or fees; and

(G) any other law or regulation deemed ineligible by the Commissioner.

(2) The authority granted to the Commissioner under this section shall not be construed to allow the Commissioner to grant or extend a waiver that would abridge the recovery rights of Vermont policyholders.

(h) A person who receives a waiver under this section shall be required to make a deposit of cash or marketable securities with the State Treasurer in an amount subject to such conditions and for such purposes as the Commissioner determines necessary for the protection of consumers.

(i)(1) At least 30 days prior to granting an innovation waiver, the Commissioner shall provide public notice of the draft waiver by publishing the following information:

(A) the specific statute, regulation, or bulletin to which the draft waiver applies;

(B) the proposed terms, conditions, and limitations of the draft waiver;

(C) the proposed duration of the draft waiver; and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(j)(1) If a waiver is granted pursuant to this section, the Commissioner shall provide public notice of the existence of the waiver by providing the following information:

(A) the specific statute, regulation, or bulletin to which the waiver applies;

(B) the name of the person who applied for and received the waiver;

(C) the duration of and any other terms, conditions, or limitations of the waiver; and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(k) The Commissioner, by regulation, shall adopt uniform procedures for the submission, granting, denying, monitoring, and revocation of petitions for a waiver pursuant to this section. The procedures shall set forth requirements for the ongoing monitoring, examination, and supervision of, and reporting by, each person granted a waiver under this section and shall permit the Commissioner to attach reasonable conditions or limitations on the conduct permitted pursuant to a waiver. The procedures shall provide for an expedited application process for a product or service that is substantially similar to one for which a waiver has previously been granted by the Commissioner. The procedures shall include an opportunity for public comment on draft waivers under consideration by the Commissioner.

(l) Upon expiration of an innovation waiver, the person who obtained the waiver shall cease all activities that were permitted only by the waiver and comply with all generally applicable laws and regulations.

(m) The ability to grant a waiver under this section shall not be interpreted to limit or otherwise affect the authority of the Commissioner to exercise discretion to waive or enforce requirements as permitted under any other section of this title or any regulation or bulletin adopted pursuant thereto.

(n) Biannually, beginning on January 15, 2020, the Commissioner shall submit a report to the General Assembly providing the following information:

(1) the total number of petitions for waivers that have been received, granted, and denied by the Commissioner;

(2) for each waiver granted by the Commissioner, the information specified under subsection (f) of this section;

(3) a list of any regulations or bulletins that have been adopted or amended as a result of or in connection with a waiver granted under this section;



(4) with respect to each statute to which a waiver applies, the Commissioner's recommendation as to whether such statute should be continued, eliminated, or amended in order to promote innovation and establish a uniform regulatory system for all regulated entities; and

(5) a list of any waivers that have lapsed or been revoked and, if revoked, a description of other regulatory or disciplinary actions, if any, that resulted in, accompanied, or resulted from such revocation.

(o) No new waivers or extensions shall be granted after July 1, 2021.

(p) This section shall be repealed on July 1, 2023.

\* \* \* Capital and Surplus Requirements \* \* \*

Sec. 2. [Deleted.]

Sec. 3. 8 V.S.A. § 3366 is amended to read:

§ 3366. ASSETS OF COMPANIES

(a)(1) ~~Such~~ A foreign or alien insurer authorized to do business in this State shall possess and thereafter maintain unimpaired paid-in capital or basic surplus of not less than \$2,000,000.00 and, when first so authorized, shall possess and maintain free surplus of not less than \$3,000,000.00. ~~Such~~

(2) The capital and surplus shall be in the form of cash or marketable securities, a portion of which may be held on deposit with the State Treasurer, such securities as designated by the insurer and approved by the Commissioner, in an amount and subject to ~~such~~ conditions determined by the Commissioner. ~~Such~~ The conditions shall include a requirement that any interest or other earnings attributable to such cash or marketable securities shall inure to the benefit of the insurer until such time as the Commissioner determines that the deposit must be used for the benefit of the policyholders of the insurer or some other authorized public purpose relating to the regulation of the insurer.

(3) The Commissioner may prescribe additional capital or surplus for all insurers authorized to transact the business of insurance based upon the type, volume, and nature of insurance business transacted. The Commissioner may reduce or waive the capital and surplus amounts required by this section pursuant to a plan of dissolution for the company approved by the Commissioner.

(b) The express purpose of subsection (a) of this section and the Commissioner's power to require the deposit of cash or marketable securities set forth therein is to protect the interests of Vermont policyholders in the event of the insolvency of the insurer. Except to the extent it would

contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be deemed to control the funds on deposit and to have a lien on the funds for the benefit of the Vermont policyholders affected by the insolvency. The lien so created shall be superior to any lien filed by a general creditor of the insurer.

\* \* \* Domestic Surplus Lines Insurer; Home State Surplus Lines  
Premium Taxation \* \* \*

Sec. 4. 8 V.S.A. § 5022 is amended to read:

§ 5022. DEFINITIONS

\* \* \*

(b) As used in this chapter:

(1) “Admitted insurer” means an insurer possessing a certificate of authority licensed to transact business in this State issued by the Commissioner pursuant to section 3361 of this title. For purposes of this chapter, “admitted insurer” shall not include a domestic surplus lines insurer.

\* \* \*

(3) “Domestic insurer” means any insurer that has been chartered by, incorporated, organized, or constituted within or under the laws of this State.

(4) “Domestic risk” means a subject of insurance which ~~that~~ is resident, located, or to be performed in this State.

(5) “Domestic surplus lines insurer” means a domestic insurer with which insurance coverage may be placed under this chapter.

~~(4)~~(6) “To export” means to place surplus lines insurance with a non-admitted insurer.

~~(5)~~(7) “Home state” means, with respect to an insured:

(A)(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located outside the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term “home state” means the home state, as determined pursuant to subdivision (A) of this subdivision ~~(5)~~(7), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

~~(6)~~(8) “NAIC” means the National Association of Insurance Commissioners.

~~(7)~~(9) “Surplus lines broker” means an individual licensed under this chapter and chapter 131 of this title.

~~(8)~~(10) “Surplus lines insurance” means coverage not procurable from admitted insurers.

~~(9)~~(11) “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.

Sec. 5. 8 V.S.A. § 5023a is added to read:

§ 5023a. DOMESTIC SURPLUS LINES INSURER; AUTHORIZED

(a) Surplus lines insurance may be procured from a domestic surplus lines insurer if all of the following criteria are met:

(1) The board of directors of the insurer has adopted a resolution seeking certification as a domestic surplus lines insurer and the Commissioner has approved such certification.

(2) The insurer is already eligible to offer surplus lines insurance in at least one other state besides Vermont.

(3) The insurer meets the requirements of section 5026 of this title.

(4) All other requirements of this chapter are met.

(b) The requirements of 8 V.S.A. § 80 shall not apply to domestic surplus lines insurers. A domestic surplus lines insurer shall be deemed to be a non-admitted insurer for purposes of chapter 138 of this title.

Sec. 6. 8 V.S.A. § 5024 is amended to read:

§ 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

(a) Insurance coverage, except as described in section 5025 of this chapter, shall not be placed with a ~~non-admitted~~ surplus lines insurer unless the full amount of insurance required is not reasonably procurable from admitted insurers actually transacting that kind and class of insurance in this State; and the amount of insurance exported shall be only the excess over the amount procurable from admitted insurers actually transacting and insuring that kind and class of insurance.

\* \* \*

Sec. 7. 8 V.S.A. § 5026 is amended to read:

§ 5026. SOLVENT INSURERS REQUIRED

(a) Where Vermont is the home state of the insured, surplus lines brokers shall not knowingly place or continue surplus lines insurance with ~~non-~~admitted surplus lines insurers who are insolvent or unsound financially, and in no event shall any surplus lines broker place any insurance with a non-admitted insurer unless such insurer:

\* \* \*

(b) Notwithstanding the capital and surplus requirements of this section, a ~~non-~~admitted surplus lines insurer may receive approval upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital, and surplus of any parent company, company underwriting profit and investment-income trends, market availability, and company record and reputation within the industry. In no event, however, shall the Commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4,500,000.00.

\* \* \*

Sec. 8. [Deleted.]

\* \* \*

Sec. 9. 8 V.S.A. § 5028 is amended to read:

§ 5028. INFORMATION REQUIRED ON CONTRACT

Where Vermont is the home state of the insured, each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number, and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped or written conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any, "The company issuing this policy ~~has not been licensed by the State of Vermont~~ is a surplus lines insurer and the rates charged have not been approved by the Commissioner of Financial Regulation. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association."

Sec. 10. 8 V.S.A. § 5029 is amended to read:

§ 5029. SURPLUS LINES INSURANCE VALID

(a) Insurance contracts procured as surplus lines insurance from ~~non-~~admitted surplus lines insurers in accordance with this chapter shall be valid and enforceable to the same extent as insurance contracts procured from

admitted insurers.

(b) The insurance trade practices provisions of sections 4723 and 4724(1)–(7) and (9)–(18) of this title, and the cancellation provisions of sections 3879–3883 (regarding fire and casualty policies) and 4711–4715 (regarding commercial risk policies) of this title shall apply to surplus lines insurers, both domestic and foreign.

(c) Other provisions of this title not specifically applicable to surplus lines insurers shall not apply.

Sec. 11. 8 V.S.A. § 5030 is amended to read:

§ 5030. LIABILITY OF ~~NON-ADMITTED~~ SURPLUS LINES INSURER  
FOR LOSSES AND UNEARNED PREMIUMS

If a ~~non-admitted~~ surplus lines insurer has assumed a surplus lines coverage through the intervention of a licensed surplus lines broker of this State, and if the premium for that coverage has been received by that broker, then in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received that premium and the insurer shall be liable to the insured for losses covered by such insurance and for any return premiums due on that insurance to the insured whether or not the broker is indebted to the insurer for such insurance or for any other cause.

Sec. 12. 8 V.S.A. § 5035 is amended to read:

§ 5035. SURPLUS LINES TAX

(a) Where Vermont is the home state of the insured, gross premiums charged, less any return premiums, for surplus lines coverages placed with ~~non-admitted~~ surplus lines insurers are subject to a premium receipts tax of three percent, which shall be collected from the insured by the surplus lines broker at the time of delivery of policy or other confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance shall be returned to the policyholder by the surplus lines broker. Nothing contained in this section will preclude a surplus lines broker from charging a fee to the purchaser of the contract sufficient to recover the amount of this tax. ~~Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this State, the sum payable shall be computed based on gross premiums charged, less any return premiums, as follows:~~

~~(1) An amount equal to three percent on that portion of the premiums applicable to properties, risks, or exposures located or to be performed in Vermont; plus~~

~~(2) An amount equal to a percentage on that portion of the premiums applicable to properties, risks, or exposures located or to be performed outside Vermont. Such percentage shall be determined based on the laws of the jurisdiction within which the property, risk, or exposure is located or to be performed.~~

\* \* \*

Sec. 13. 8 V.S.A. § 5036 is amended to read:

§ 5036. DIRECT PLACEMENT OF INSURANCE

\* \* \*

~~(b) If any such insurance also covers a subject located or to be performed outside this State, a proper pro rata portion of the entire premium shall be allocated to the subjects of insurance located or to be performed in this State.~~

~~(e) Any insurance with a non-admitted insurer procured through negotiations or by application in whole or in part made within this State, where this State is the home state of the insured, or for which premium in whole or in part is remitted directly or indirectly from within this State, shall be deemed insurance subject to subsection (a) of this section.~~

~~(d)~~(c) A tax at the rate of three percent of the gross amount of premium, less any return premium, ~~in respect of risks located in this State,~~ shall be levied upon an insured who procures insurance subject to subsection (a) of this section. Before March 1 of the year after the year in which the insurance was procured, continued, or renewed, the insured shall remit to the Commissioner the amount of the tax. The Commissioner before June 1 of each year shall certify and transmit to the Commissioner of Taxes the sums so collected.

~~(e)~~(d) The tax shall be collectible from the insured by civil action brought by the Commissioner.

Sec. 14. 8 V.S.A. § 5038 is amended to read:

§ 5038. ACTIONS AGAINST INSURER; SERVICE OF PROCESS

\* \* \*

(b) Each ~~non-admitted~~ surplus lines insurer ~~assuming that assumes~~ a surplus lines coverage shall be deemed thereby to have subjected itself to this chapter.

\* \* \*

\* \* \* HIV-Related Tests \* \* \*

Sec. 15. 8 V.S.A. § 4724 is amended to read:

§ 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR  
DECEPTIVE ACTS OR PRACTICES DEFINED

The following are hereby defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance:

\* \* \*

(7) Unfair discrimination; arbitrary underwriting action.

\* \* \*

(C)(i) Inquiring or investigating, directly or indirectly as to an applicant's, an insured's or a beneficiary's sexual orientation, or gender identity in an application for insurance coverage, or in an investigation conducted by an insurer, reinsurer, or insurance support organization in connection with an application for such coverage, or using information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation or gender identity;

\* \* \*

(iii) Making adverse underwriting decisions because medical records or a report from an insurance support organization reveal that an applicant or insured has demonstrated ~~AIDS-related~~ HIV-related concerns by seeking counseling from health care professionals;

\* \* \*

(20) HIV-related tests. Failing to comply with the provisions of this subdivision regarding HIV-related tests. "HIV-related test" means a test approved by the United States Food and Drug Administration ~~and the Commissioner~~, included in the current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens, used to determine the existence of HIV antibodies or antigens in the blood, ~~urine, or oral mucosal transudate (OMT)~~.

\* \* \*

(B)(i) No person shall request or require that an individual submit to an HIV-related test unless he or she has first obtained the individual's written informed consent to the test. Before written, informed consent may be granted, the individual shall be informed, by means of a printed information statement ~~which~~ that shall have been read aloud to the individual by any agent

of the insurer at the time of application or later and then given to the individual for review and retention, of the following:

(I) an explanation of the test or tests to be given, including: the tests' relationship to AIDS, the insurer's purpose in seeking the test, potential uses and disclosures of the results, limitations on the accuracy of and the meaning of the test's results, the importance of seeking counseling about the individual's test results after those results are received, and the availability of information from and the telephone numbers of the Vermont Department of Health AIDS hotline and the Centers for Disease Control and Prevention; and

(II) an explanation that the individual is free to consult, at personal expense, with a personal physician or counselor or the State Vermont Department of Health, which shall remain confidential, or to obtain an anonymous test at the individual's choice and personal expense, before deciding whether to consent to testing and that such delay will not affect the status of any application or policy; and

\* \* \*

~~(ii) In addition, before drawing blood or obtaining a sample of the urine or OMT for the HIV-related test or tests, the person doing so shall give the individual to be tested an informed consent form containing the information required by the provisions of this subdivision (B), and shall then obtain the individual's written informed consent. If an OMT test is administered in the presence of the agent or broker, the individual's written informed consent need only be obtained prior to administering the test, in accordance with the provisions of this subdivision (B).~~

~~(C)(i) The forms for informed consent, information disclosure, and test results disclosure used for HIV-related testing shall be filed with and approved by the Commissioner pursuant to section 3541 of this title; and~~

~~(ii) Any testing procedure shall be filed and approved by the Commissioner in consultation with the Commissioner of Health.~~

~~(D) No laboratory may be used by an insurer or insurance support organization for the processing of HIV-related tests unless it is approved by the Vermont Department of Health. Any requests for approval under this subdivision shall be acted upon within 120 days. The Department may approve a laboratory without on-site inspection or additional proficiency data if the laboratory has been certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a or if it meets the requirements of the federal Health Care Financing Administration under the Clinical Laboratory Improvement Amendments.~~



~~(E) The test protocol shall be considered positive only if test results are two positive ELISA tests, and a Western Blot test confirms the results of the two ELISA tests, or upon approval of any equally or more reliable confirmatory test or test protocol which has been approved by the Commissioner and the U.S. Food and Drug Administration. If the result of any test performed on a sample of urine or OMT is positive or indeterminate, the insurer shall provide to the individual, no later than 30 days following the date of the first urine or OMT test results, the opportunity to retest once, and the individual shall have the option to provide either a blood sample, a urine sample, or an OMT sample for that retest. This retest shall be in addition to the opportunities for retest provided in subdivisions (F) and (G) of this subdivision (20).~~

~~(F) If an individual has at least two positive ELISA tests but an indeterminate Western Blot test result, the Western Blot test may be repeated on the same sample. If the Western Blot test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits, or rates under any separate policy or policies held by the individual may be based upon such indeterminacy. If action on an application is delayed due to indeterminacy as described herein, the insurer shall provide the individual the opportunity to retest once after six but not later than eight months following the date of the first indeterminate test result. If the retest Western Blot test result is again indeterminate or is negative, the test result shall be considered as negative, and a new application for coverage shall not be denied by the insurer based upon the results of either test. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing a retest which had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.~~

(D) HIV-related tests required by insurers or insurance support organizations must be processed in a laboratory certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a, or that meets the requirements of the federal Health Care Financing Administration under the Clinical Laboratory Improvement Amendments.

(E) The test protocol shall be considered positive only if testing results meet the most current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm or more reliable confirmatory test or test protocol that has been approved by the United States Food and Drug Administration.

(F) If the HIV-1/2 antibody differentiation test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits, or rates under any separate policy or policies held by the individual shall be based upon such indeterminacy. If the HIV-1 NAT test result is negative, a new application for coverage shall not be denied by the insurer. If the HIV-1 NAT test is invalid, the full testing algorithm shall be repeated. No application for coverage shall be denied based on an indeterminate or invalid result. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing any previous HIV-related testing that had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.

(G)(i) Upon the written request of an individual for a retest, an insurer shall retest, at the insurer's expense, any individual who was denied insurance, or offered insurance on any other than a standard basis, because of the positive results of an HIV-related test:

\* \* \*

(II) in any event, upon the approval by the Commissioner of an alternative test or test protocol for the presence of HIV antibodies or antigens updates to the Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens.

\* \* \*

Sec. 16. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

\* \* \*

(d) Laboratory certification and approval	Annual fee shall be:
Drug laboratory approval	\$500.00
Drug laboratory alternate approval	\$300.00
Drug laboratory approval renewal	\$300.00
HIV laboratory approval	\$300.00
HIV laboratory alternate approval	\$100.00
HIV laboratory approval renewal	\$100.00
HIV laboratory (insurance) approval	\$500.00

---

HIV laboratory (insurance) ~~alternate approval~~ \$300.00

HIV laboratory (insurance) approval renewal \$300.00

\* \* \*

\* \* \* Financial Services Education and Victim Restitution  
Special Fund \* \* \*

Sec. 17. REPEAL; FINANCIAL SERVICES EDUCATION AND  
TRAINING SPECIAL FUND

9 V.S.A. § 5601(e), establishing the Financial Services Education and Training Special Fund, is repealed.

Sec. 17a. 9 V.S.A. § 5616 is added to read:

§ 5616. VERMONT FINANCIAL SERVICES EDUCATION AND VICTIM  
RESTITUTION SPECIAL FUND

(a) Purpose. The purpose of this section is to provide:

(1) funds for the purposes specified in subsection 5601(d) of this title;  
and

(2) restitution assistance to victims of securities violations who:

(A) were awarded restitution in a final order issued by the Commissioner or were awarded restitution in the final order in a legal action initiated by the Commissioner;

(B) have not received the full amount of restitution ordered before the application for restitution assistance is due; and

(C) demonstrate to the Commissioner's satisfaction that there is no reasonable likelihood that they will receive the full amount of restitution in the future.

(b) Definitions. As used in this section,

(1) "Claimant" means a person who files an application for restitution assistance under this section on behalf of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the named party in a restitution award in a final order, the executor of a named party in a restitution award in a final order, and the heirs and assigns of a named party in a restitution award in a final order.

(2) "Final order" means a final order issued by the Commissioner or a final order in a legal action initiated by the Commissioner.

(3) "Fund" means the Vermont Financial Services Education and Victim Restitution Special Fund created by this section.

(4) "Securities violation" means a violation of this chapter and any related administrative rules.

(5) "Victim" means a person who was awarded restitution in a final order.

(6) "Vulnerable person" means:

(A) a person who meets the definition of vulnerable person under 33 V.S.A. § 6902(14); or

(B) a person who is at least 60 years of age.

(c) Eligibility.

(1) A natural person who was a resident of Vermont at the time of the alleged fraud is eligible for restitution assistance.

(2) The Commissioner shall not award securities restitution assistance under this section:

(A) to more than one claimant per victim;

(B) unless the person ordered to pay restitution has not paid the full amount of restitution owed to the victim before the application for restitution assistance from the fund is due;

(C) if there was no award of restitution in the final order; or

(D) to a claimant who has not exhausted his or her appeal rights.

(d) Denial of assistance. The Commissioner shall not award restitution assistance if the victim:

(1) sustained the monetary injury as a result of:

(A) participating or assisting in the securities violation; or

(B) attempting to commit or committing the securities violation;

(2) profited or would have profited from the securities violation; or

(3) is an immediate family member of the person who committed the securities violation.

(e) Application for restitution assistance and maximum amount of restitution assistance award.

(1) The Commissioner may adopt procedures and forms for application for restitution assistance under this section.

(2) An application must be received by the Commissioner within two years after the deadline for payment of restitution established in the final order.

(3) Except as provided in subdivision (4) of this subsection, the maximum award from the Fund for each claimant shall be the lesser of \$25,000.00 or 25 percent of the amount of unpaid restitution awarded in a final order.

(4) If the claimant is a vulnerable person, the maximum award from the Fund shall be the lesser of \$50,000.00 or 50 percent of the amount of unpaid restitution awarded in the final order.

(f) Vermont Financial Services Education and Victim Restitution Special Fund. The Vermont Financial Services Education and Victim Restitution Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to provide funds for the purposes specified in this section and in subsection 5601(d) of this title. All monies received by the State for use in financial services education initiatives pursuant to subsection 5601(d) of this title or in providing uncompensated victims restitution pursuant to this section shall be deposited into the Fund. The Commissioner may direct a party to deposit a sum not to exceed 15 percent of the total settlement amount into the Fund in conjunction with settling a State securities law enforcement matter. Interest earned on the Fund shall be retained in the Fund.

(g) Award not subject to execution, attachment, or garnishment. An award made by the Commissioner under this section is not subject to execution, attachment, garnishment, or other process.

(h) State's liability for award. The Commissioner shall have the discretion to suspend applications and awards based on the solvency of the Fund. The State shall not be liable for any determination made under this section.

(i) Subrogation of rights of State.

(1) The State is subrogated to the rights of the person awarded restitution under this chapter to the extent of the award.

(2) The subrogation rights are against the person who committed the securities violation or a person liable for the pecuniary loss.

(j) Rulemaking authority. The Commissioner may adopt rules to implement this section.

(k) Bulletin. The Commissioner shall publish a bulletin defining the term "immediate family member" for purposes of this section.

\* \* \* New England Equity Crowdfunding \* \* \*

Sec. 18. 9 V.S.A. § 5305 is amended to read:

§ 5305. SECURITIES REGISTRATION FILINGS

\* \* \*

(b) A person filing a registration statement shall pay a filing fee of \$600.00. A person filing a registration statement in connection with the New England Crowdfunding Initiative shall be exempt from the filing fee requirement. Open-end investment companies shall pay a registration fee and an annual renewal fee for each portfolio as long as the registration of those securities remains in effect. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under section 5306 of this title, the Commissioner shall retain the fee.

\* \* \*

\* \* \* Surplus Lines Insurance Compact; Repeal \* \* \*

## Sec. 19. REPEAL

8 V.S.A. chapter 138A (Surplus Lines Insurance Multi-state Compliance Compact) is repealed.

\* \* \* Insurance Producers; Licensing Requirements; Definitions \* \* \*

Sec. 20. 8 V.S.A. § 4791 is amended to read:

## § 4791. DEFINITIONS

As used in this chapter:

\* \* \*

(3) “Adjuster” means any person who investigates claims ~~and~~ or negotiates settlement of claims arising under policies of insurance in behalf of insurers under such policies, or who advertises or solicits business from insurers as an adjuster. Lawyers settling claims of clients shall not be considered an adjuster. A license as an adjuster shall not be required of an official or employee of a domestic fire or casualty insurance company or of a duly licensed resident insurance producer of a domestic or duly licensed foreign insurer who is authorized by such insurer to appraise losses under policies issued by such insurer.

(4) “Public adjuster” means any person who investigates claims ~~and~~ or negotiates settlement of claims arising under policies of insurance in behalf of the insured under such policies or who advertises or solicits business as such adjuster. Lawyers settling claims of clients shall not be deemed to be insurance public adjusters.

\* \* \*

\* \* \* Fair Credit Reporting; Definition of Credit Report \* \* \*

Sec. 21. 9 V.S.A. § 2480a(3) is amended to read:

(3) “Credit report” means a consumer report, as defined in 15 U.S.C. § 1681a, that is used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer’s eligibility for credit for personal, family, or household purposes any written, oral, or other communication of any information by a credit reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, including an investigative credit report. The term does not include:

(A) a report containing information solely as to transactions or experiences between the consumer and the person making the report; or

(B) an authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

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

## Sec. 22. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senators Cummings, Balint, Brock, Campion, MacDonald, Pearson and Sirotkin moved that the Senate concur in the House proposal of amendment with an amendment as follows:

First: In Sec. 17a, 9 V.S.A. § 5616, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Denial of assistance. The Commissioner shall not award restitution assistance if the victim:

(1) sustained the monetary injury as a result of:

(A) participating or assisting in the securities violation; or

(B) attempting to commit or committing the securities violation; or

(2) profited or would have profited from the securities violation.

Second: In Sec. 17a, 9 V.S.A. § 5616, by striking out subsection (k) in its entirety.

Which was agreed to.

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

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

**H. 287.** An act relating to small probate estates.

**H. 524.** An act relating to health insurance and the individual mandate.

**H. 525.** An act relating to miscellaneous agricultural subjects.

**H. 530.** An act relating to the qualifications and election of the Adjutant and Inspector General.

**Proposal of Amendment; Third Reading Ordered**

**H. 512.**

Senator Sears, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to miscellaneous court and Judiciary related amendments.

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

Sec. 1. 12 V.S.A. § 5 is amended to read:

§ 5. DISSEMINATION OF ELECTRONIC CASE RECORDS

(a) The Court shall not permit public access via the Internet to criminal, or family, or probate case records. The Court may permit criminal justice agencies, as defined in 20 V.S.A. § 2056a, Internet access to criminal case records for criminal justice purposes, as defined in section 2056a.

\* \* \*

Sec. 2. 12 V.S.A. § 5169 is amended to read:

§ 5169. JUDGMENT FOR PLAINTIFF; COMMISSIONERS; WAIVER

(a) When the issue is determined in favor of the plaintiff, or if the person interested defaults, the court shall render judgment that partition be made and appoint three disinterested residents of the county as commissioners. The commissioners shall make partition of the estate and set off each share of the several persons interested, according to their respective titles, and shall award to the plaintiff reasonable costs against the adverse party.

(b) Notwithstanding subsection (a) of this section, the parties may, with the approval of the court, waive the use of commissioners and have all matters decided by the court at a bench trial.

Sec. 3. 15A V.S.A. § 1-110 is amended to read:

§ 1-110. NOTICE OF INTENT TO RETAIN PARENTAL RIGHTS

\* \* \*



~~(b) Each probate division of the superior court~~ Probate Division of the Superior Court shall forward maintain a notice filed with that court under subsection (a) of this section, ~~to the probate division of the superior court in the district of Chittenden, which~~ within an electronic database that shall serve as a central repository for all such notices.

Sec. 4. 33 V.S.A. § 5117 is amended to read:

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

\* \* \*

(c)(1) Upon motion of a party in a divorce or parentage proceeding related to parental rights and responsibilities for a child or parent-child contact, the ~~Court~~ court may order that ~~Court~~ court records in a juvenile proceeding involving the same child or children be released to the parties in the divorce proceeding.

(2) Upon the court's own motion in a probate proceeding involving adoption, guardianship, or termination of parental rights, the court may order that court records in a juvenile proceeding involving the same child or children be released to the Probate Division. When the court orders release of records pursuant to this subdivision, the court shall notify the parties that it intends to consider confidential juvenile case information and shall provide the parties with access to the information in a manner that preserves its confidentiality.

(3) Files inspected under this subsection shall be marked: UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE OF UP TO \$2,000.00. The public shall not have access to records from a juvenile proceeding that are filed with the ~~Court~~ court or admitted into evidence in the divorce or parentage proceeding or in the probate proceeding.

\* \* \*

Sec. 5. 33 V.S.A. § 5119 is amended to read:

§ 5119. SEALING OF RECORDS

\* \* \*

(h)(1) In matters relating to a person who was charged with a criminal offense or was the subject of a delinquency petition on or after July 1, 2006, and prior to the person attaining the age of majority, the files and records of the ~~Court~~ court applicable to the proceeding shall be sealed immediately if the case is dismissed.

\* \* \*

Sec. 6. 15 V.S.A. § 752 is amended to read:

§ 752. MAINTENANCE

(a) In an action under this chapter, the court may order either spouse to make maintenance payments, either rehabilitative or ~~permanent~~ long term in nature, to the other spouse if it finds that the spouse seeking maintenance:

(1) lacks sufficient income or property, or both, including property apportioned in accordance with section 751 of this title, to provide for his or her reasonable needs; and

(2) is unable to support himself or herself through appropriate employment at the standard of living established during the civil marriage or is the custodian of a child of the parties.

(b) The maintenance order shall be in such amounts and for such periods of time as the court deems just, after considering all relevant factors, including:

(1) the financial resources of the party seeking maintenance, the property apportioned to the party, the party's ability to meet his or her needs independently, and the extent to which a provision for support of a child living with the party contains a sum for that party as custodian;

(2) the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(3) the standard of living established during the civil marriage;

(4) the duration of the civil marriage;

(5) the age and the physical and emotional condition of each spouse;

(6) the ability of the spouse from whom maintenance is sought to meet his or her reasonable needs while meeting those of the spouse seeking maintenance;

(7) inflation with relation to the cost of living; ~~and~~

(8) the impact of both parties reaching the age of eligibility to receive full retirement benefits under Title II of the federal Social Security Act or the parties' actual retirement, including any expected discrepancies in federal Social Security Retirement benefits; and

~~(8)~~(9) the following guidelines:

Length of marriage

% of the difference  
between parties'  
gross incomes

Duration of alimony award  
as % length of marriage

0 to <5 years	0-20 <u>16%</u>	No alimony or short-term alimony up to one year
5 to <10 years	<del>15-35</del> <u>12-29%</u>	20-50% (1-5 yrs)
10 to <15 years	<del>20-40</del> <u>16-33%</u>	40-60% ( <del>34-9</del> yrs)
15 to <20 years	<del>24-45</del> <u>20-37%</u>	40-70% (6-14 yrs)
20+ years	<del>30-50</del> <u>24-41%</u>	45% (9-20+ yrs)

(c) In each order awarding maintenance, the court shall state whether and how maintenance payments will be impacted by either party reaching the age of eligibility to receive full retirement benefits under Title II of the federal Social Security Act or the parties' actual retirement will impact payments.

Sec. 7. Vermont Rule of Criminal Procedure 3(k) is amended to read:

(k) Temporary Release. ~~Either a~~ A law enforcement officer arresting a person ~~or the prosecuting attorney~~ shall contact a judicial officer for determination of temporary release pursuant to Rule 5(b) of these rules without unnecessary delay. The law enforcement officer ~~or prosecuting attorney~~ shall provide the judicial officer with an affidavit or sworn statement as required by Rule 4(a) of these rules, and information upon which the determination as to temporary release may be made. The affidavit or sworn statement must indicate the ~~charge(s) the prosecuting attorney intends to file~~ crimes to be charged by the arresting officer.

Sec. 8. 18 V.S.A. § 4472 is amended to read:

§ 4472. DEFINITIONS

As used in this subchapter:

\* \* \*

(14) "Possession limit" means the amount of marijuana collectively possessed between the registered patient and the patient's registered caregiver that is ~~no~~ not more than two mature marijuana plants, seven immature plants, and two ounces of usable marijuana. Any marijuana harvested from the plants shall not count toward the two-ounce possession limit, provided it is stored in an indoor facility on the property where the marijuana was cultivated and reasonable precautions are taken to prevent unauthorized access to the marijuana.

\* \* \*

Sec. 9. 18 V.S.A. § 4474c is amended to read:

§ 4474c. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS  
REGARDING THE USE OF MARIJUANA FOR SYMPTOM  
RELIEF

\* \* \*

~~(c) A registered patient or registered caregiver who elects to grow marijuana to be used for symptom relief by the patient may do so only if the marijuana is cultivated in a single, secure indoor facility. Personal cultivation of marijuana by a patient or caregiver on behalf of a patient shall only occur:~~

(1) on property lawfully in possession of the cultivator or with the written consent of the person in lawful possession of the property; and

(2) in an enclosure that is screened from public view and is secure so that access is limited to the cultivator and persons 21 years of age or older who have permission from the cultivator.

\* \* \*

Sec. 10. 18 V.S.A. § 4474n is added to read:

§ 4474n. USE OF U.S. FOOD AND DRUG ADMINISTRATION-  
APPROVED DRUGS CONTAINING ONE OR MORE  
CANNABINOIDS

(a) Upon approval by the U.S. Food and Drug Administration (FDA) of one or more prescription drugs containing one or more cannabinoids, the following activities shall be lawful in Vermont:

(1) the clinically appropriate prescription for a patient of an FDA-approved prescription drug containing one or more cannabinoids by a health care provider licensed to prescribe medications in this State and acting within his or her authorized scope of practice;

(2) the dispensing, pursuant to a valid prescription, of an FDA-approved prescription drug containing one or more cannabinoids to a patient or a patient's authorized representative by a pharmacist or by another health care provider licensed to dispense medications in this State and acting within his or her authorized scope of practice;

(3) the possession and transportation of an FDA-approved prescription drug containing one or more cannabinoids by a patient to whom a valid prescription was issued or by the patient's authorized representative;

(4) the possession and transportation of an FDA-approved prescription drug containing one or more cannabinoids by a licensed pharmacy or

wholesaler in order to facilitate the appropriate dispensing and use of the drug; and

(5) the use of an FDA-approved prescription drug containing one or more cannabinoids by a patient to whom a valid prescription was issued, provided the patient uses the drug only for legitimate medical purposes in conformity with instructions from the prescriber and dispenser.

(b) Upon approval by the U.S. Food and Drug Administration of one or more prescription drugs containing one or more cannabinoids, the Department of Health shall amend its rules to conform to the provisions of subsection (a) of this section.

Sec. 11. REPEAL

2017 Act and Resolves No. 62, Sec. 8 (use of U.S. Food and Drug Administration-approved drugs containing cannabidiol) is repealed.

Sec. 12. 32 V.S.A. § 5894 is amended to read:

§ 5894. LIABILITY FOR FAILURE OR DELINQUENCY

\* \* \*

(f) Violations from income derived from illegal activity. An individual, fiduciary, officer, or employee of any corporation or a partner or employee of any partnership who violates subsections (a)-(e) of this section based on income derived from illegal activity shall be imprisoned not more than three years or fined not more than \$10,000.00 or not more than \$100,000.00 if the violation was based on income derived from the unlawful sale of a regulated drug in violation of 18 VSA chapter 84, or both. The penalty provided in this subsection shall be in addition to any other civil or criminal penalties provided by law.

Sec. 13. TASK FORCE ON CAMPUS SEXUAL HARM; REPORT

(a) Creation. There is created the Task Force on Campus Sexual Harm to examine issues relating to responses to sexual harm, dating and intimate partner violence, and stalking on campuses of postsecondary educational institutions in Vermont.

(b) Membership. The Task Force shall be composed of the following 19 members:

(1) one current member of the House of Representatives, appointed by the Speaker of the House;

(2) one current member of the Senate, appointed by the Committee on Committees;

(3) two survivors of campus sexual assault, domestic violence, or stalking incidents, appointed by Vermont Center for Crime Victim Services;

(4) the Executive Director of the Vermont Network Against Domestic and Sexual Violence or designee;

(5) one representative of a community-based sexual violence advocacy organization, appointed by the Vermont Network Against Domestic and Sexual Violence;

(6) three Title IX Coordinators, one employed and appointed by the University of Vermont, one employed and appointed by the Vermont State Colleges, and one employed by a Vermont independent postsecondary educational institution, appointed by the President of the Association of Vermont Independent Colleges;

(7) one campus health and wellness educator or sexual violence prevention educator working in a Vermont postsecondary educational institution, appointed by the Higher Education Subcommittee of the Prekindergarten–16 Council;

(8) one victim advocate working in a Vermont postsecondary educational institution, appointed by the Higher Education Subcommittee of the PreK–16 Council;

(9) two students who are members of campus groups representing traditionally marginalized communities, appointed by the Higher Education Subcommittee of the Prekindergarten–16 Council;

(10) one community-based restorative justice practitioner, appointed by the Community Justice Network of Vermont;

(11) one representative appointed by the Pride Center of Vermont;

(12) one representative appointed by the Vermont Office of the Defender General;

(13) one representative appointed by the Vermont Department of State's Attorneys and Sheriffs;

(14) one representative appointed by the Vermont Bar Association, with expertise in working with postsecondary educational institutions on the investigation and adjudication of sexual harassment and sexual assault allegations; and

(15) the Executive Director of the Vermont Human Rights Commission, or designee.

(c) Powers and duties. The Task Force shall study the following:

(1) The pathways for survivors of sexual harm in postsecondary educational institutional settings to seek healing and justice and recommendations to increase or enhance those pathways.

(2) Issues with Vermont's campus adjudication processes as identified by survivors of sexual harm, dating and intimate partner violence, or stalking in postsecondary educational institutional settings, including the interface between campus adjudication processes and law enforcement.

(3) Issues relating to transparency, safety, affordability, accountability of outcomes, and due process in campus conduct adjudication processes for sexual harm, dating and intimate partner violence, or stalking, including:

(A) current and best practices relating to outcomes conveyed through a student's transcript record;

(B) the effectiveness of acts passed in New York in 2015 to address campus sexual assault and in Virginia in 2015 to include a notation "on the transcript of each student who has been suspended for, has been permanently dismissed for, or withdraws from the institution while under investigation for an offense involving sexual violence under the institution's code, rules, or set of standards governing student conduct";

(C) the effectiveness of requiring that student transcript records note expulsions or suspensions in order to trigger follow-up conversations between the transferring and receiving schools; and

(D) consideration of concerns raised by the Association of Title IX Administrators with regard to transcript notation, in support of proposed federal legislation known as the Safe Transfer Act (H.R.6523, 114th Congress).

(4) How to improve survivor safety in campus adjudication processes.

(5) Any State policy changes that should be made in response to Title IX changes at the federal level.

(6) How to enhance ties between postsecondary educational institutions and community organizations that focus on domestic and sexual violence.

(d) Assistance. For purposes of scheduling meetings and preparing recommended legislation, the Task Force shall have the assistance of the Office of Legislative Council.

(e) Report. On or before March 15, 2020, the Task Force shall submit a written report to the House and Senate Committees on Education and Judiciary with its findings and any recommendations for legislative action.

(f) Meetings.

(1) The Executive Director of the Vermont Network Against Domestic and Sexual Violence or designee shall call the first meeting of the Task Force to occur on or before July 15, 2019.

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

(3) A majority of the membership shall constitute a quorum.

(4) The Task Force shall cease to exist on March 16, 2020.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Task Force serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than seven meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Task Force who are not otherwise compensated for their service on the Task Force shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than seven meetings. These payments shall be made from monies appropriated to the Agency of Education.

(h) Appropriation. The sum of \$11,102.00 is appropriated to the Agency of Education from the General Fund in fiscal year 2020 for per diem compensation and reimbursement of expenses for nonlegislative members of the Task Force. The sum of \$3,066.00 is appropriated to the General Assembly from the General Fund in fiscal year 2020 for per diem compensation and reimbursement of expenses for legislative members of the Task Force.

Sec. 14. PROTECTION OF PROBATION AND PAROLE OFFICERS;  
AGENCY OF HUMAN SERVICES REPORT TO JOINT JUSTICE  
OVERSIGHT COMMITTEE

On or before December 15, 2019, the Secretary of Human Services, in consultation with the Vermont State Employees Association, shall report to the Joint Legislative Justice Oversight Committee, the Senate and House Committees on Judiciary, and the House Committee on Corrections and Institutions on best practices and standards for protecting probation and parole officers in the performance of their job duties. The report shall consider:



(1) development of a training and certification program to be administered by the Department of Corrections to enable probation and parole officers to implement and use defensive techniques, equipment, and measures to protect themselves and the public from the risk of serious bodily injury or death;

(2) whether to impose one or more standard conditions of probation to protect the public; and

(3) best practices for the supervision of offenders by probation and parole officers without risk to the safety of themselves or the public.

Sec. 15. EFFECTIVE DATE; APPLICABILITY

(a) This act shall take effect on July 1, 2019.

(b) Notwithstanding 1 V.S.A. § 214, Sec. 6, 15 V.S.A. § 752(b)(9) (maintenance guidelines), shall apply to actions filed on or after January 1, 2019.

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

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Judiciary.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Judiciary?, Senators Sears, Baruth, Benning, Nitka and White moved to amend the proposal of amendment of the Committee on Judiciary as follows:

First: In Sec. 13 (Task Force on Campus Sexual Harm), by striking subsections (g) and (h) in their entirety and inserting in lieu thereof a new subsections (g) and (h) to read as follows:

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Task Force serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than six meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Task Force who are not otherwise compensated for their service on the Task Force shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A.

§ 1010 for not more than six meetings. These payments shall be made from monies appropriated to the General Assembly.

Second: By adding a new section to be numbered Sec. 14a to read as follows:

Sec. 14a. VERMONT SENTENCING COMMISSION; REPORT ON  
JUVENILE JURISDICTION

On or before December 15, 2019, the Vermont Sentencing Commission shall report to the Joint Justice Oversight Committee proposed alternatives, in light of 33 V.S.A. § 5204a, for providing the court with jurisdiction over cases where a person under 18 years of age commits a criminal offense that is not a listed crime under 13 V.S.A. § 5301(7) and is not charged with the offense until after turning 18 years of age.

Which was agreed to.

Thereupon, the proposal of amendment of the Committee on Judiciary, as amended was agreed to and third reading of the bill was ordered.

**House Proposal of Amendment Concurred In**

**S. 41.**

House proposal of amendment to Senate bill entitled:

An act relating to regulating entities that administer health reimbursement arrangements.

Was taken up.

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

Sec. 1. 18 V.S.A. § 9417 is added to read:

§ 9417. TAX-ADVANTAGED ACCOUNTS FOR HEALTH-RELATED  
EXPENSES; ADMINISTRATION; RULEMAKING

(a) As used in this section:

(1) “Flexible spending account” or “FSA” has the same meaning as in 26 U.S.C. § 106(c)(2).

(2) “Health reimbursement arrangement” or “HRA” means any account-based reimbursement arrangement funded solely by employer contributions that reimburses an employee, spouse, or dependents, or a combination thereof, for medical care expenses incurred by the employee, spouse, dependents, or a combination thereof, up to a maximum coverage amount set by the employer for a given coverage period, and that is established pursuant to 26 U.S.C. §§ 105–106 and applicable guidance from the Internal Revenue Service.

(3) “Health savings account” or “HSA” has the same meaning as in 26 U.S.C. § 223(d)(1).

(b) Any entity administering one or more HRAs, HSAs, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these, in this State is subject to the jurisdiction of the Commissioner of Financial Regulation pursuant to 8 V.S.A. § 10 and all other applicable provisions.

(c) The Commissioner of Financial Regulation shall adopt rules pursuant to 3 V.S.A. chapter 25 to license and regulate, to the extent permitted under federal law, entities administering or proposing to administer one or more HRAs, HSAs, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these, in this State. The rules shall include:

(1) annual licensure or registration filing requirements; and

(2) such requirements and qualifications for such entities as the Commissioner determines necessary to protect Vermont consumers and employers and to help ensure that funds are disbursed appropriately.

(d) Following the adoption of rules pursuant to subsection (c) of this section, an entity making an initial application for a license or registration to administer HRAs, HSAs, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these, in this State shall pay to the Commissioner a nonrefundable fee of \$600.00 for examining, investigating, and processing the application. Each such entity shall also pay a renewal fee of \$600.00 on or before December 31 every three years following initial licensure.

(e) This section shall not apply to an employer that self-administers one or more tax-advantaged accounts on behalf of its own employees.

## Sec. 2. RULEMAKING; REPORT

On or before February 15, 2020, the Commissioner of Financial Regulation shall provide an update to the Senate Committee on Finance and the House Committees on Health Care and on Commerce and Economic Development on the progress of the rulemaking required by Sec. 1 of this act, including any findings related to the permissible scope of the rule.

## Sec. 3. EFFECTIVE DATE

This act shall take effect on passage, provided that the Department of Financial Regulation shall adopt its final rule on or before September 1, 2020 regulating entities that administer HRAs, HSAs, FSAs, or similar tax-advantaged accounts for health-related expenses, or a combination of these.

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

An act relating to regulating entities that administer tax-advantaged accounts for health-related expenses.

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

### **Rules Suspended; Bills Messaged**

On motion of Senator Mazza, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

**S. 41, S. 131, H. 133, H. 287, H. 524, H. 525, H. 252, H. 530.**

### **Adjournment**

On motion of Senator Mazza, the Senate adjourned until one o'clock in the afternoon.

### **Afternoon**

The Senate was called to order by the President.

### **Bills Referred**

Pursuant to Temporary Rule 44A the following bills having failed to meet cross-over and being referred to the Committee on Rules were severally referred to their respective committees of jurisdictions:

### **H. 508.**

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

To the Committee on Government Operations.

### **H. 547.**

An act relating to approval of an amendment to the charter of the City of Montpelier.

To the Committee on Government Operations.

### **Senate Resolution Adopted**

Senate resolution of the following title was offered, read and adopted, and is as follows:

By Senators Ashe, Balint, Baruth, Benning, Bray, Brock, Campion, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, McCormack, McNeil, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman and White,

**S.R. 6.** Senate resolution relating to congratulating Dick Mazza's General Store on its 65th anniversary.

*Whereas*, Vermonters far beyond the confines of Mallets Bay know of the friendly service, great variety of products, and delicious homemade offerings for sale at Dick Mazza's General Store, and

*Whereas*, this unique Vermont-family enterprise was established under the auspices of Senator Dick Mazza's father, Joseph Mazza, who was honored to represent the town of Colchester in the General Assembly from 1961 to 1972, and

*Whereas*, even though Dick Mazza was only 15 years of age when the store opened in May, 1954, he played a major role in its construction and debut, and

*Whereas*, Joseph Mazza's careful management, keen sense of consumer preferences, and dedication to his business all contributed to the store's success, and

*Whereas*, in 1981, Dick Mazza incorporated the store as Dick Mazza's General Store, and it has continued to flourish under his expert proprietorship, and

*Whereas*, be it because of a cup of coffee, groceries, or a slice of apple pie, Dick Mazza's General Store has numerous loyal and satisfied customers, and

*Whereas*, as the many photos and memorabilia on display attest, Dick Mazza's General Store has played host to many political discussions, and

*Whereas*, the success of Dick Mazza's General Store is attributable in large measure to the efforts of Senator Dick Mazza's wonderful wife, Dolly, and

*Whereas*, despite his legislative duties, Senator Dick Mazza remains directly involved in the store's daily operations, and

*Whereas*, 2019 marks the 65th anniversary of the award-winning Dick Mazza's General Store, a great milestone worthy of celebration, *now therefore be it*

***Resolved by the Senate***

That the Vermont Senate is delighted to congratulate Dick Mazza's General Store on its 65th anniversary and extends best future wishes to both Senator Dick Mazza and his wife, Dolly, for the store's continued success, *and be it further*

***Resolved:*** That the Secretary of the Senate be directed to send a copy of this resolution to Senator Dick Mazza and his wife, Dolly.

**Recess**

On motion of Senator Ashe the Senate recessed until 3:30 P.M.

**Called to Order**

The Senate was called to order by the President.

**Proposal of Amendment; Third Reading Ordered****H. 107.**

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

An act relating to paid family and medical leave.

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

**Sec. 1. PURPOSE**

It is the intent of the General Assembly that:

(1) the Family and Medical Leave Insurance Program established by this act shall provide employees with affordable Family and Medical Leave Insurance benefits;

(2) the Commissioner of Financial Regulation shall seek a private insurance carrier to provide the benefits required under the Program;

(3) if the Commissioner is able to identify an insurance carrier that can provide the required benefits in a more cost-effective manner than would be possible if benefits were provided by the State, the Commissioner shall enter into a contract with that insurance carrier to administer the Program and provide the benefits required by this act beginning in October of 2020; and

(4) if the Commissioner is unable to identify a suitable insurance carrier, the Program shall be administered by the Department of Labor in coordination with the Departments of Financial Regulation and of Taxes, and benefits shall become available beginning in July of 2021.

Sec. 2. 21 V.S.A. chapter 5, subchapter 13 is added to read:

Subchapter 13. Family and Medical Leave Insurance§ 571. DEFINITIONS

As used in this subchapter:

(1) "Average weekly wage" means the employee's total wages from his or her two highest-earning quarters in the last four completed calendar quarters divided by 26.

(2) “Bonding leave” means a leave of absence from employment by an employee for:

(A) the employee’s pregnancy;

(B) the birth of the employee’s child; or

(C) the initial placement of a child 18 years of age or younger with the employee for the purpose of adoption or foster care.

(3) “Domestic partner” has the same meaning as in 17 V.S.A. § 2414.

(4) “Employee” means an individual who receives payments with respect to services performed for an employer from which the employer is required to withhold Vermont income tax pursuant to 32 V.S.A. chapter 151, subchapter 4.

(5) “Employer” means an individual, organization, governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within this State.

(6) “Family care leave” means a leave of absence from employment by an employee for a serious illness of the employee’s family member.

(7) “Family member” means:

(A) the employee’s child or foster child;

(B) a step child or ward who lives with the employee;

(C) the employee’s spouse, domestic partner, or civil union partner;

(D) the employee’s parent or the parent of the employee’s spouse, domestic partner, or civil union partner;

(E) the employee’s sibling;

(F) the employee’s grandparent; or

(G) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.

(8) “In loco parentis” means a child for whom the employee has day-to-day responsibilities to care for and financially support, or, in the case of the employee, an individual who had such responsibility for the employee when he or she was a child.

(9) “Qualified employee” means an employee who has:

(A) earned wages from which contributions were withheld pursuant to section 574 of this subchapter during at least two of the last four completed calendar quarters; and

(B) earned wages from which contributions were withheld pursuant to section 574 of this subchapter during the last four completed calendar quarters in an amount that is equal to or greater than 1,040 hours at the minimum wage established pursuant to section 384 of this chapter.

(10) "Serious illness" means an accident, disease, or physical or mental condition that:

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

(C) requires continuing in-home care under the direction of a physician.

(11) "Vermont average weekly wage" means the most recent average weekly wage for Vermont as calculated by the U.S. Bureau of Labor Statistics.

(12) "Wages" means payments that are included in the definition of wages set forth in 26 U.S.C. § 3401.

§ 572. FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM;  
ADMINISTRATION

(a) The Family and Medical Leave Insurance Program is established in the Department of Labor for the provision of Family and Medical Leave Insurance benefits to eligible employees pursuant to this section.

(b)(1) The Commissioner of Financial Regulation shall endeavor to identify and contract with a suitable insurance company to provide paid family and medical leave insurance in accordance with this subchapter.

(2)(A) On or before July 1, 2019, the Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall develop and issue a request for information related to the provision of family and medical leave insurance by a private insurance carrier on behalf of the State that satisfies the requirements of this subchapter. The request for information shall also seek input regarding the cost and administrative feasibility of the insurance carrier administering the collection of contributions on behalf of the Department of Taxes pursuant to section 574 of this subchapter.

(B) Responses to the request for information shall be due on or before August 15, 2019.



(3) On or before September 1, 2019, the Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall develop and issue a request for proposals for an insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter. An insurance carrier shall not be selected unless it can demonstrate that it would be able to provide the required family and medical leave insurance benefits and comply with the provisions of this subchapter in a more cost-effective manner than if the Family and Medical Leave Insurance Program were administered by the State.

(4) The Commissioner of Financial Regulation, in consultation with the Commissioners of Human Resources, of Labor, and of Taxes, shall evaluate the proposals received in response to the request for proposals and shall select, on or before November 15, 2019, the proposal that the Commissioner determines:

(A) best satisfies the requirements of this subchapter;

(B) will provide the required family and medical leave insurance benefits and comply with the provisions of this subchapter in a more cost-effective manner than if the Family and Medical Leave Insurance Program were administered by the State; and

(C) delivers the greatest value to the State and Vermont's employees and employers.

(5) An agreement with an insurance carrier to provide family and medical leave insurance pursuant to this subsection shall include a clause that permits the Commissioner of Financial Regulation to terminate the agreement for noncompliance with this chapter.

(6)(A) An agreement with an insurance carrier pursuant to this subsection shall be for a period of not more than four years.

(B) Not later than six months prior to the expiration on the agreement pursuant to this subsection, the Commissioner of Financial Regulation shall determine whether to renew the agreement for an additional period of not more than four years or to issue a new request for proposals for an insurance carrier to provide family and medical leave insurance that satisfies the requirements of this subchapter.

(7) The insurance carrier shall have its books and financial records related to the provision of family and medical leave insurance pursuant to this subsection audited annually and shall provide a copy of the annual audit to the Commissioner of Financial Regulation.

(c)(1) In the event that the Commissioner of Financial Regulation is unable to secure a suitable insurance carrier pursuant to subsection (b) of this section, the Paid Family and Medical Leave Insurance Program shall be administered by the Department of Labor pursuant to the provisions of this subchapter.

(2) In the event that the Paid Family and Medical leave Insurance Program is administered by the Department of Labor, the Commissioner of Labor may contract with a third-party administrator for actuarial support, fund administration, the processing of benefits claims and payments, and the initial determination of appeals.

### § 573. CONTRIBUTIONS

(a) An employer that does not elect to meet its obligations under this subchapter as provided pursuant to section 577 shall remit the contributions required by subsection (b) of this section to the Commissioner of Taxes on a quarterly basis as provided pursuant to 32 V.S.A. § 5842(a)(1) beginning with the calendar quarter that starts on April 1, 2020.

(b)(1) Contributions shall be equal to 0.20 percent of each employee's covered wages.

(2)(A) One-half of the contribution required pursuant subdivision (1) of this subsection shall be deducted and withheld by an employer from an employee's covered wages, and one-half shall be paid by the employee's employer.

(B) In lieu of deducting and withholding the full amount of the contributions due from the employee's covered wages pursuant to subdivision (A) of this subdivision (2), an employer may elect to pay all or a portion of the contributions due from the employee's covered wages.

(c) As used in this section, the term "covered wages" shall include all wages paid to an employee up to the amount of the maximum Social Security Taxable Wage.

(d)(1) The General Assembly shall annually review and, if necessary, adjust the rate of contribution established pursuant to subsection (b) of this section for the next fiscal year. The rate shall equal the amount necessary to provide Family and Medical Leave Insurance benefits pursuant to this subchapter, to administer the Family and Medical Leave Insurance Program during the next fiscal year, and, if a reserve is necessary, to ensure that it is adequately funded.

(2) On or before February 1 of each year, the Commissioner of Financial Regulation, in consultation with the insurance carrier that the State has contracted with, if any, and the Commissioners of Labor and of Taxes,

shall report to the General Assembly the rate of contribution necessary to provide Family and Medical Leave Insurance benefits pursuant to this subchapter, to administer the Program during the next fiscal year, and, if a reserve is necessary, to ensure that it is adequately funded.

§ 574. COLLECTION OF CONTRIBUTIONS; REMITTANCE

(a) The Commissioner of Taxes shall collect all contributions required pursuant to section 573 of this subchapter and deposit them into the Family and Medical Leave Insurance Special Fund.

(b)(1) The Commissioner of Taxes shall require the withholding of the contributions required pursuant to section 573 of this subchapter from wages paid by any employer, as if the contributions were an additional Vermont income tax subject to the withholding requirements of 32 V.S.A. § 5841(a). The administrative and enforcement provisions of 32 V.S.A. chapter 151, subchapter 4 shall apply to the withholding requirement under this section as if the contributions withheld were a Vermont income tax.

(2) An employer that has received approval from the Commissioner of Financial Regulation for an alternative insurance or benefit plan pursuant to the provisions of section 577 shall not be required to withhold contributions pursuant to this section.

(c)(1) The Commissioner of Taxes may enter into a memorandum of understanding with the private insurance carrier contracted with by the Commissioner of Financial Regulation pursuant to section 572 of this subchapter, the Commissioner of Financial Regulation, or the Commissioner of Labor as the Commissioner of Taxes determines is necessary to carry out the provisions of this section.

(2) The Commissioner of Taxes may contract with the private insurance carrier contracted with by the Commissioner of Financial Regulation pursuant to section 572 of this subchapter to administer the collection of contributions pursuant to this section.

§ 575. BENEFITS

(a)(1) A qualified employee shall be permitted to receive a total of not more than 12 weeks of Family and Medical Leave Insurance benefits in a calendar year, which may include:

(A) up to 12 weeks of benefits for bonding leave taken by the employee, provided that if both parents are qualified employees they shall be permitted to receive a combined total of not more than 12 weeks of Parental and Family Leave Insurance benefits in a 12-month period for bonding leave; and

(B) up to six weeks of benefits for family care leave taken by the employee.

(2) Notwithstanding subdivision (1)(B) of this subsection, with respect to a serious illness of an individual who is a sibling or grandparent of one or more qualified employees, the qualified employees who are a sibling or grandchild of that individual shall be permitted to receive a combined total of not more than six weeks of Parental and Family Leave Insurance benefits in a 12-month period for family care leave related to that individual.

(b)(1) The weekly benefit amount for a qualified employee awarded Family and Medical Leave Insurance benefits under this section shall be determined as follows:

(A) the portion of the qualified employee's average weekly wage that is less than or equal to 55 percent of the Vermont average weekly wage shall be replaced at a rate of 90 percent; and

(B) the portion of the qualified employee's average weekly wage that is greater than 55 percent of the Vermont average weekly wage shall be replaced at a rate of 55 percent.

(2) Notwithstanding subdivision (1) of this subsection, no qualified employee may receive Parental and Family Leave Insurance benefits that exceed the Vermont average weekly wage.

(c)(1) After the occurrence of a family care leave event, a qualified employee shall wait for a period of one week for which he or she shall not be eligible to receive Family and Medical Leave Insurance benefits.

(2) A qualified employee shall only have one waiting period in a calendar year.

(3) No waiting period shall be required before a qualified employee is eligible to receive Family and Medical Leave Insurance benefits in relation to a bonding leave.

(d) A qualified employee may receive Family and Medical Leave Insurance benefits for an intermittent leave or leave for a portion of a week. The benefit amount for an intermittent leave or leave for a portion of a week shall be calculated in increments of one full day or one fifth of the qualified employee's weekly benefit amount.

(e) A bonding leave or family care leave for which benefits are paid pursuant to this subchapter shall run concurrently with a leave taken pursuant to section 472 of this title or the federal Family and Medical Leave Act, 29 U.S.C. §§ 2611–2654.

(f)(1) A qualified employee shall not be permitted to receive Family and Medical Leave Insurance benefits for any day for which he or she is receiving:

(A) wages;

(B) payment for the use of vacation leave, sick leave, or other accrued paid leave;

(C) payment pursuant to a disability insurance plan;

(D) unemployment insurance benefits pursuant to 21 V.S.A. chapter 17 or the law of any other state; or

(E) compensation for temporary partial disability or temporary total disability pursuant to 21 V.S.A. chapter 9, the workers' compensation law of any state, or any similar law of the United States.

(2) Notwithstanding subdivision (1) of this subsection, an employer may provide its employees with additional income to supplement the amount of the benefits provided pursuant to this section provided that the sum of the additional income and the benefits provided pursuant to this section does not exceed the employee's average weekly wage.

§ 576. APPLICATION FOR BENEFITS; PAYMENT; TAX WITHHOLDING

(a) A qualified employee, or his or her agent, shall file an application for Family and Medical Leave Insurance benefits under this subchapter on a form approved by the Commissioner of Labor. The determination of whether the qualified employee is eligible to receive Family and Medical Leave Insurance benefits shall be based on the following criteria:

(1) The claim is for a bonding leave or a family care leave and the need for the leave is adequately documented.

(2) The claimant satisfies the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this subchapter.

(3) The claimant has specified the anticipated start date and duration of the leave.

(b)(1) A determination shall be made in relation to each claim within not more than five business days after the date the claim is filed. The time to make a determination on a claim may be extended by not more than 15 business days if necessary to obtain documents or information that are needed to make the determination.

(2) An application for Family and Medical Leave Insurance benefits may be filed:

(A) up to 60 days before an anticipated leave; or

(B) in the event of a premature birth or an unanticipated serious illness, within 60 days after the leave begins.

(3)(A) Benefits shall be paid to a qualified employee for the time period beginning on the day his or her leave began.

(B) The first benefit payment shall be sent to the qualified employee within 14 days after the leave begins or the claim is approved, whichever is later, and subsequent payments shall be sent biweekly.

(4) The provisions of section 1367 of this title shall apply to Family and Medical Leave Insurance benefits.

(c)(1) An individual filing a claim for Family and Medical Leave Insurance benefits shall, at the time of filing, be advised that Family and Medical Leave Insurance benefits may be subject to income tax and that the individual's benefits may be subject to withholding.

(2) All procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the withholding of income tax shall be followed in relation to the payment of Family and Medical Leave Insurance benefits.

(d) As used in this section, "agent" means an individual who holds a valid power of attorney for the employee or other legal authorization to act on the employee's behalf that is acceptable to the Commissioner of Labor.

#### § 577. EMPLOYER OPTION; ALTERNATIVE INSURANCE OR BENEFITS

(a) As an alternative to and in lieu of participating in the Family and Medical Leave Insurance Program, an employer may, upon approval by the Commissioner of Financial Regulation, comply with the requirements of this subchapter through the use of an alternative insurance plan or benefit plan that provides to all of its employees benefits for bonding and family care leave that are equivalent to or more generous than the benefits provided pursuant to this subchapter. An employer may elect to provide such benefits by:

(1) establishing and maintaining to the satisfaction of the Commissioner of Financial Regulation self-insurance necessary to provide equivalent or greater benefits;

(2) purchasing insurance coverage for the payment of equivalent or greater benefits from any insurance carrier authorized to provide family and medical leave insurance in this State;

(3) establishing an employee benefits plan that provides equivalent or greater benefits; or

(4) any combination of subdivisions (1) through (3) of this subsection.

(b)(1) The Commissioner of Financial Regulation may approve an alternative insurance or benefit plan under this section upon making a determination that it provides benefits that are equivalent to or more generous than the benefits provided pursuant to this subchapter.

(2)(A) Nothing in this section shall be construed to required that the benefits provided by an alternative insurance or benefit plan be identical to the benefits provided pursuant to this subchapter.

(B) The Commissioner shall determine whether the benefits provided by a proposed alternative insurance or benefit plan are equivalent to or more generous than the benefits provided pursuant to this subchapter by weighing the relative value of the alternative plan's length of leave, wage replacement, and cost to employees against the provisions of this subchapter.

(c)(1) Except as otherwise provided pursuant to subdivision (4) of this subsection, an alternative insurance or benefit plan shall only be permitted to become effective on January 1 following its approval and shall remain in effect until it is discontinued pursuant to subdivision (3) of this subsection.

(2)(A) An employer shall submit an application to the Commissioner of Financial Regulation for approval of a new or modified alternative insurance or benefit plan on or before October 15 of the calendar year prior to when it shall take effect.

(B) The Commissioner shall make a determination and notify the employer of whether its application has been approved on or before December 1. If the application is approved, the Commissioner shall also provide a copy of the notice to the Commissioners of Labor and of Taxes on or before December 1.

(3) An employer may discontinue its alternative insurance or benefit plan on January 1 of any year by filing notice of its intent to discontinue the plan with the Commissioners of Financial Regulation, of Labor, and of Taxes on or before November 1 of the prior year.

(4)(A) Notwithstanding any provisions of subdivisions (1) and (2) of this subsection to the contrary, for calendar year 2020, an employer shall submit an application for a new alternative insurance or benefit plan on or before February 1.

(B) The Commissioner shall make a determination and notify the employer of whether its application has been approved on or before March 15.

If the application is approved, the Commissioner shall also provide a copy of the notice to the Commissioners of Labor and of Taxes on or before March 15.

(C) Beginning on April 1, 2020, an employer that receives approval for an alternative insurance or benefit plan pursuant to this subdivision (4) shall be exempt from withholding contributions as provided pursuant to subdivision 574(b)(2) of this subchapter.

(d) Nothing in this subchapter shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or paid time off policy that provides more generous benefits than the benefits provided pursuant to this subchapter.

#### § 578. DISQUALIFICATIONS

A qualified employee shall be disqualified for benefits for any week in which he or she has received:

(1) compensation for temporary partial disability or temporary total disability under the workers' compensation law of any state or under a similar law of the United States; or

(2) unemployment insurance benefits under the law of any state.

#### § 579. APPEALS

(a) An employer or employee aggrieved by a decision under section 576 or 578 of this subchapter may file an initial appeal of the decision with the insurance carrier that the State has contracted with.

(b) Within 20 days after receiving notice of the insurance carrier's decision on the initial appeal, the employer or employee may appeal the decision to an administrative law judge as provided pursuant to sections 1348 and 1351-1357 of this title.

(c) Within 30 days after receiving notice of the administrative law judge's decision, either party may appeal that decision to the Supreme Court.

#### § 580. FALSE STATEMENT OR REPRESENTATION; PENALTY

A person who willfully makes a false statement or representation for the purpose of obtaining any benefit or payment or to avoid payment of any required contributions under the provisions of this subchapter, either for himself or herself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00 and shall forfeit all or a portion of any right to benefits under the provisions of this subchapter, as determined to be appropriate by the Commissioner of Labor or Commissioner of Financial Regulation, as appropriate.



§ 581. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

(a) The employer of an employee who receives Family and Medical Leave Insurance benefits under this subchapter shall reinstate the employee at the conclusion of his or her bonding leave or family care leave, provided the employee does not take bonding leave or family care leave for a combined total of more than 12 weeks in a calendar year. The employee shall be reinstated in the first available suitable position given the position he or she held at the time his or her leave began.

(b) Upon reinstatement, the employee shall regain seniority and any unused accrued paid leave he or she was entitled to prior to the leave, less any accrued paid leave used during the leave.

(c)(1) Nothing in this section shall be construed to diminish an employee's rights pursuant to subsection 472(f) of this chapter.

(2) The provisions of this section shall not apply if:

(A) the employee had been given notice, or had given notice, prior to the employee providing his or her employer with notice of the leave;

(B) the employer can demonstrate by clear and convincing evidence that during the leave, or prior to the employee's reinstatement, the employee's position would have been terminated or the employee laid off for reasons unrelated to the leave or the reason for which the employee took the leave;

(C) the employee fails to inform the employer of:

(i) his or her interest in being reinstated at the conclusion of the leave; and

(ii) the date on which his or her leave is anticipated to conclude;  
or

(D) more than two years have elapsed since the conclusion of the employee's leave.

(d)(1) An employee aggrieved by an employer's failure to comply with the provisions of this section may bring an action in the Civil Division of the Superior Court in the county where the employment is located for compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, and other appropriate relief.

(2) A copy of the complaint shall be filed with the Commissioner of Labor.

(3) The court shall award reasonable attorney's fees to the employee if he or she prevails.

#### § 582. PROTECTION FROM RETALIATION OR INTERFERENCE

(a) An employer shall not discharge or in any other manner retaliate against an employee who exercises or attempts to exercise his or her rights under this subchapter. The provisions against retaliation in subdivision 495(a)(8) of this title shall apply to this subchapter.

(b) An employer shall not interfere with, restrain, or otherwise prevent an employee from exercising or attempting to exercise his or her rights pursuant to this subchapter.

(c) An employee aggrieved by a violation of the provisions of this subchapter may bring an action in Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

#### § 583. CONFIDENTIALITY OF INFORMATION

(a) Information obtained from an employer or individual in the administration of this subchapter and determinations of an individual's right to receive benefits that reveal an employer's or individual's identity in any manner shall be kept confidential and, to the extent that such information is obtained by the State, shall be exempt from public inspection and copying under the Public Records Act. Such information shall not be admissible as evidence in any action or proceeding other than one brought pursuant to the provisions of this subchapter.

(b) Notwithstanding subsection (a) of this section:

(1) an individual or his or her duly authorized agent may be provided with information to the extent necessary for the proper presentation of his or her claim for benefits or to inform him or her of his or her existing or prospective rights to benefits; and

(2) an employer may be provided with information that the Commissioner of Financial Regulation, of Labor, or of Taxes determines is necessary to enable the employer to discharge fully its obligations and protect its rights under this subchapter.

#### § 584. RULEMAKING

(a) The Commissioner of Taxes shall adopt rules as necessary to implement the provisions of section 574 of this subchapter. The rules adopted by the Commissioner of Taxes shall include:

- (1) procedures for the collection of contributions; and
- (2) reporting and record-keeping requirements for employers.

(b) The Commissioner of Financial Regulation shall adopt rules as necessary to implement the provisions of section 577 of this subchapter. The rules adopted by the Commissioner of Financial Regulation shall include requirements and criteria for the approval of an employer's alternative insurance or benefit plan pursuant to section 577 of this subchapter and for determining whether a proposed plan provides benefits that are equivalent to or more generous than the benefits provided pursuant to this subchapter.

(c)(1) The Commissioner of Labor shall adopt rules as necessary to implement all other provisions of this subchapter. The rules adopted by the Commissioner of Labor shall include:

(A) acceptable documentation for demonstrating eligibility for benefits;

(B) requirements for providing certification from a health care provider of the need for family leave that are modeled on the federal rules governing certification of a serious health condition under the Family and Medical Leave Act;

(C) requirements for obtaining authorization for an individual's health care provider to disclose information necessary to make a determination of the individual's eligibility for benefits;

(D) procedures for appeals pursuant to subsection 579(b) of this subchapter; and

(E) rules to permit an employee to authorize the Department, in compliance with all applicable provisions of federal law, to disclose unemployment insurance information to the insurance carrier as necessary to determine if the employee meets the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this chapter.

(2) The Commissioner of Labor shall create a form that will permit an employee to provide informed consent for the Department to disclose unemployment insurance information to the insurance carrier as necessary to determine if the employee meets the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this chapter. The form shall satisfy all applicable requirements under federal law.

#### § 585. FAMILY AND MEDICAL LEAVE INSURANCE SPECIAL FUND

The Family and Medical Leave Insurance Special Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund shall consist of contributions

collected from employers pursuant to section 574 of this subchapter. The Fund may be expended by the Commissioners of Financial Regulation, of Labor, and of Taxes for the payment of premiums for and the administration of the Family and Medical Leave Insurance Program. All interest earned on Fund balances shall be credited to the Fund.

Sec. 3. 21 V.S.A. § 586 is added to read:

§ 586. OVERPAYMENT OF BENEFITS; COLLECTION

(a)(1) Any individual who by nondisclosure or misrepresentation of a material fact, by him or her, or by another person, has received Family and Medical Leave Insurance benefits when he or she failed to fulfill a requirement for the receipt of benefits pursuant to this chapter or while he or she was disqualified from receiving benefits pursuant to section 580 of this chapter shall be liable to repay to the Commissioner of Labor the amount received.

(2) Upon determining that an individual has received benefits under this chapter that he or she was not entitled to, the Commissioner of Labor shall provide the individual with notice of the determination. The notice shall include a statement that the individual is liable to repay to the Commissioner the amount of overpaid benefits and shall identify the basis of the overpayment and the time period in which the benefits were paid.

(3) The determination shall be made within not more than three years after the date of the overpayment.

(b)(1) An individual liable under this section shall repay the overpaid amount to the Commissioner for deposit into the Fund.

(2) If the Commissioner finds that the individual intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits, in addition to the repayment under subdivision (1) of this subsection, the person shall pay an additional penalty of 15 percent of the amount of the overpaid benefits, which shall also be deposited into the Fund.

(3) The Commissioner may collect the amounts due under this section in civil action in the Superior Court.

(c) If an individual is liable to repay any amount pursuant to this section, the Commissioner may withhold, in whole or in part, any future benefits payable to the individual pursuant to this chapter and credit the withheld benefits against the amount due from the individual until it is repaid in full, less any penalties assessed under subdivision (b)(2) of this section.

(d) In addition to the remedy provided pursuant to this section, an individual who intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits may be subject to the penalties provided pursuant to section 580 of this title.

---

Sec. 4. ADOPTION OF RULES

(a) On or before January 1, 2020, the Commissioner of Taxes shall adopt rules necessary to implement the provisions of 21 V.S.A. § 574, which shall include:

- (1) procedures for the collection of contributions; and
- (2) reporting and record-keeping requirements for employers.

(b) On or before January 1, 2020, the Commissioner of Financial Regulation shall adopt rules as necessary to implement the provisions of section 577 of this subchapter. The rules adopted by the Commissioner of Financial Regulation shall include requirements and criteria for the approval of an employer's alternative insurance or benefit plan pursuant to 21 V.S.A. § 577 and for determining whether a proposed plan provides benefits that are equivalent to or more generous than the benefits provided pursuant to 21 V.S.A. chapter 5, subchapter 13.

(c) On or before June 1, 2020, the Commissioner of Labor shall adopt rules necessary to implement all other provisions of 21 V.S.A. chapter 5, subchapter 13, which shall include:

- (1) acceptable documentation for demonstrating eligibility for benefits;
- (2) requirements for providing certification from a health care provider of the need for family leave that are modeled on the federal rules governing certification of a serious health condition under the Family and Medical Leave Act;
- (3) requirements for obtaining authorization for an individual's health care provider to disclose information necessary to make a determination of the individual's eligibility for benefits;
- (4) procedures for appealing a decision pursuant to 21 V.S.A. § 579(b)(2);
- (5) the establishment of the existence of an in loco parentis relationship between an employee and another individual; and
- (6) rules to permit an employee to authorize the Department, in compliance with all applicable provisions of federal law, to disclose unemployment insurance information to the insurance carrier as necessary to determine if the employee meets the requirements to be a qualified employee as defined pursuant to subdivision 571(9) of this chapter.

## Sec. 5. EDUCATION AND OUTREACH

On or before June 1, 2020, the Commissioner of Labor shall develop and make available on the Department of Labor's website information and materials to educate and inform employers and employees about the Family and Medical Leave Insurance Program established pursuant to 21 V.S.A. chapter 5, subchapter 13.

## Sec. 6. ESTABLISHMENT OF FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL FUND

The Commissioner of Finance and Management may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from the Family and Medical Leave Insurance Special Fund necessary to establish the Family and Medical Leave Insurance Program in anticipation of the receipt on or after April 1, 2020 of contributions submitted pursuant to 21 V.S.A. §§ 573 and 574.

## Sec. 7. ADEQUACY OF RESERVES; REPORT

Annually, on or before January 15, 2021, 2022, and 2023, the Commissioner of Labor, in consultation with the Commissioners of Finance and Management, of Financial Regulation, and of Taxes, shall submit a written report to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance regarding the amount and adequacy of the reserves in the Family and Medical Leave Insurance Special Fund and any recommendations for legislative action necessary to ensure that an adequate reserve is maintained in the Fund.

Sec. 8. 21 V.S.A. § 471 is amended to read:

## § 471. DEFINITIONS

As used in this subchapter:

(1) "Employer" means an individual, organization ~~or~~, governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within this State ~~which for the purposes of parental leave that employs 10 or more individuals who are employed for an average of at least 30 hours per week during a year and for the purposes of family leave employs 15 or more individuals for an average of at least 30 hours per week during a year.~~

\* \* \*

(3) “Family leave” means a leave of absence from employment by an employee who works for an employer ~~which~~ that employs ~~15~~ 10 or more individuals who are employed for an average of at least 30 hours per week during the year for one of the following reasons:

(A) the serious illness of the employee; ~~or~~

(B) the serious illness of the employee’s ~~child, stepchild or ward who lives with the employee, foster child, parent, spouse or parent of the employee’s spouse~~ family member;

(4) ~~“Parental leave” means a leave of absence from employment by an employee who works for an employer which employs 10 or more individuals who are employed for an average of at least 30 hours per week during the year for one of the following reasons:~~

(C) the employee’s pregnancy;

~~(A)~~(D) the birth of the employee’s child; or

~~(B)~~(E) the initial placement of a child ~~16~~ 18 years of age or younger with the employee for the purpose of adoption or foster care.

(4) “Family member” means:

(A) the employee’s child or foster child;

(B) a step child or ward who lives with the employee;

(C) the employee’s spouse, domestic partner, or civil union partner;

(D) the employee’s parent or the parent of the employee’s spouse, domestic partner, or civil union partner;

(E) the employee’s sibling;

(F) the employee’s grandparent; or

(G) a child for whom the employee stands in loco parentis or an individual who stood in loco parentis for the employee when he or she was a child.

\* \* \*

(6) “Commissioner” means the Commissioner of Labor.

(7) “Domestic partner” has the same meaning as in 17 V.S.A. § 2414.

(8) “In loco parentis” means a child for whom the employee has day-to-day responsibilities to care for and financially support, or, in the case of the employee, an individual who had such responsibility for the employee when he or she was a child.

Sec. 9. 21 V.S.A. § 472 is amended to read:

§ 472. FAMILY LEAVE

(a) During any 12-month period, an employee shall be entitled to take unpaid leave for a period not to exceed 12 weeks for the following reasons:

(1) ~~for parental leave, during the employee's pregnancy and;~~

(2) following the birth of ~~an~~ the employee's child ~~or;~~

(3) within a year following the initial placement of a child ~~16~~ 18 years of age or younger with the employee for the purpose of adoption ~~or foster care;~~

~~(2)~~(4) ~~for family leave, for the serious illness of the employee;~~ or

(5) the serious illness of the employee's child, stepchild or ward of the employee who lives with the employee, foster child, parent, spouse, or parent of the employee's spouse family member.

(b) During the leave, at the employee's option, the employee may use accrued sick leave ~~or,~~ vacation leave ~~or,~~ any other accrued paid leave, ~~not to exceed six weeks~~ Family and Medical Leave Insurance benefits pursuant to subchapter 13 of this chapter, or short-term disability insurance or other insurance benefits. ~~Utilization~~ Use of accrued paid leave, Family and Medical Leave Insurance benefits, or other insurance benefits shall not extend the leave provided ~~herein~~ by this section.

\* \* \*

(d) The employer shall post and maintain in a conspicuous place in and about each of ~~his or her~~ its places of business printed notices of the provisions of this subchapter on forms provided by the Commissioner of Labor.

(e)(1) An employee shall give his or her employer reasonable written notice of intent to take family leave under this subchapter. Notice shall include the date the leave is expected to commence and the estimated duration of the leave.

(2) In the case of the adoption or birth of a child, an employer shall not require that notice be given more than six weeks prior to the anticipated commencement of the leave.

(3) In the case of an unanticipated serious illness or premature birth, the employee shall give the employer notice of the commencement of the leave as soon as practicable.



(4) In the case of serious illness of the employee or a member of the employee's family, an employer may require certification from a physician to verify the condition and the amount and necessity for the leave requested.

(5) An employee may return from leave earlier than estimated upon approval of the employer.

(6) An employee shall provide reasonable notice to the employer of his or her need to extend the leave to the extent provided by this chapter.

\* \* \*

(h) Except for serious illness of the employee, an employee who does not return to employment with the employer who provided the family leave shall return to the employer the value of any compensation paid to or on behalf of the employee during the leave, except payments of Family and Medical Leave Insurance benefits and payments for accrued sick leave or vacation leave. An employer may elect to waive the rights provided pursuant to this subsection.

Sec. 10. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

\* \* \*

(5) For any week with respect to which the individual is receiving or has received remuneration in the form of:

\* \* \*

(F) Family and Medical Leave Insurance benefits pursuant to chapter 5, subchapter 13 of this title.

\* \* \*

Sec. 11. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;  
DISCLOSURE TO SUCCESSOR ENTITY

(a)(1) The Commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

\* \* \*

(G) The individual was employed by that employer as a result of another employee taking leave under chapter 5, subchapter 13 of this title, and the individual's employment was terminated as a result of the reinstatement of the other employee following his or her leave under chapter 5, subchapter 13 of this title.

\* \* \*

#### Sec. 12. SELF-EMPLOYED INDIVIDUAL; OPT-IN; REPORT

On or before January 15, 2021, the Commissioner of Labor, in consultation with the insurance carrier that the State has contracted with, if any, and the Commissioners of Financial Regulation and of Taxes, shall submit a written report to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential for permitting self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program. In particular, the report shall examine the experience of other states that allow self-employed individuals to obtain coverage under their family and medical leave insurance programs, and the potential impact of permitting self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program on the Program, contribution rates, and administrative costs. The report shall also include a recommendation for legislative action necessary to permit self-employed individuals to elect to obtain coverage through the Family and Medical Leave Insurance Program.

#### Sec. 13. POTENTIAL TRANSITION TO STATE-OPERATED FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM; REPORT

On or before January 15, 2023, the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation and of Taxes, shall report to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential for transitioning the Family and Medical Leave Insurance Program to a program that is fully administered and operated by the State. The report shall identify the potential costs to the State of such a transition and the amount of time necessary to successfully accomplish the transition, as well as the expected impacts on contribution rates, administrative efficiency, and the experience of employers and employees. The report shall also examine and contrast the potential benefits and drawbacks of ensuring the solvency of a program that is fully administered and operated by the State by either maintaining a reserve or obtaining reinsurance. The report shall include a recommendation regarding whether the Family and Medical Leave Insurance

Program should transition to a program that is fully administered and operated by the State.

Sec. 14. 3 V.S.A. § 638 is added to read:

§ 638. FAMILY AND MEDICAL LEAVE INSURANCE

(a) All State employees shall be provided with family and medical leave insurance that satisfies the requirements of 21 V.S.A. chapter 5, subchapter 13.

(b) The State shall bargain with the appropriate collective bargaining representative for each bargaining unit of State employees to determine:

(1) whether State employees will be covered by the Family and Medical Leave Insurance Program or an alternative insurance or benefit plan established pursuant to 21 V.S.A. § 577;

(2) if the State employees will be covered by the Family and Medical Leave Insurance Program, the portion of the contribution rate established pursuant to 21 V.S.A. § 573 that the State and the employees will be responsible for; and

(3) if the State employees will be covered by an alternative insurance or benefit plan established pursuant to 21 V.S.A. § 577, the cost of the program to the employees, and the length of leave and level of wage replacement that the employees will be eligible for.

(c)(1) The contribution rate determined pursuant to subdivision (b)(2) of this section or the cost of the plan to the employees determined pursuant to subdivision (b)(3) of this section shall be the same for all State employees, regardless of whether the employees are permitted to collectively bargain pursuant to 3 V.S.A. chapter 27 or 28.

(2) The length of leave and level of wage replacement determined pursuant to subdivision (b)(3) of this section shall be the same for all State employees, regardless of whether the employees are permitted to collectively bargain pursuant to 3 V.S.A. chapter 27 or 28.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, the sworn Vermont State Police Officers below the rank of Lieutenant shall not be required to have the same rate of contribution or the same cost of the plan, length of leave, and level of wage replacement as other State employees.

Sec. 15. REQUEST FOR INFORMATION; REQUEST FOR PROPOSALS; REPORTS

(a) On or before July 15, 2019, the Commissioner of Financial Regulation shall submit a copy of the request for information to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and

Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

(b) On or before September 1, 2019, the Commissioner of Finance shall submit a brief summary of the responses to the request for information together with copies of all the responses to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance. The Commissioner of Financial Regulation may redact confidential business information from the copies of the responses to the request for information before submitting them.

(c) On or before September 15, 2019, the Commissioner of Financial Regulation shall submit a copy of the request for proposals to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

(d) On or before December 15, 2019, the Commissioner of Financial Regulation shall submit a written report summarizing the outcome of the request for proposal process to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance.

#### Sec. 16. PLAN FOR STATE OPERATION OF FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM; REPORT

In the event that the Commissioner of Financial Regulation is unable to secure a suitable insurance company to provide paid family and medical leave insurance pursuant to the provisions of 21 V.S.A. § 572(b), the Commissioner of Labor, in consultation with the Commissioners of Financial Regulation and of Taxes, shall, on or before January 15, 2020, submit a written report outlining a plan for the State to operate the Family and Medical Leave Insurance Program to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance. The report shall include a detailed explanation of how the State will implement Family and Medical Leave Insurance Program and carry out the requirements of 21 V.S.A. chapter 5, subchapter 13, including specific details and requirements related to staffing, information technology development, the development of rules and procedures, ensuring adequate reserves in the Family and Medical Leave Insurance Special Fund, and, if appropriate, the utilization of one or more

third-party administrators. The report shall also include a recommendation for any legislative action necessary for the State to successfully implement the Family and Medical Leave Insurance Program.

Sec. 17. APPROPRIATIONS; POSITIONS

(a)(1) The sum of \$1,000,000.00 is appropriated from the Family and Medical Leave Insurance Special Fund to the Department of Taxes in fiscal year 2020 for temporary staffing needs related to the adoption of rules, the development of information technology systems necessary to implement the provisions of 21 V.S.A. § 574, and, if applicable, to contract with the private insurance carrier selected pursuant to 21 V.S.A. § 572 to administer the collection of Family and Medical Leave Insurance contributions.

(2) The sum of \$217,900.00 is appropriated from the Family and Medical Leave Insurance Special Fund to the Department of Labor for staffing needs related to the adoption of rules and for the development of forms, procedures, and outreach and education materials related to the Family and Medical Leave Insurance Program established pursuant to 21 V.S.A. chapter 5, subchapter 13.

(b) The establishment of one new administrator position in the Department of Labor is authorized in fiscal year 2020.

Sec. 18. 32 V.S.A. § 3102 is amended to read:

§ 3102. CONFIDENTIALITY OF TAX RECORDS

\* \* \*

(d) The Commissioner shall disclose a return or return information:

\* \* \*

(7) to the Joint Fiscal Office pursuant to subsection 10503(e) of this title and subject to the conditions and limitations specified in that subsection; and

(8) to the Commissioner of Financial Regulation, the Commissioner of Labor, or the private insurance carrier contracted with by the Commissioner of Financial Regulation pursuant to 21 V.S.A. § 572, provided the information is related to the administration of the Family and Medical Leave Insurance Program created pursuant to 21 V.S.A. chapter 5, subchapter 13.

\* \* \*

Sec. 19. 21 V.S.A. § 1314 is amended to read:

§ 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;  
DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT  
EMPLOYMENT INFORMATION; DISCLOSURE OF

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INFORMATION TO OTHER STATE AGENCIES TO  
INVESTIGATE MISCLASSIFICATION OR MISCODING

\* \* \*

(e)(1) Subject to such restrictions as the Board may ~~by regulation~~ prescribe by rule, information from unemployment insurance records may be made available to any public officer or public agency of this or any other state or the federal government dealing with the administration or regulation of relief, public assistance, unemployment compensation, a system of public employment offices, wages and hours of employment, workers' compensation, misclassification or miscoding of workers, occupational safety and health, or a public works program for purposes appropriate to the necessary operation of those offices or agencies. The Commissioner may also make information available to colleges, universities, and public agencies of the State for use in connection with research projects of a public service nature, and to the Vermont Economic Progress Council with regard to the administration of 32 V.S.A. chapter 105, subchapter 2; but no person associated with those institutions or agencies may disclose that information in any manner that would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by the Commissioner.

\* \* \*

(8)(A) The Department of Labor shall disclose, upon request, to the insurance carrier that the Commissioner of Financial Regulation has contracted with to operate the Family and Medical Leave Insurance Program pursuant to section 572 of this title, any information in its records related to an identified individual that is necessary for the purpose of determining the individual's eligibility for Family and Medical Leave Insurance benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(B) The Commissioner shall enter into an agreement with the insurance carrier that governs the use of the disclosed information and complies with all requirements of 20 C.F.R. § 603.10.

(C) The information requested shall not be released unless the individual to whom the requested information relates has signed a consent form, approved by the Commissioner, that permits the release of the requested information.

(D) The requested information shall not be released unless the insurance carrier agrees to reimburse the Department of Labor for the costs involved in furnishing the requested information.

\* \* \*

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Sec. 20. EFFECTIVE DATES

(a) This section and Secs. 1, 2, 4, 5, 6, 12, 13, 14, 15, 16, 17, 18, and 19 shall take effect on passage.

(b) Secs. 3 and 7 shall not take effect until December 1, 2019, and shall not take effect at all if the Commissioner of Financial Regulation secures a suitable insurance company to provide paid family and medical leave insurance pursuant to the provisions of 21 V.S.A. § 572(b).

(c) Secs. 8, 9, 10, and 11 shall take effect on October 1, 2020.

(d)(1)(A) If the Commissioner of Financial Regulation secures a private insurance carrier pursuant to 21 V.S.A. § 572, contributions shall begin being paid pursuant to 21 V.S.A. §§ 573 and 574 on April 1, 2020, and, beginning on October 1, 2020, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(B) If the Commissioner of Financial Regulation is unable to secure a private insurance carrier pursuant to 21 V.S.A. § 572, contributions shall begin being paid pursuant to 21 V.S.A. §§ 573 and 574 on July 1, 2020, and, beginning on July 1, 2021, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(2) An employer that is subject to a collective bargaining agreement shall not be required to pay contributions or be subject to the provisions of 21 V.S.A. chapter 5, subchapter 13 until either the effective date of the next collective bargaining agreement after April 1, 2020, or the effective date of a supplement to or provision of an existing collective bargaining agreement that specifically addresses the provisions of 21 V.S.A. chapter 5, subchapter 13, in order to permit the employer and the collective bargaining representative to negotiate regarding the employer and employee shares of the contribution rate or whether the employer will provide benefits through an alternative plan established pursuant to 21 V.S.A. § 577.

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

Senator Sirotkin, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs with the following amendment thereto:

In Sec. 2, 21 V.S.A. § 575, by striking out subdivision (c)(1) in its entirety and inserting in lieu thereof a new subdivision (c)(1) to read as follows:

(c)(1)(A) Each qualified employee shall complete a waiting period before he or she may receive benefits for a family care leave.

(B) The waiting period shall consist of the first five calendar days in a calendar year for which the qualified employee would otherwise be eligible to receive benefits for a family care leave.

(C) Family and Medical Leave Insurance benefits shall not be payable for any day in the waiting period.

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

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported the same without recommendation.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Economic Development, Housing and General Affairs was amended as recommended by the Committee on Finance.

Thereupon, the proposal of amendment recommended by the Committee on Economic Development, Housing and General Affairs, as amended, was agreed to and third reading of the bill was ordered on a roll call, Yeas 19, Nays 10.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Balint, Baruth, Bray, Campion, Clarkson, Cummings, Hardy, Hooker, Ingram, Lyons, MacDonald, McCormack, Nitka, Pearson, Perchlik, Pollina, Sirotkin, White.

**Those Senators who voted in the negative were:** Benning, Brock, Collamore, Kitchel, Mazza, McNeil, Parent, Rodgers, Sears, Westman.

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

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

##### **S. 107.**

House proposal of amendment to Senate bill entitled:

An act relating to elections corrections.

Was taken up.

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



\* \* \* Ratification of Articles of Amendment to the Vermont Constitution \* \* \*

Sec. 1. 17 V.S.A. chapter 32 is amended to read:

CHAPTER 32. PUBLICATION AND RATIFICATION OF ARTICLES OF  
AMENDMENT TO VERMONT CONSTITUTION

\* \* \*

§ 1841. CONSTITUTIONAL REQUIREMENTS

(a) Amendments to the Constitution, having been proposed by the General Assembly, published, and concurred in by the succeeding General Assembly as required by § 72 of Chapter II of the Constitution, shall be submitted to the people of the ~~state~~ State for their ratification and adoption in the manner provided in this chapter.

(b) Following the concurrence by the succeeding General Assembly but prior to being submitted to the people of the State, the Governor shall issue a proclamation providing public notice of the proposed constitutional amendment.

§ 1842. TIME OF VOTING; WARNING

(a) The people shall be assembled for the purpose of voting on the article of amendment in their respective towns and cities at the same time and place as for the general election, on the first Tuesday after the first Monday in November, in even-numbered years, and the warning for each meeting shall contain an article, in substance as follows:

“To see if the ~~freemen and freewomen~~ voters will vote to accept or reject the proposed article of amendment to the Constitution of Vermont.”

(b) The omission of that article from the warning shall not invalidate nor affect the vote on the proposed article of amendment, and the ~~freemen and freewomen~~ voters of each town or city shall vote on the article of amendment whether the warning contains the foregoing article or not.

§ 1843. PROCESS OF VOTING; MAKING RETURNS; CONDUCT OF  
MEETINGS

(a)(1) At those meetings the ~~freemen and freewomen~~ voters may vote by ballot for or against the article of amendment.

(2) The same officer shall preside in each such meeting as provided in section 2680 of this title.

(b) The board of civil authority shall, in open meeting, receive, sort, and count the votes of the ~~freemen and freewomen~~ voters for and against the article of amendment and the result shall be declared by the presiding officer. That

result shall be recorded by the clerk of the town or city and true returns thereof shall be made, sealed up and sent by the clerk by mail or otherwise to the Secretary of State as provided in section 2588 of this title.

(c) ~~The ballot boxes for the reception of votes~~ polls for voting on the article of amendment shall be ~~opened and shall close~~ open as provided in section 2561 of this title.

§ 1844. PUBLICATION IN NEWSPAPERS AND ON STATE WEBSITES;  
BALLOTS

(a)(1) The Secretary of State shall, between September 25 and October 1 in any year in which a vote on ratification of an article of amendment is taken, prepare copies of the proposal of amendment and forward them, with a summary of proposed changes, for publication in at least two newspapers having general circulation in the State, as determined by the Secretary of State.

(2) The proposal shall be so published once each week for three successive weeks in each of the papers at the expense of the State and on the websites of the General Assembly and the Office of the Secretary of State.

(b) The Secretary of State shall cause ballots to be prepared for a vote by the ~~freemen and freewomen~~ voters of the State upon the proposal of amendment.

§ 1845. QUALIFICATIONS OF VOTERS; ~~CHECKLISTS, BOOTHS,~~  
CLERKS CONDUCT OF ELECTION

The qualifications of voters on the proposal of amendment, ~~the checklist requirements for the election, and all other provisions relating to the conduct of the election~~ shall be the same as those required of voters at general elections ~~under sections 2121-2126 of this title and sections 2141-2150 of this title relating to checklists shall apply, but the checklist specified in section 2141 of this title to be used at the meetings under this act shall be prepared and posted at least 30 days before the first Tuesday after the first Monday in November, in even-numbered years. Voting booths shall be prepared and the ballot clerks and assisting clerks shall be appointed, as in case of general elections.~~

§ 1846. FAILURE TO POST CHECKLISTS

The failure of the selectboard of any town, or the proper officers of any city, to prepare and post checklists of the ~~freemen and freewomen~~ voters of the town or city ~~at least 30 days before the first Tuesday after the first Monday in November, in even-numbered years,~~ as provided by section 1845 ~~2141~~ of this title, shall not invalidate the votes given by the ~~freemen and freewomen~~ voters of the town or city upon the proposed article of amendment.

\* \* \*

§ 1848. TABULATION OF RETURNS; RECORD OF AMENDMENTS

The Governor and Secretary of State shall, on the second Tuesday of December, of the year in which a vote on ratification of an article of amendment is taken, open and tabulate the returns made under section 1843 of this ~~title~~ chapter; and if it appears therefrom that the article of amendment has been ratified and adopted by a majority of the ~~freemen and freewomen~~ voters voting thereon, the amendment shall be enrolled on the parchment and deposited in the office of the Secretary of State as a part of the Constitution of this State and shall, in all future official revisions of the laws, be published in immediate connection therewith.

§ 1849. PROCLAMATION BY GOVERNOR

The Governor shall thereupon forthwith issue his or her proclamation, attested by the Secretary of State, reciting the article of amendment and announcing the ratification and adoption of it by the people of this State under this chapter and that the amendment has become a part of the Constitution thereof and requiring all ~~magistrates and officers~~, and all citizens of the State to take notice thereof and govern themselves accordingly; or that the article of amendment has been rejected, as the case may be.

§ 1850. TRANSMISSION OF COPIES OF ACT CHAPTER AND FORMS TO CLERKS

(a) The Secretary of State shall send to the clerk of each city and town a copy of this ~~act~~ chapter at least two months before the vote on the ratification of an article of amendment.

(b) In any year in which a vote on ratification of an article of amendment is taken, the Secretary of State shall, within the period prescribed by section 1844 of this ~~title~~ chapter, send to the clerk of each city and town ballots provided for in that section 1844 of this ~~title~~ and blank forms for the returns of votes on the article of amendment.

\* \* \* Reapportionment \* \* \*

Sec. 2. 17 V.S.A. § 1881a is amended to read:

§ 1881a. SENATORIAL DISTRICTS; NOMINATIONS AND ELECTION

\* \* \*

(c)(1) Petitions for nominating candidates for Senator in the General Assembly by primary or by certificates of nomination of candidates for that office by convention, caucus, committee, or voters under chapter 49 of this title may be filed in the office of any county clerk in a senatorial district.

(2)(A) On the day after the last day for filing those petitions or certificates for that office, the other county clerk shall notify the senatorial district clerk of the facts concerning those petitions or certificates.

(B) The senatorial district clerk shall be responsible for determining the names of candidates and other facts required by law to appear on the ballot for the office of Senator, and for obtaining and distributing the ballots to the other clerks in the district. ~~In senatorial districts, the ballots for Senator in the General Assembly shall be separate from those for other county officers.~~

\* \* \*

Sec. 3. 17 V.S.A. § 1901 is amended to read:

§ 1901. PURPOSE

(a) The Supreme Court of the United States has ruled that the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution requires all state legislative bodies to be apportioned in such manner as to achieve substantially equal weighting of the votes of all voters in the choice of legislators.

(b) To comply with such requirement it will be necessary to reapportion the House of Representatives and Senate at periodic intervals, so that changes may be recognized in legislative apportionment.

(c) It is the purpose of this chapter to achieve such reapportionment in an orderly and impartial manner.

Sec. 4. 17 V.S.A. § 1909 is amended to read:

§ 1909. REVIEW

(a) Within 30 days of the effective date of any apportionment bill enacted pursuant to section 1906b, 1906c, or 1907 of this ~~title~~ chapter, any five or more ~~freemen and freewomen voters~~ of the State aggrieved by the plan or act may petition the Supreme Court of Vermont for review of same.

(b) The sole grounds of review to be considered by the Supreme Court shall be that the apportionment plan, or any part of it, is unconstitutional or violates section 1903 of this ~~title~~ chapter.

\* \* \*

\* \* \* Offenses Against the Purity of Elections \* \* \*

Sec. 5. 17 V.S.A. § 2017 is amended to read:

§ 2017. UNDUE INFLUENCE

A person who attempts by bribery, threats, or any undue influence to dictate, control, or alter the vote of a ~~freeman or freewoman~~ voter about to be

given at a local, primary, or general election shall be fined not more than \$200.00.

\* \* \* Voter Registration \* \* \*

Sec. 5a. 17 V.S.A. § 2145 is amended to read:

§ 2145. APPLICATION FORMS

\* \* \*

(f) A person who makes a false statement in completing a voter registration application form or the voter registration portion of an application for a motor vehicle driver's license or nondriver identification card knowing the statement to be false shall be subject to the penalties of perjury as provided in 13 V.S.A. § 2901, except that a person who is not eligible to register to vote and who otherwise completes the application accurately shall not be considered to have made a false statement under this subsection by his or her unintentional failure to decline to register on a motor vehicle driver's license or nondriver identification card application under section 2145a of this chapter or on a designated automatic voter registration agency's application under subsection 2145b(e) of this chapter.

\* \* \*

Sec. 6. 17 V.S.A. § 2145a is amended to read:

§ 2145a. REGISTRATIONS AT THE DEPARTMENT OF MOTOR  
VEHICLES

(a) An application for, or renewal of, a motor vehicle driver's license or nondriver identification card shall serve as a simultaneous application to register to vote unless the applicant checks the box on the application designating that he or she declines to use the application as a voter registration application.

\* \* \*

(c) An application for voter registration under this section shall update any previous voter registration by the applicant. Any change of address form submitted to the Department of Motor Vehicles in connection with an application for a motor vehicle driver's license shall serve to update voter registration information previously provided by the voter, unless the voter states on the form that the change of address is not for voter registration purposes.

(d)(1) The Department of Motor Vehicles shall transmit motor vehicle driver's license and nondriver identification card applications received under this section to the Secretary of State not later than five days after the date the

application was accepted by the Department, or before the date of any primary or general election, whichever is sooner.

(2) The Department of Motor Vehicles shall not transmit motor vehicle driver's license and nondriver identification card applications when the applicant has designated that he or she declines to be registered.

(3) The Department of Motor Vehicles shall ensure confidentiality of records as required by subdivision (b)(2)(A) of this section.

\* \* \*

(i) Notwithstanding the provisions of subsection (d) of this section or any other provision of law to the contrary, the Department of Motor Vehicles shall share its motor vehicle driver's license, driver privilege card, and nondriver identification card customer data with the Secretary of State's office for the Secretary's use in conducting voter registration and voter checklist maintenance activities.

Sec. 7. 17 V.S.A. § 2145b is amended to read:

§ 2145b. VOTER REGISTRATION AGENCIES

(a) Each voter registration agency shall:

(1) distribute voter registration application forms approved under section 2145 of this title;

(2) assist applicants in completing voter registration application forms, unless the applicant refuses such assistance; and

(3) accept completed voter registration applications and transmit completed applications to the Secretary of State not later than 10 days after the date of acceptance, or before the date of any primary or general election, whichever is sooner.

(b) The Secretary shall promptly transmit applications received under this section to the clerks of the appropriate municipalities.

(c)(1) A voter registration agency shall provide each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration application that the office provides with regard to the completion of its own forms, unless the applicant refuses such assistance.

(2) If an agency provides services to a person with a disability at the person's home, the agency shall provide the services described in subsection (a) of this section at the person's home.

(d) A Except as provided in subsection (e) of this section, a voter registration agency that provides services or assistance in addition to conducting voter registration shall distribute a voter registration application with each application for the services or assistance provided by the agency, and with each recertification, renewal, or change of address form relating to those services or assistance. In addition to the voter registration application form, the agency shall distribute a separate form that includes the following:

(1) The question, “If you are not registered to vote where you live now, would you like to apply to register to vote here today?”

(2) In the case of an agency that provides public assistance, the statement, “Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.”

(3) Boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote, together with the statement, “IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.”

(4) The statement, “If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.”

(5) The statement, “If you believe that someone has interfered with your right to register or to decline to register to vote, you may file a complaint with the Secretary of State (Secretary of State’s office address and telephone number).”

(e) The Secretary of State may designate voter registration agencies that shall provide qualified applicants for such agency’s services, or qualified inmates within the custody of the Department of Corrections, with automatic voter registration as an integrated option on application forms for services provided by those agencies.

(1) Such designations shall be limited to a voter registration agency or a specific program administered by such an agency:

(A) that, in the regular course of the agency’s or program’s business, already collects and verifies documents necessary to provide proof of an individual’s eligibility to vote under subchapter 1 of this chapter; and

(B) whose secretary, commissioner, or other applicable head of the agency has approved of such designation.

(2) On or before January 1 of each year, the Secretary shall, in accordance with the approval given by a voter registration agency's secretary, commissioner, or other head:

(A) publish on his or her official website a list of voter registration agencies designated under this subsection;

(B) specify which programs or services offered by each agency are included within the designation; and

(C) provide the date by which the agency's specified programs or services will comply with requirements of this subsection.

(3) Beginning on the date by which a voter registration agency's specified programs or services will comply with requirements of this subsection, an application for those services and any change of address form related to those services provided by the agency shall request the following information in a form approved by the Secretary of State:

(A) The applicant's citizenship.

(B) The applicant's date of birth.

(C) The applicant's town of legal residence.

(D) The applicant's street address or a description of the physical location of the applicant's residence. The description must contain sufficient information so that the town clerk can determine whether the applicant is a resident of the town.

(E) The voter's oath.

(F) The applicant's e-mail address, which shall be optional to provide.

(4) An application for a designated automatic voter registration agency's services shall provide the following statements:

(A) "By signing and submitting this application, you are authorizing this voter registration agency to transmit this application to the Secretary of State for voter registration purposes. YOU MAY DECLINE TO REGISTER. Both the office through which you submit this application and your decision of whether or not to register will remain confidential and will be used for voter registration purposes only."

(B) "In order to be registered to vote, you must: (1) be a U.S. citizen; (2) be a resident of Vermont; (3) have taken the voter's oath; and (4) be 18 years of age or older. Any person meeting the requirements of (1)–(3) who will be 18 years of age on or before the date of a general election may



register and vote in the primary election immediately preceding that general election. Failure to decline to register is an attestation that you meet the requirements to vote.”

(5)(A) An application for a designated automatic voter registration agency’s services shall provide the penalties provided by law for submission of a false voter registration application and shall require the signature of the applicant, under penalty of perjury.

(B) If a person who is ineligible to vote becomes registered to vote pursuant to this subsection in the absence of a violation of subsection 2145(f) of this chapter, that person’s registration shall be presumed to have been effected with official authorization and not the fault of that person.

(f)(1) The Secretary of State shall have the authority to audit any voter registration agency to determine compliance with the requirements of this section and to require any voter registration agency to implement any remedial measures necessary to ensure compliance with this section.

(2) The Secretary of Administration shall provide the Secretary of State any assistance that is necessary to ensure the cooperation of voter registration agencies in implementing any remedial measures the Secretary of State requires under this subsection.

Sec. 8. 17 V.S.A. § 2150 is amended to read:

§ 2150. REMOVING NAMES FROM CHECKLIST

\* \* \*

(d) Except as provided in subsection (a) of this section, a board of civil authority shall only remove a name from the checklist in accordance with the following procedure:

(1) If the board of civil authority is satisfied that a voter whose eligibility is being considered is still qualified to vote in the municipality, the voter’s name shall remain on the checklist, and no further action shall be taken.

(2)(A)(i) If the board of civil authority does not immediately know that the voter is still qualified to vote in the municipality, the board shall attempt to determine with certainty what the true status of the voter’s eligibility is.

(ii) The board of civil authority may consider and rely upon official and unofficial public records and documents, including telephone directories, city directories, newspapers, death certificates, ~~obituary~~ obituaries (or other public ~~notice~~ notices of death), tax records, and any checklist or checklists showing persons who voted in any election within the last four years.

(iii) The board of civil authority may also designate one or more persons to attempt to contact the voter personally.

(B) Any voter whom the board of civil authority finds through such inquiry to be eligible to remain on the checklist shall be retained without further action being taken.

(C) The name of any voter proven to be deceased shall be removed from the checklist.

(3)(A)(i) If after conducting its inquiry the board of civil authority or town clerk is unable to locate a voter whose name is on the checklist, or if the inquiry reveals facts indicating that the voter may no longer be eligible to vote in the municipality, the board of civil authority or, upon request of the board, the town clerk shall send a written notice to the voter.

(ii) The notice shall be sent by first-class mail to the most recent known address of the voter, asking the voter to verify his or her current eligibility to vote in the municipality.

(iii) The notice shall be sent with the required U.S. Postal Service language for requesting change of address information.

(B) Enclosed with the notice shall be a ~~postage-paid~~ postage-paid pre-addressed return form on which the voter may reply swearing or affirming the voter's current place of residence as the municipality in question or alternatively consenting to the removal of the voter's name.

(C) The notice required by this subsection shall also include the following:

(A)(i) A statement informing the voter that if the voter has not changed his or her residence, or if the voter has changed his or her residence but the change was within the area covered by the checklist, the voter should return the form to the town clerk's office. The statement shall also inform the voter that if he or she fails to return the form as provided in this subdivision, written affirmation of the voter's address shall be required before the voter is permitted to vote.

(B)(ii) Information concerning how the voter can register to vote in another state or another municipality within this State.

(4) If the voter confirms in writing that the voter has changed his or her residence to a place outside the area covered by the checklist, the board of civil authority shall remove the voter's name from the checklist.

(5) In the case of voters who failed to respond to the notice sent pursuant to subdivision (3) of this subsection, the board of civil authority shall

remove the voter's name from the checklist on the day after the second general election following the date of such notice, if the voter has not voted or appeared to vote in an election since the notice was sent or has not otherwise demonstrated his or her eligibility to remain on the checklist.

(6)(A) Notwithstanding the provisions of subdivision (5) of this subsection, if at any time subsequent to removal of a person's name from the checklist, the board determines that the person was still qualified to vote and that the voter's name should not have been removed, the board shall add the person's name to the checklist as provided in section 2147 of this ~~title~~ chapter.

(B) The provisions of this chapter shall be liberally construed, so that if there is any reasonable doubt whether a person's name should have been removed from the checklist, the person shall have the right to have the person's name immediately returned to the checklist.

(7)(A) The board of civil authority shall keep detailed records of its proceedings under this subchapter for at least two years. These records, except records relating to a person's decision not to register to vote or to the identity of the voter registration agency through which any particular voter registered, shall be public records and shall be available for inspection and copying at actual cost. The records shall include:

~~(A)(i)~~ in the case of each name removed from the checklist, a clear statement of the reason or reasons for which the name was removed;

~~(B)(ii)~~ in the case of the updating of the checklist required by subsection (c) of this section, the working copy or copies of the checklist used in the name by name review conducted to ascertain continued eligibility to vote;

~~(C)(iii)~~ the total number of new registrations occurring during the period between general elections;

~~(D)(iv)~~ the total number of persons removed from the checklist during the period between general elections; and

~~(E)(v)~~ lists of the names and addresses of all persons to whom notices were sent under this subsection, and information concerning whether or not each person to whom a notice was sent responded to the notice as of the date that inspection of the records is made.

(B)(i) A letter certifying compliance with this section shall be filed with the Secretary of State ~~by~~ on or before September 20 of each odd-numbered year.

(ii) Upon request of any Superior judge or upon request of the Secretary of State, the town clerk shall forward a certified copy of the records of checklist maintenance.

Sec. 8a. 17 V.S.A. § 2154 is amended to read:

§ 2154. STATEWIDE VOTER CHECKLIST

\* \* \*

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

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

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

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

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

\* \* \*

\* \* \* Political Parties \* \* \*

Sec. 9. 17 V.S.A. chapter 45 is amended to read:

CHAPTER 45. POLITICAL PARTIES

§ 2301. ORGANIZATION OF MAJOR POLITICAL PARTIES

A major political party shall organize biennially as provided in this chapter. ~~No~~ A person acting on behalf of a major political party shall not accept any contribution or make any expenditure (except for the purpose of organizing under this chapter) unless the party has a current certificate of organization on file with the Secretary of State.

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§ 2302. STATE CHAIR TO CALL CAUCUS

(a) The chair of the State committee of a party shall set a date for members of the party to meet in caucus in their respective towns, ~~which~~. The date shall be between September 10 and September 30, inclusive, in each odd-numbered year.

(b) At least 14 days before the date set for the caucuses, the State chair shall mail or electronically mail a notice of the date and purpose of the caucuses to each town clerk and to each town and county chair of the party.

§ 2303. TOWN CHAIR TO GIVE NOTICE

(a) The town chair or, if unavailable or if the records of the Secretary of State show there is no chair, any three voters of the town shall arrange to hold a caucus on the day designated by the State chair, in some public place within the town and shall set the hour of the caucus.

(b)(1) At least five days before the day of the caucus, the town chair shall post a notice of the date, purpose, time, and place of the caucus in the town clerk's office and in at least one other public place in town.

(2) In towns of ~~3,000~~ 5,000 or more population, he or she shall also publish the notice:

(A) in a newspaper having general circulation in the town; or

(B) in a nonpartisan electronic news media website or online forum that specializes in news of the State or the community.

(c) If three voters arrange to call the caucus, the voters shall designate one person among them to perform the duties prescribed in subsection (b) of this section for the town chair.

§ 2304. TOWN CAUCUS

(a)(1) At the time and place set for the town caucus, the voters of the party residing in the town shall meet in caucus and proceed to elect a town committee, consisting of such number of voters of the town as the caucus deems necessary, to serve during the following two years or until their successors are elected or appointed.

(2) Additional members of a town committee may be elected by the town committee at any meeting, and may be eligible to vote on matters before the town committee at that meeting or at the next meeting, as determined by the members of the committee before the election.

(b) The voter checklist used by the caucus shall be the most recent checklist approved by the board of civil authority.

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§ 2305. FIRST MEETING OF TOWN COMMITTEE

(a)(1) The first meeting of the town committee shall be held immediately following adjournment of the caucus.

(2) At this meeting, members of the town committee shall elect committee officers and delegates to the county committee.

(b) All officers and other members of the town committee and all delegates to the county committee shall be voters of the town.

§ 2306. PROCEDURE UPON FAILURE TO HOLD CAUCUS

If the voters of the party residing in any town fail to hold a caucus on the day designated by the State ~~chairman~~ chair, any three or more voters of the party residing in the town may call and hold a caucus at any time thereafter, in the manner provided ~~above~~ in sections 2303 through 2305 of this chapter. Those voters calling the caucus shall designate one ~~of their number~~ person among them to perform the duties prescribed ~~above~~ in section 2303 for the town chair.

§ 2307. CERTIFICATION OF OFFICERS AND COUNTY COMMITTEE DELEGATES

(a) Within 72 hours after the caucus, the chair and secretary of the town committee shall ~~mail~~ submit to the ~~Secretary of State and the chairs of the State and county committees~~ a copy of the notice calling the meeting and a certified list of the names, ~~and mailing addresses, phone numbers, and e-mails~~ of the officers and members of the town committee and of the delegates to the county committee.

(b) A committee is not considered organized until a certificate of organization is filed by the State committee with the Secretary of State pursuant to section 2313 of this chapter. ~~it has filed the material required by this section.~~

(c) The Secretary of State shall furnish forms for this purpose to the chair of the State committee of a political party.

§ 2308. COMPOSITION OF COUNTY COMMITTEE

(a) The number of delegates to the county committee that each town caucus is entitled to elect shall be apportioned by the State committee, based upon the number of votes cast for the party's candidate for Governor in the last election, provided that each town caucus shall be entitled to elect at least two delegates.

(b) Delegates to the county committee shall be voters of the town, but need not be members of the town committee; ~~they~~.

(c) Delegates shall serve during the following for two years following their election or until their successors are elected or appointed.

§ 2309. FIRST MEETING OF COUNTY COMMITTEE

(a)(1) The chair of the State committee shall set a date, ~~not more than 45 days after the date of the party's caucuses,~~ for the first meeting of each county committee.

(2) The State chair shall notify the chairs of the county committees of the date of the meeting.

(3)(A) The chair of the county committee shall set the hour and place of the meeting and shall notify all delegates-elect by mail or electronic mail not less than 10 days prior to the meeting.

(B) If the chair of the county committee receives notice that a town committee within the county has organized 10 or fewer days before the date of the first meeting of the county committee, the chair ~~must~~ shall notify the newly elected members within 48 hours of receiving notice of the organized town committee.

(b)(1) At the time and place set for the meeting, the delegates shall proceed to elect their officers and perfect an organization of the county committee for the ensuing two years.

(2) All officers and other members of the county committee and all delegates to the State committee shall be voters of the county.

§ 2310. ELECTION OF STATE COMMITTEE

(a)(1) The chair of the county committee shall be a member of the State committee.

(2) Each county committee shall be entitled to elect at least two additional members of the State committee. These delegates need not be members of the county committee.

(3) If the rules or bylaws of a State committee provide for apportionment of additional members of the State committee to come from the county, the county committee also shall elect those additional members.

(b) All county committee members and officers and all persons elected to the State committee shall be voters in the county from which they are elected.

(c) County committee members and delegates to the State committee shall serve for ~~the following~~ two years following their election or until their successors are elected or appointed.

§ 2311. CERTIFICATION OF COUNTY OFFICERS AND STATE COMMITTEE MEMBERS

(a) Within 72 hours of the first meeting of the county committee, its chair and secretary shall ~~mail~~ submit to ~~the Secretary of State~~ and the chair of the State committee a copy of the notice calling the meeting and a certified list of the names, ~~and mailing addresses, phone numbers, and e-mails~~ of the officers of the county committee and of the members elected by the county committee to the State committee.

(b) A committee is not considered organized until ~~it has filed the material required by this section~~ a certificate of organization is filed by the State committee with the Secretary of State pursuant to section 2313 of this chapter.

(c) The Secretary of State shall prescribe and furnish forms for this purpose.

§ 2312. FIRST MEETING OF THE STATE COMMITTEE

(a) The chair of the State committee shall name an hour and place of meeting ~~on a day not less than 15 nor more than 30 days after the day set for the first meeting of the county committee of the party,~~ at which time the members-elect of the State committee shall meet and perfect an organization of the State committee for the ensuing two years.

(b) The chair of the State committee shall notify all members-elect of the State committee in writing, at least ~~seven~~ 10 days before the day set for the meeting.

§ 2313. FILING OF CERTIFICATE OF ORGANIZATION

(a)(1) Within 10 days after the first meeting of the State committee of a party, the chair and secretary shall file in the office of the Secretary of State a certificate stating that the party has completed its organization for the ensuing two years and has substantially complied with the provisions of this chapter.

(2) However, no State committee shall be eligible to file a certificate of organization unless it has town committees organized in at least 30 towns in this State and county committees organized in at least seven counties by January 1 of the year of the general election.

(b) The certificate of organization shall:

(1) set forth the names, and mailing addresses, phone numbers, and e-mails of the officers and members of the State committee, together with the counties that they represent. ~~It shall also;~~

(2) contain a listing of the towns and counties in which committees have organized;



(3) designate, in not more than three words, the name by which the party shall be identified on any Australian ballot; and ~~shall~~

(4) be accompanied by a copy of the notice calling the meeting.

\* \* \*

#### § 2316. ~~SECRET BALLOT~~

~~At every caucus or meeting of a political committee, if there is a contest for nomination, recommendation, or election to any office or position, the vote shall be taken by secret written ballot. [Repealed.]~~

#### § 2317. VOTERS NOT TO PARTICIPATE IN MORE THAN ONE PARTY

~~No~~ A voter shall not vote in the ~~biennial~~ a town, county, or State caucus of more than one party in the same ~~year~~ 12-month period, nor shall any voter simultaneously hold membership on the committees of more than one political party.

\* \* \*

#### § 2319. PARTY CONVENTIONS FOR PLATFORMS AND PRESIDENTIAL ELECTIONS

On or before the fourth Tuesday in September in each even-numbered year, upon the call of the chair of the State committee of the party, a party platform convention of each organized political party shall be held to make and adopt the platform of the party. ~~In presidential years, the convention shall be the same convention held to nominate presidential electors.~~

\* \* \*

\* \* \* Nominations \* \* \*

Sec. 10. 17 V.S.A. chapter 49 is amended to read:

#### CHAPTER 49. NOMINATIONS

##### Subchapter 1. Primary Elections

\* \* \*

#### § 2353. PETITIONS TO PLACE NAMES ON BALLOT

(a) The name of any person shall be printed upon the primary ballot as a candidate for nomination by any major political party for ~~any~~ the office indicated, if ~~petitions~~ a petition containing the requisite number of signatures made by registered voters, in substantially the following form, ~~are~~ is filed with the proper official, together with the person's written consent to having his or her name printed on the ballot:

\* \* \*

(b)(1) A person's name shall not be listed as a candidate on the primary ballot of more than one party in the same election.

(2) A single petition shall contain only one office for which a person seeks to be a candidate.

(3) A person shall file a separate petition for each office for which he or she seeks to be a candidate.

#### § 2354. SIGNING PETITIONS

(a) Any number of voters may sign the same petition.

(b)(1) A voter's signature shall not be valid unless at the time he or she signs, the voter is registered and qualified to vote for the candidate whose petition he or she signs.

(2) Each voter shall indicate his or her town of residence next to his or her signature.

(c) The signature of a voter on a candidate's petition does not necessarily indicate that the voter supports the candidate. ~~A voter shall not sign more than one petition for the same office, unless more than one nomination is to be made, in which case he or she may sign as many petitions as there are nominations to be made for the same office.~~

(d) A petition shall contain the name of only one candidate.

\* \* \*

#### § 2368. CANVASSING COMMITTEE MEETINGS

After the primary election is conducted, ~~the~~:

(1) The canvassing committee for State and national offices and statewide public questions shall meet at 10 a.m. one week after the day of the election.

(2) The canvassing committee for county offices and countywide public questions, and State Senator shall meet at 10 a.m. on the third day following the election.

(3) The canvassing committees for local offices and local public questions, including and State Representative, shall meet at 10 a.m. on the day after the election, except that in the case of canvassing committees for State Representative in multi-town representative districts, the committees shall meet at 10 a.m. on the third day after the election.

---

§ 2369. DETERMINING WINNER; TIE VOTES

(a) A person who receives a plurality of all the votes cast by a party in a primary shall be a candidate of that party for the office designated on the ballot.

(b)(1) If, after the period for requesting a recount under section 2602 of this title has expired, no candidate has requested a recount and two or more candidates of the same party are tied for the same office, or if the results of any recount result in a tie the choice among those tied shall be determined upon five days' notice and not later than 10 days following the primary election by the committee of that party, which shall meet to nominate a candidate from among the tied candidates. The committee that nominates a candidate shall be as follows:

- (A) the State committee of a party for a State or congressional office;
- (B) the senatorial district committee for State Senate;
- (C) the county committee for county office; or

(D) the representative district committee for a Representative to the General Assembly.

(2) The committee chair shall certify the candidate nomination for the general election to the Secretary of State within 48 hours of the nomination.

\* \* \*

Subchapter 3. Independent Candidates

\* \* \*

§ 2403. NUMBER OF CANDIDATES; PARTY NAMES

(a)(1) A statement of nomination shall contain the name of only one candidate, except in the case of presidential and vice presidential candidates, who may be nominated by means of the same statement of nomination. ~~A person shall not sign more than one statement of nomination for the same office.~~

(2) A single statement of nomination shall contain only one office for which a person seeks to be a candidate.

\* \* \*

Subchapter 4. Miscellaneous Provisions

\* \* \*

§ 2414. CANDIDATES FOR STATE AND LEGISLATIVE OFFICE;  
DISCLOSURE FORM

\* \* \*

(d)(1) A senatorial district clerk or representative district clerk who receives a disclosure form under this section shall forward a copy of the disclosure to the Secretary of State within three business days of receiving it.

(2)(A) The Secretary of State shall post a copy of any disclosure forms and tax returns he or she receives under this section on his or her official State website. The forms shall remain posted on the Secretary's website until the date of the filing deadline for petition and consent forms for major party candidates for the statewide primary in the following election cycle.

\* \* \*

## \* \* \* Election Complaint Procedure \* \* \*

Sec. 11. 17 V.S.A. § 2458 is amended to read:

## § 2458. COMPLAINT PROCEDURE

(a)(1) The Secretary of State shall adopt rules to establish a uniform and nondiscriminatory complaint procedure to be used by any person who believes that a violation of this title or any other provision of ~~Title III of United States Public Law 107-252~~ 52 U.S.C. chapter 209, subchapter III (Uniform and Nondiscriminatory Election Technology and Administration Requirements) has occurred, is occurring, or is about to occur in the course of any election in which a candidate for federal office appears on the ballot.

(b) ~~For purposes of~~ As used in this section, “complaint” ~~shall mean~~ means a statement in writing made by a voter stating, with particularity, the violation, notarized, and sworn or affirmed under penalty of perjury.

(c) The Secretary's rules shall provide for an informal proceeding to hear complaints for all complainants unless a formal hearing is requested. Formal complaints held pursuant to this section shall be in conformance with the rules adopted by the Secretary.

(d) Any decision of the Secretary may be appealed to the Superior Court in the county where the individual resides.

\* \* \* Conduct of Elections \* \* \*

Sec. 12. 17 V.S.A. § 2473 is amended to read:

## § 2473. PROVISIONS RELATIVE TO PRESIDENTIAL ELECTION

\* \* \*

(c)(1) If a candidate whose name is not printed on the ballot receives the greatest number of votes for President, the Secretary of State shall notify him or her of that fact, and within two weeks thereafter, the candidate shall file

with the Secretary of State, a list of ~~freemen and freewomen~~ voters equal to the number of electors that the State is entitled to elect. The list shall be signed by the candidate personally.

(2) The persons so named shall be electors, having the duties prescribed in this title.

Sec. 13. 17 V.S.A. § 2508 is amended to read:

§ 2508. CAMPAIGNING DURING POLLING HOURS; VOTER ACCESS

(a)(1) The presiding officer shall ensure during polling hours on the day of the election that:

(A) within the building containing a polling place, no campaign literature, stickers, buttons, name stamps, information on write-in candidates, or other political materials that display the name of a candidate on the ballot or an organized political party or that demonstrate support or opposition to a question on the ballot are displayed, placed, handed out, or allowed to remain;

(B) within the building containing a polling place, no candidate, election official, or other person distributes election materials, solicits voters regarding an item or candidate on the ballot, or otherwise campaigns; and

(C) on the walks and driveways leading to a building in which a polling place is located, no candidate or other person physically interferes with the progress of a voter to and from the polling place.

(2) The provisions of subdivision (1) of this subsection shall apply to the town clerk's office during any period of early or absentee voting.

(b) During polling hours, the presiding officer shall control the placement of signs on the property of the polling place in a fair manner.

(c) The provisions of this section shall be posted in the notice required by section 2521 of this ~~title~~ chapter.

\* \* \* Early or Absentee Voters \* \* \*

Sec. 14. 17 V.S.A. chapter 51, subchapter 6 is amended to read:

Subchapter 6. Early or Absentee Voters

§ 2531. APPLICATION FOR EARLY VOTER ABSENTEE BALLOT

(a) Deadline to file.

(1)(A) A voter who expects to be an early or absentee voter, or an authorized person on behalf of such voter, may apply for an early voter absentee ballot until 5:00 p.m. or the closing of the town clerk's office on the day preceding the election.

~~(2)(B)~~ If a town clerk does not have regular office hours on the day before the election and his or her office will not otherwise be open on that day, an application may be filed until the closing of the clerk's office on the last day that office has hours preceding the election.

(2)(A) In cases of emergency, including unanticipated illness or injury, at his or her discretion the town clerk may accept a request for an absentee ballot after the deadline set forth in subdivision (1) of this subsection.

(B) In such cases of emergency, the ballot may be mailed, electronically delivered, or delivered by two justices of the peace as set forth in subsection 2539(b) of this subchapter.

(b) Place of filing.

(1) All applications shall be filed with the town clerk of the town in which the early or absentee voter is registered to vote.

(2) The town clerk shall file written applications and memoranda of verbal applications in his or her office, and shall retain the applications and memoranda for 90 days following the election, at which time they may be destroyed.

(c) Australian ballot. Voting by early voter absentee ballot shall be allowed only in elections using the Australian ballot system.

§ 2532. APPLICATIONS AUTHORIZED APPLICANTS; APPLICATION FORM; DUPLICATES

(a) Authorized applicants.

(1) An early or absentee voter, or an authorized family member or health care provider acting in the voter's behalf, may apply for an early voter absentee ballot by telephone, in person, or in writing. "Family As used in this subsection, "family member" here means a person's spouse, children, brothers, sisters, parents, spouse's parents, grandparents, and spouse's grandparents.

(2) Any other authorized person may apply in writing or in person; provided, however, that voter authorization to such a person shall not be given by response to a robotic phone call.

~~(b)(2)~~ Form of application.

(1) The application shall be in substantially the following form:

REQUEST FOR EARLY VOTER ABSENTEE BALLOT

Name of early or absentee voter: \_\_\_\_\_

Voter's Town of Residence: \_\_\_\_\_

Current physical address (address where you reside): \_\_\_\_\_

Telephone Number: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Date: \_\_\_\_\_

I request early voter absentee ballot(s) for the election(s) checked below:

- (1) Annual Town Meeting;
- (2) All other local elections;
- (3) August Primary Election;
- (4) Presidential Primary (YOU MUST SELECT PARTY);
- (5) November General Election;
- (6) All elections in this calendar year.

Please deliver the ballot(s) as indicated below (check one):

(1) Mail to voter at: \_\_\_\_\_  
Street or P.O. Box    Town/City State    Zip Code

(2) Delivery by two Justices of the Peace (this may only be selected if you are ill or if you, injured, or have a physical disability).

If applicant is other than early or absentee voter:

Name of applicant: \_\_\_\_\_

Address of applicant: \_\_\_\_\_

Relationship to early or absentee voter: \_\_\_\_\_

Organization, if applicable: \_\_\_\_\_

Date: \_\_\_\_\_ Signature of applicant: \_\_\_\_\_

~~(3)~~(2) If the application is made by telephone or in writing, the information supplied must shall be in substantial conformance with the information requested on this form.

~~(b) A person temporarily residing in a foreign country who is eligible to register to vote in this State, or a military service absentee voter who is eligible to register to vote in this State, may apply for early voter absentee ballots in the same manner and within the same time limits that apply for other early or absentee voters. An official federal postcard application shall suffice as a simultaneous request for an application for addition to the checklist and for an early voter absentee ballot, when properly submitted. Any other person also may make a simultaneous request for an application for addition to the checklist and for an early voter absentee ballot.~~

(c) Simultaneous voter registration.

(1) If a person makes a simultaneous request to register to vote and to apply for an early voter absentee ballot or if the request for an early voter absentee ballot is made for a person who is not yet registered and the request is received by the town clerk receives the request prior to the deadline for requesting to apply for early voter absentee ballots set forth in section 2531 of this chapter subchapter, the town clerk shall mail a blank voter registration application for addition to the checklist, together with a full set of early voter absentee ballots, to that person.

(2) An official federal postcard application shall suffice as a simultaneous application to register to vote and for an early voter absentee ballot.

(3)(A) All such voter registration applications for addition to the checklist that are returned to the town clerk before the close of the polls on election day shall be considered and acted upon by the board of civil authority before the ballots are counted.

(B) If the voter registration application is approved and the voter's name added to the checklist, the early voter absentee ballots cast by that voter shall be treated as other valid early voter absentee ballots.

(d) Application time frame.

(1) An application for an early voter absentee ballot shall be valid for the elections or the time frame specified by the applicant.

(e)(2) A single application shall only be valid for any elections within the same calendar year.

(f) A person residing in a State institution may apply for early voter absentee ballots in the same manner and within the same time limits that apply for other early or absentee voters.

(g)(e) Duplicate early voter absentee ballots.

(1)(A) The town clerk may, upon application, issue a duplicate early voter absentee ballot if the original ballot is not received by the voter within a reasonable period of time after mailing.

(B) The application may be made by a person entitled to apply for an early voter absentee ballot under subsection (a) of this section and shall be accompanied by a sworn statement affirming that the voter has not received the original ballot.

(2) If a duplicate early voter absentee ballot is issued and both the duplicate and original early voter absentee ballots are received before the close



of the polls on election day, the ballot with the earlier postmark shall be counted.

~~(h)~~(f) Unauthorized applicants.

(1) Any person who applies for an early voter absentee ballot knowing the person is without authorization from the early or absentee voter shall be fined not more than \$100.00 per violation for the first three violations; not more than \$500.00 per violation for the fourth through ninth violations; and not more than \$1,000.00 per violation for the tenth and subsequent violations.

(2) The Attorney General or a State's Attorney, whenever he or she has reason to believe any person to be or to have been in violation of this provision, shall conduct a civil investigation in accordance with the procedures set forth in section 2904 of this title.

\* \* \*

§ 2537. EARLY OR ABSENTEE VOTING IN THE TOWN CLERK'S OFFICE

(a)(1) A voter may, if he or she chooses, apply in person to the town clerk for the early voter absentee ballots and envelopes ~~rather than having them mailed as required by section 2539 of this subchapter.~~

(2) In this case, the clerk shall furnish the early voter absentee ballots and envelopes when a valid application has been made, or at such time as the clerk receives the ballots, whichever comes first.

(3) The voter may:

(A) mark his or her ballots, place them in the envelope, sign the certificate, and return the ballots in the envelope containing the certificate to the town clerk or an assistant town clerk without leaving the office of the town clerk; ~~or the voter may~~

(B) take the ballots and return them to the town clerk in the same manner as if the ballots had been received by mail.

(b) ~~No person, except~~ Except for justices of the peace as provided in section 2538 of this subchapter, ~~may~~ a person shall not take any ballot from the town clerk on behalf of any other person.

§ 2538. DELIVERY OF BALLOTS BY JUSTICES OF THE PEACE

(a)(1) In the case of persons who are early or absentee voters due to illness, injury, or ~~physical~~ disability, ballots shall be delivered in the following manner, unless the early or absentee voter has requested pursuant to section 2539 of this ~~title~~ subchapter that the early voter absentee ballots be mailed or electronically delivered.

(2) Not later than three days prior to the election, the board of civil authority or, upon request of the board, the town clerk, shall designate in pairs justices of the peace in numbers sufficient to deliver early voter absentee ballots to the applicants for early voter absentee ballots who have stated in their applications that they are unable to vote in person at the polling place due to illness, injury, or ~~physical~~ disability ~~but who have not requested in their applications that early voter absentee ballots be mailed to them~~. No A pair shall not consist of two justices from the same political party.

(3) If there shall not be available a sufficient number of justices to make up the required number of pairs, a member of each remaining pair shall be designated by the board, to be selected from lists of registered voters submitted by the chairs of the town committees of political parties, and from among registered voters who in written application to the board state that they are not affiliated with any political party.

(4) No A candidate or spouse, parent, or child of a candidate shall not be eligible to perform the duties prescribed by this section unless the candidate involved is not disqualified by section 2456 of this ~~title~~ chapter from serving as an election official. ~~This shall not prevent a candidate for district office from serving as a justice in another district.~~

(5) The compensation of justices and voters designated under this subsection shall be fixed by the board of civil authority and shall be paid by the town.

(6) The justices may, but shall not be required to, deliver ballots outside the town.

(b)(1) The town clerk shall divide the list of applicants who have an illness, injury, or ~~physical~~ disability into approximately as many equal parts as there are pairs of justices so designated, having regard to the several parts of the town in which the applicants may be found.

(2) As soon as early voter absentee ballots are available, the clerk shall deliver to each pair of justices one part of the list, together with early voter absentee ballots and envelopes for each applicant.

(3) When justices receive ballots and envelopes prior to election day, they shall receive only the ballots and envelopes they are assigned to deliver on that day.

(c)(1) Each pair of justices on the days they are assigned to deliver the ballots and envelopes shall call upon each of the early or absentee voters whose name appears on the part of the list furnished to them and shall deliver early voter absentee ballots and envelopes to each early or absentee voter.

(2) The early or absentee voter shall then proceed to mark the ballots alone or in the presence of the justices, but without exhibiting them to the justices or to any other person, except that when the early or absentee voter is blind or physically unable to mark his or her ~~ballot~~ ballots, they may be marked by one of the justices in full view of the other.

§ 2539. MAILING DELIVERY OF EARLY VOTER ABSENTEE  
BALLOTS; ~~VOTERS WHO ARE PERMANENTLY DISABLED~~

(a) Default; town office or mail.

(1) ~~Unless~~ Except as provided in subsections (b) and (c) of this section, unless the early or absentee voter votes in the town clerk's office as set forth in section 2537 of this subchapter, or unless the justices are to deliver the early voter absentee ballots to the early or absentee voter, the town clerk shall provide to the early or absentee voter who comes to the town clerk's office a complete set of early voter absentee ballots or mail a complete set of early voter absentee ballots to each early or absentee voter for whom a valid application has been filed.

(2) The early voter absentee ballots shall be mailed forthwith upon the filing of a valid application, or upon the town clerk's receipt of the necessary ballots, whichever is later.

(b) Voters who are ill, injured, or have a disability. In the case of persons who are early or absentee voters due to illness, injury, or ~~physical~~ disability, if the voter or authorized person requests in his or her application or otherwise that early voter absentee ballots be mailed ~~rather than delivered by justices of the peace~~ or electronically delivered, the town clerk shall mail or electronically deliver the ballots; otherwise the ballots shall be delivered to ~~such voters~~ the voter by justices of the peace as set forth in section 2538 of this subchapter. ~~In the case of all other early or absentee voters, the town clerk shall mail the early voter absentee ballots, unless the voter chooses to apply and vote in person at the town clerk's office.~~

(c) Military or overseas voters.

(1) Early voter absentee ballots ~~to~~ for military or overseas voters shall be sent air mail, first class, postpaid when such service is available, or they may be ~~sent by email~~ electronically delivered when requested by the voter.

(2)(A) The town clerk's office shall be open on the 46th day before any election that includes a federal office and the town clerk shall send on or before that day all absentee ballots to any military or overseas voter who requested an early voter absentee ballot on or before that day.

(B) On that day the town clerk shall complete any reporting requirements and any other responsibilities regarding the mailing of early voter absentee ballots to military or overseas voters, as directed by the Secretary of State.

§ 2540. INSTRUCTIONS TO BE SENT WITH BALLOTS

(a) The town clerk shall send with all early voter absentee ballots and envelopes printed instructions, which may be included on the envelope, in substantially the following form:

INSTRUCTIONS FOR EARLY OR ABSENTEE VOTERS

1. Mark the ballots.
2. Place them in this envelope.
3. Fill out and sign the certificate on the envelope.
4. Mail or deliver the envelope containing the ballots to the town clerk of the town where you are a registered voter in time to arrive not later than election day.

Note: If these ballots have been brought to you personally by two justices of the peace because of your illness, injury or ~~physical~~ disability, just return them to the justices after you have signed the envelope. YOU HAVE THE RIGHT TO MARK YOUR BALLOTS IN PRIVATE - but if you ask for help in filling out the ballots, they will give it to you.

BE SURE TO FILL OUT AND SIGN THE CERTIFICATE ON THIS ENVELOPE OR YOUR VOTE WILL NOT COUNT!

(b) In the case of early absentee voting in a primary, the instructions shall also include appropriate instructions prepared by the Secretary of State for separating and depositing unvoted ballots in a separate envelope provided and clearly marked for that purpose.

§ 2541. MARKING OF BALLOTS

(a) An early or absentee voter to whom ballots, envelopes, and instructions are mailed shall mark the ballots in accordance with the instructions.

(b) ~~When an early or absentee voter is blind or is physically unable to go to the polls to vote in person or to mark his or her ballots, they may be marked by one of the officers who delivers the ballots, in the presence of the other officer.~~ A person who gives assistance to a voter in the marking or registering of ballots shall not in any way divulge any information regarding the choice of the voter or the manner in which the voter's ballot was cast.

(c) If an early or absentee voter makes an error in marking a ballot, the voter may return that ballot by mail or in person to the town clerk and receive another ballot, consistent with the provisions of section 2568 of this ~~title~~ chapter.

\* \* \*

§ 2546b. EARLY VOTING IN TOWN CLERK'S OFFICE; DEPOSIT INTO VOTE TABULATOR

(a)(1) A board of civil authority may vote to permit its town's registered early or absentee voters to vote in the town clerk's office in the same manner as those voting on election day by marking their early voter absentee ballots and depositing them into a vote tabulator.

(2) If a board of civil authority votes to permit early voting as described in subdivision (1) of this subsection, the town's process for conducting this early voting shall conform to the provisions of this section and to procedures that the Secretary of State shall adopt for this purpose.

(b)(1) During business hours in the town clerk's office, the vote tabulator and ballot bin shall be in a secured area accessible only to election officials and voters. The vote tabulator unit shall be secured with an identifiable seal and the ballot box containing voted ballots shall remain locked at all times and secured with an identifiable seal. Neither seal shall be broken prior to the time of closing the polls on election day.

(2) Once early voting has commenced in the town clerk's office, the town clerk or designee shall certify each day in a record prepared for this purpose that the seals on the vote tabulator and ballot box are intact.

(3) When an election official is not present or at times other than business hours, the sealed vote tabulator and ballot box shall be secured in the town clerk's office vault.

(4) The town clerk shall maintain a record of each early or absentee voter who voted in person in accordance with this section.

(c) On the day of the election:

(1) The sealed vote tabulator and sealed ballot boxes shall be transferred to the polling place on election day by two election officials and shall not be opened until the polls have closed on election day.

(2) When the vote tabulator is turned on at the polling place, the town clerk shall verify that the number of ballots that the vote tabulator displays as having been counted matches the number of voters who deposited their early voter absentee ballots in the vote tabulator in accordance with this section and

any early voter absentee ballots that were processed and deposited in the vote tabulator under section 2546a of this subchapter.

(3) All early voter absentee ballots shall be commingled with those voted at the polls on election day prior to being examined for the purpose of identifying write-in votes.

#### § 2547. DEFECTIVE BALLOTS

(a) If upon examination by the election officials it shall appear that any of the following defects is present, either the ballot or the unopened certificate envelope shall be marked “defective” and the ballot shall not be counted:

(1) the identity of the early or absentee voter cannot be determined;

(2) the early or absentee voter is not legally qualified to vote;

~~(2)~~(3) the early or absentee voter has voted in person or previously returned a ballot in the same election;

~~(3) the affidavit on the certificate envelope is not completed;~~

(4) the certificate is not signed;

(5) the voted ballot is not in the certificate envelope; or

(6) in the case of a primary vote, the early or absentee voter has failed to return the unvoted primary ballots.

(b) Each defective ballot or unopened certificate envelope shall be:

(1) affixed with a note from the presiding officer indicating the reason it was determined to be defective;

(2) placed with other such defective ballots in an envelope marked “Defective Ballots - Voter Checked Off Checklist - Do Not Count”; and

(3) returned in that envelope to the town clerk in the manner prescribed by section 2590 of this title chapter.

(c) The provisions of this section shall be indicated prominently in the early or absentee voter material prepared by the Secretary of State.

\* \* \*

\* \* \* Process of Voting; Count and Return of Votes \* \* \*

Sec. 15. 17 V.S.A. § 2568 is amended to read:

§ 2568. REMOVING BALLOTS FROM POLLING PLACE;  
REPLACEMENT, ~~BLANK,~~ AND UNUSED BALLOTS

- (a) Removing ballots from polling place. A person shall not take or remove a ballot from the polling place before the close of the polls.
- (b) Replacement ballots.

\* \* \*

(c) Unused ballots. Ballots originally delivered to the presiding officer that remain undistributed to the voters shall be preserved and returned to the town clerks, and ~~the clerk shall preserve them in such condition, unless called for by some authority entitled to demand and receive them.~~ After 90 days from the date the election is held following the election, they may be destroyed or distributed by the town clerk for educational purposes or for any other purpose the town clerk deems appropriate.

\* \* \* Recounts \* \* \*

Sec. 16. 17 V.S.A. § 2601 is amended to read:

§ 2601. RECOUNT THRESHOLD

(a)(1) In an election for federal office, statewide office, county office, or State Senator, if the difference between the number of votes cast for a winning candidate and the number of votes cast for a losing candidate is two percent or less of the total votes cast for all the candidates for an office, divided by the number of persons to be elected, that losing candidate shall have the right to have the votes for that office recounted.

(2) In an election for State Representative, if the difference between the number of votes cast for a winning candidate and the number of votes cast for a losing candidate is five percent or less of the total votes cast for all the candidates for an office, divided by the number of persons to be elected, that losing candidate shall have the right to have the votes for that office recounted.

(b) In the case of a recount for a local election, the threshold and procedures for conducting the recount shall be as provided in chapter 55, subchapter 3 of this title.

Sec. 17. 17 V.S.A. § 2602k is amended to read:

§ 2602k. RECOUNT TIES

(a)(1) If a recount of a primary election results in a tie, the provisions of subsection 2369(b) of this title shall apply.

(2) If a recount of a public question results in a tie, a runoff election shall not be held, and the question shall be certified not to have passed.

(3) ~~If the a recount of a general election results in a tie, the provisions of this section shall apply, and the court shall order a runoff election to be held, within three weeks of the recount, on a date set by the court.~~

(b) The only candidates who shall appear on the ballot at the runoff election shall be those who tied in the previous election.

(c) The runoff election shall be considered a separate election for the purpose of voter registration under chapter 43 of this title.

~~(d) If the recount confirms a tie as to any public question, a runoff election shall not be held, and the question shall be certified not to have passed. [Repealed.]~~

(e) Warnings for a runoff election shall be posted as required by subchapter 5 of this chapter, except that the warnings shall be posted not less than 10 days before the runoff election.

(f) The conduct of a runoff election shall be as provided in this chapter for general elections.

\* \* \* Special Election for Congressional Vacancies \* \* \*

Sec. 18. 17 V.S.A. § 2621 is amended to read:

§ 2621. VACANCY IN OFFICE OF U.S. SENATOR OR REPRESENTATIVE

(a) If a vacancy occurs in the office of U.S. Senator or U.S. Representative, the Governor shall call a special election to fill the vacancy. His or her proclamation shall specify a day for the special election and a day for a special primary, pursuant to section 2352 of this title.

(b) The special election shall be held not more than ~~three~~ six months from the date the vacancy occurs, except that if the vacancy occurs within six months of a general election, the special election may be held the same day as the general election provided the ballots for the special election are able to be distributed by the deadline set forth in section 2479 of this title.

\* \* \* Local Elections \* \* \*

Sec. 19. 17 V.S.A. § 2647 is amended to read:

§ 2647. INCOMPATIBLE OFFICES

(a)(1) An auditor shall not be town clerk, town treasurer, selectboard member, first constable, collector of current or delinquent taxes, trustee of public funds, town manager, road commissioner, water commissioner, sewage system commissioner, sewage disposal commissioner, cemetery commissioner, or town district school director; nor shall a spouse of or any person assisting



any of these officers in the discharge of official duties be eligible to hold office as auditor.

(2) A selectboard member or school director shall not be first constable, collector of taxes, town treasurer, assistant town treasurer, auditor, or town agent. A selectboard member shall not be lister or assessor.

(3) A cemetery commissioner or library trustee shall not be town treasurer, assistant town treasurer, or auditor.

(4) A town manager shall not hold any elective office in that town or town school district.

(5) Election officers at local elections shall be disqualified as provided in section 2456 of this title.

(b) Notwithstanding subsection (a) of this section, if a school district prepares and reports its budget independently from the budget of the town and the school district is audited by an independent public accountant, a person school director or spouse of a school director shall be eligible to hold office as auditor or town treasurer ~~even if that person's spouse holds office as a school director.~~

Sec. 20. 17 V.S.A. § 2681 is amended to read:

§ 2681. NOMINATIONS; PETITIONS; CONSENTS

(a)(1)(A) Nominations of the municipal officers shall be by petition. The petition shall be filed with the municipal clerk, together with the endorsement, if any, of any party or parties in accordance with the provisions of this title, not later than 5:00 p.m. on the sixth Monday preceding the day of the election, which shall be the filing deadline.

\* \* \*

(3) A petition shall contain the name of only one candidate, ~~and the candidate's name shall appear on the petition as it does on the voter checklist. A voter shall not sign more than one petition for the same office, unless more than one nomination is to be made, in which case the voter may sign as many petitions as there are nominations to be made for the same office.~~

\* \* \*

\* \* \* Voting on Town Manager Form of Governance \* \* \*

Sec. 21. 24 V.S.A. chapter 37 is amended to read:

CHAPTER 37. TOWN, CITY, OR VILLAGE MANAGERS

\* \* \*

## § 1241. PETITION; WARNING

When voters, in number equal to five percent of the legal registered voters in town, petition the selectboard ~~therefor~~ in writing to adopt or rescind the town manager form of governance, the warning for the annual or special meeting ~~which that~~ shall be called upon such petition shall contain an article in substantially the ~~following~~ form set forth in section 1243 of this chapter: ~~“To see if the town will vote to take advantage of the provisions of chapter 37 of Title 24 of the Vermont Statutes Annotated and authorize the selectboard to employ a town manager.”~~

\* \* \*

## § 1243. METHOD OF VOTING

~~When the question of the adoption or rejection of A town may vote at an annual or special meeting to adopt or rescind the provisions of this chapter is submitted to a meeting wherein the Australian ballot system is used for the election of officers, there. A vote on the question shall be printed upon the ballots below the list of candidates the following question in substantially the following form:~~

~~““Will Shall the [town name] vote to take advantage of [adopt/rescind] the town manager form of governance in accordance with the provisions of chapter 37 of Title 24 of the Vermont Statutes Annotated and authorize the selectboard to employ a town manager?”~~

Yes  — No

~~And the voter shall make a cross or X in the blank space against the answer he or she desires to give concerning such question. The ballots shall be counted forthwith by the board of civil authority and the result announced by the presiding officer.~~

\* \* \*

\* \* \* Campaign Finance; Reporting Dates \* \* \*

Sec. 22. 17 V.S.A. § 2964 is amended to read:

§ 2964. CAMPAIGN REPORTS; CANDIDATES FOR STATE OFFICE,  
THE GENERAL ASSEMBLY, AND COUNTY OFFICE;  
POLITICAL COMMITTEES; POLITICAL PARTIES

(a)(1) Each candidate for State office, the General Assembly, or a two-year-term county office who has rolled over any amount of surplus into his or her new campaign or who has made expenditures or accepted contributions of \$500.00 or more during the two-year general election cycle and, except as provided in subsection (b) of this section, each political committee that has not

filed a final report pursuant to subsection 2965(b) of this chapter, and each political party required to register under section 2923 of this chapter shall file with the Secretary of State campaign finance reports as follows:

(A) in the first year of the two-year general election cycle, on July ~~15~~ 1; and

(B) in the second year of the two-year general election cycle:

(i) on March 15;

(ii) on July ~~15~~ 1 and August ~~15~~ 1;

(iii) on September 1;

(iv) on October 1, October 15, and the Friday before the general election; and

(v) two weeks after the general election.

(2) Each candidate for a four-year-term county office who has rolled over any amount of surplus into his or her new campaign or who has made expenditures or accepted contributions of \$500.00 or more during the four-year general election cycle shall file with the Secretary of State campaign finance reports as follows:

(A) in the first three years of the four-year general election cycle, on July ~~15~~ 1; and

(B) in the fourth year of the four-year general election cycle:

(i) on March 15;

(ii) on July ~~15~~ 1 and August ~~15~~ 1;

(iii) on September 1;

(iv) on October 1, October 15, and the Friday before the general election; and

(v) two weeks after the general election.

\* \* \*

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

#### Sec. 23. EFFECTIVE DATES

This act shall take effect on July 1, 2019, except that:

(1) this section and Secs. 19, 17 V.S.A. § 2647 (incompatible offices) and 22, 17 V.S.A. § 2964 (campaign finance reports), shall take effect on passage; and

(2) in Sec. 14, 17 V.S.A. chapter 51, subchapter 6 (early or absentee voters), § 2546b (early voting in town clerk's office; deposit into vote tabulator) shall take effect on July 1, 2020, except that the Secretary of State shall adopt the procedures described in subdivision (a)(2) of that section on or before January 1, 2020.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senators White, Bray, Clarkson and Pollina moved that the Senate concur in the House proposal of amendment with amendments as follows:

First: In Sec. 5a, 17 V.S.A. § 2145 (application forms), in subsection (f), following "or the voter registration portion of an application for a motor vehicle driver's license or nondriver identification card" by inserting or of an application for the services of a designated automatic voter registration agency

Second: In Sec. 7, 17 V.S.A. § 2145b (voter registration agencies), in subsection (e), by adding a new subdivision (2) to read as follows:

(2) A voter registration agency shall not collect data necessary to establish an individual's eligibility to vote solely for the purpose of being designated an automatic voter registration agency under this subsection.

And by renumbering the remaining subdivisions within subsection (e) to be numerically correct.

Which was agreed to.

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

**S. 110.**

House proposal of amendment to Senate bill entitled:

An act relating to data privacy and consumer protection.

Was taken up.

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

\* \* \* Data Privacy; State Government \* \* \*

Sec. 1. DATA PRIVACY INVENTORY

(a) On or before January 15, 2020, the following persons shall conduct a data privacy inventory and submit a report for their respective branches of State government to the House Committees on Commerce and Economic Development and on Government Operations and to the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations:

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

(2) the Deputy Director for Information Technology within the Office of Legislative Council for the Legislative Branch; and

(3) the Chief Data Officer within the Agency of Digital Services and the Chief Records Officer within the Office of the Secretary of State for the Executive Branch.

(b) The inventory and report for each branch shall address the collection and management of personally identifiable information, as defined in 9 V.S.A. § 2430, and of street addresses, e-mail addresses, telephone numbers, and demographic information, specifically:

(1) federal and State laws, rules, and regulations that:

(A) exempt personally identifiable information from public inspection and copying pursuant to 1 V.S.A. § 317;

(B) require personally identifiable information to be produced or acquired in the course of State government business;

(C) specify fees for obtaining personally identifiable information produced or acquired in the course of State government business; and

(D) require personally identifiable information to be shared between branches of State government or between branches and nonstate entities, including municipalities;

(2) arrangements or agreements, whether verbal or written, between branches of State government or between branches and nonstate entities, including municipalities, to share personally identifiable information, street addresses, e-mail addresses, telephone numbers, and demographic information; and

(3) recommendations for proposed legislation concerning the collection and management of personally identifiable information, street addresses, e-mail addresses, telephone numbers, and demographic information.

\* \* \* Security Breach Notice Act \* \* \*

Sec. 2. 9 V.S.A. § 2430 is amended to read:

§ 2430. DEFINITIONS

As used in this chapter:

\* \* \*

(6) “Data collector” means a person who, for any purpose, whether by automated collection or otherwise, handles, collects, disseminates, or

otherwise deals with personally identifiable information, and includes the State, State agencies, political subdivisions of the State, public and private universities, privately and publicly held corporations, limited liability companies, financial institutions, and retail operators.

(7) “Encryption” means use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key.

(8) “License” means a grant of access to, or distribution of, data by one person to another in exchange for consideration. A use of data for the sole benefit of the data provider, where the data provider maintains control over the use of the data, is not a license.

(9) “Login credentials” means a consumer’s user name or e-mail address, in combination with a password or an answer to a security question, that together permit access to an online account.

~~(9)~~(10)(A) “Personally identifiable information” means a consumer’s first name or first initial and last name in combination with ~~any~~ one or more of the following digital data elements, when the data elements are not encrypted, ~~or~~ redacted, or protected by another method that renders them unreadable or unusable by unauthorized persons:

(i) a Social Security number;

(ii) ~~motor vehicle operator’s license number or nondriver identification card number~~ a driver license or nondriver State identification card number, individual taxpayer identification number, passport number, military identification card number, or other identification number that originates from a government identification document that is commonly used to verify identity for a commercial transaction;

(iii) a financial account number or credit or debit card number, if circumstances exist in which the number could be used without additional identifying information, access codes, or passwords;

(iv) ~~account passwords~~ a password, or personal identification numbers number, or other access codes code for a financial account;

(v) unique biometric data generated from measurements or technical analysis of human body characteristics used by the owner or licensee of the data to identify or authenticate the consumer, such as a fingerprint, retina or iris image, or other unique physical representation or digital representation of biometric data;

(vi) genetic information; and

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(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 subchapter commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

#### Sec. 5. STUDENT PRIVACY; REVIEW; RECOMMENDATIONS

The Attorney General, in consultation with the Agency of Education, shall examine the issue of student data privacy as it relates to the federal Family Educational Rights and Privacy Act and access to student data by data brokers or other entities, and shall confer with parties of interest to determine any necessary recommendations.

\* \* \* Automatic Renewal Provisions \* \* \*

Sec. 6. 9 V.S.A. § 2454a is amended to read:

#### § 2454a. CONSUMER CONTRACTS; AUTOMATIC RENEWAL

(a) A contract between a consumer and a seller or a lessor with an initial term of one year or longer that renews for a subsequent term that is longer than one month shall not renew automatically unless:

(1) the contract states clearly and conspicuously the terms of the automatic renewal provision in plain, unambiguous language in bold-face type; and

(2) ~~in addition to accepting the contract, the consumer takes an affirmative action to opt in to the automatic renewal provision; and~~

~~(3) if the consumer opts in to the automatic renewal provision,~~ the seller or lessor provides a written or electronic notice to the consumer:

(A) not less than 30 days and not more than 60 days before the earliest of:

(i) the automatic renewal date;

(ii) the termination date; or

(iii) the date by which the consumer must provide notice to cancel the contract; and

(B) that includes:

(i) the date the contract will terminate and a clear statement that the contract will renew automatically unless the consumer cancels the contract on or before the termination date; and

(ii) the length and any additional terms of the renewal period;

~~(iii) one or more methods by which the consumer can cancel the contract; and~~

~~(iv) contact information for the seller or lessor.~~

(b) A seller or lessor under a contract subject to subsection (a) of this section shall:

(1) provide to the consumer a toll-free telephone number, electronic-mail address, a postal address if the seller or lessor directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for canceling the contract; and

(2) if the consumer accepted the contract online, permit the consumer to terminate the contract exclusively online, which may include a termination e-mail formatted and provided by the seller or lessor that the consumer can send without additional information.

(c) A person who violates a provision of ~~subsection (a)~~ of this section commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

~~(e)~~(d) The provisions of this section do not apply to:

(1) a contract between a consumer and a financial institution, as defined in 8 V.S.A. § 11101, or between a consumer and a credit union, as defined in 8 V.S.A. § 30101; or

(2) a contract for insurance, as defined in 8 V.S.A. § 3301a.

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

Sec. 7. EFFECTIVE DATE

(a) This section and Secs. 1–5 of this act shall take effect on July 1, 2019.

(b) Sec. 6 of this act shall take effect on July 1, 2019 and supersedes contrary provisions of 2018 Acts and Resolves No. 179, Sec. 1.

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

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

Senator Hooker  
Senator Baruth  
Senator Sirotkin

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

**Rules Suspended; Bill Committed**

**H. 508.**

Pending entry on the Calendar for notice, on motion of Senator White, the rules were suspended and House bill entitled:

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

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Government Operations, Senator White moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Government Operations *intact*,

Which was agreed to.

**Committee of Conference Appointed**

**H. 536.**

An act relating to education finance.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Cummings  
Senator MacDonald  
Senator Campion

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

**Rules Suspended; Bills Messaged**

On motion of Senator Ashe, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

**S. 107, S. 110, H. 536.**

**Adjournment**

On motion of Senator Ashe, the Senate adjourned until ten o'clock and thirty minutes in the morning.